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Evolution over revolution: How judicial adaptation undermined Roosevelt's court-packing plan

By Anwen Hao

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Anwen Hao is a recently graduated senior from The Harker School in San Jose, California. Anwen is interested in the subjects history and philosophy, and in the future he considers pursuing a career in law. However, he also considers AI research as a way to understand human intelligence. He first gained interest in writing this particular article after observing the institutional weaknesses of the Supreme Court, such as its inability to enforce its own rulings as shown in historical instances like *Worcester v. Georgia*, where the President ignored the Supreme Court's ruling. He wanted to investigate how the Supreme Court is able to maintain its judicial independence, which is essential to ensuring it can effectively wield judicial review.

In his free time, he enjoys dancing ballet and fencing. Anwen also enjoys taking care of and playing with his two pet cats.

ABSTRACT

This paper examines the 1937 Court-Packing Plan proposed by President Franklin D. Roosevelt, focusing on how the Supreme Court's independence persisted despite political threats. The study argues that the failure of the plan was not solely due to political opposition but primarily because of the Court's gradual jurisprudential evolution toward a more deferential stance on economic regulation, which culminated in the cases *West Coast Hotel v. Parrish* (1937) and *NLRB v. Jones & Laughlin Steel Corp.* (1937). These decisions reassured Congress that the Court no longer obstructed economic reform, diminishing the necessity of Roosevelt's proposal. By analyzing key cases before 1937—such as *Nebbia v. New York* (1934) and *Home Building & Loan Association v. Blaisdell* (1934)—this paper refutes the traditional “switch in time” narrative, demonstrating that the Court's ideological transformation was a gradual process rather than an abrupt reaction to political pressure. Furthermore, the study highlights the inherent tension between judicial independence and policy-driven political agendas, emphasizing how threats to the judiciary provoke intense political realignments. Finally, this paper draws parallels to contemporary debates on Supreme Court reform, illustrating the continued divisiveness of judicial restructuring. The findings underscore that judicial independence—and by extension, the rule of law—is not self-sustaining but depends on whether society values it above immediate political gains.

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INTRODUCTION TO HOFSTEDE'S CULTURAL DIMENSIONS THEORY

Throughout history, thinkers have exalted the rule of law as a cornerstone of a free society. More precisely, intellectuals have recognized the rule of law as a bulwark against arbitrary power. As John Locke explained, “liberty is to be free from restraint and violence from others ... and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man’s humour might domineer over him?)” (Hayek & Hamowy, 2011, p. 232). In other words, the rule of law refers to the concept that all individuals, including those in power, are subject to the same regulations. Therefore, the rule of law prevents the government from using arbitrary will to violate the rights of citizens (*What Is the Rule*, n.d.).

In *Federalist 78*, Alexander Hamilton envisioned the courts as the institution that exercises the rule of law. By determining whether government actions conform to the Constitution, the courts play a key role in ensuring that the government stays within its constitutional boundaries and does not encroach on individual rights. The instrument through which the courts limit the power of the government is judicial review, or the courts’ power to declare laws unconstitutional:

By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority ... Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing (Hamilton, 1788/1788).

Moreover, Hamilton emphasized that judicial review can only *effectively* serve as a check against the government if the judicial branch remains independent: “The complete independence of the courts of justice is particularly essential in a limited constitution” (Hamilton, 1788/1788). If the judiciary is unable to exercise independent judgment on cases and is instead under the influence of the other branches, it would in reality be merely a rubber stamp, used to validate the government’s policies and thus would not serve as an effective protector of individual rights.

However, despite the importance of the judiciary’s role and the necessity of preserving the sanctity of the judiciary, Hamilton observes that it remains the weakest branch: it relies on the executive branch to enforce its rulings, it possesses neither the power of the purse nor the military, and it cannot enact policy by invoking the will of the people (Hamilton, 1788/1788). Because the courts lack so many practical means to assert its power, it is most susceptible to pressure from the other two branches: “from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches” (Hamilton, 1788/1788).

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Notwithstanding these institutional weaknesses, the judicial branch has emerged as a remarkably effective check on the other two branches over the course of United States history. Even though Hamilton referred to the courts in general when he was discussing the judiciary, we will only focus on the Supreme Court, as it is the ultimate arbiter of constitutional interpretation. Thus the question emerges, how has the independence of the Supreme Court persisted throughout history to effectively implement judicial review as described in Hamilton's writings?

To answer this question, we will delve into the historical episode of Franklin D. Roosevelt's Judicial Procedures Reform Bill of 1937, otherwise known as the Court-Packing Plan. This was a particular instance where the Supreme Court's independence was threatened but was ultimately preserved. By having a clearer understanding of the fundamental reason that led to the defeat of this bill, we seek to gain insights into broader lessons for how society can help protect judicial independence in the future.

The ultimate reason for the bill's failure was the Court's jurisprudential evolution to an interpretation of the Constitution that was more deferential to the government's power to address economic challenges, which eliminated all necessity to enact the bill; indeed, a closer examination of the sequence of events suggests that Roosevelt had miscalculated when he proposed the Court-Packing Plan, as the Court had already been showing signs of change prior to the proposal of the bill.

To build this argument, we will first examine the historical context that set up the confrontation before the proposal of the Court-Packing Plan. Then, we will investigate the groups of people who mounted the opposition against the bill, but conclude that this opposition was not enough to stop the passage of the bill at that point. In the next section, we will enter the crux of our argument, which is that the Court's two decisions in *West Coast Hotel v. Parrish* (1937) and *NLRB v. Jones & Laughlin Steel Corp.* (1937) were the ultimate reasons that led to increased opposition that was able to defeat the bill. In the following section, we will contextualize these two cases within the Court's broader jurisprudential evolution, arguing that they were not a dramatic "switch" but rather the results of a gradual shift toward a judicial philosophy that was more deferential to economic regulation. We will then address counterarguments to our thesis, and finally, in our conclusion, we will extrapolate lessons that we can take from this historical episode to protect judicial independence and the rule of law in the future.

HISTORICAL CONTEXT

During the Great Depression, in an attempt to rescue the country, newly-elected President Franklin Delano Roosevelt abandoned the approach of unrestricted laissez-faire policies and dramatically expanded the role of government in people's lives through economic regulation. Some examples included the National Recovery Administration, which sought to regulate competition by allowing companies to collectively write codes for fair competition, and the Agricultural Adjustment Act, which subsidized farmers for limiting production, thereby artificially decreasing the supply of goods to increase prices. In the beginning of his first term, he experienced unprecedented cooperation with Congress and had the vast majority of his proposals passed into law (Rehnquist, 2011, p. 116-117).

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Although Roosevelt enjoyed Congress's cooperation, the Supreme Court was still committed to judicial activism in support of an economically conservative construction of the Constitution and would strike down many New Deal laws in Roosevelt's first term. The Court's jurisprudence from the late nineteenth century to the early twentieth century, known as the *Lochner* era, can be characterized through both its narrow construction of the Commerce Clause and its strong protection of the freedom of contract through the Due Process Clause (Chemerinsky, 2019, p. 263). With regards to the Commerce Clause, the Court construed the definition of *commerce* as distinct from other stages of production like manufacturing. If the federal government does regulate intrastate activity, the activity must substantially affect interstate commerce. Finally, the Court used the Tenth Amendment to prevent the federal government from invading the zone of power of the states (Chemerinsky, 2019, p. 264). With regards to the freedom of contract, the Court would invalidate many laws that protected workers' rights because they interfered with the freedom of workers and business owners to enter into contracts (Chemerinsky, 2019, p. 666-668).

Some cases that applied the economically conservative construction of the Constitution against New Deal policies include *A. L. A. Schechter Poultry Corp. v. United States* (1935), which invalidated the National Industrial Recovery Act of 1933 as violating the nondelegation doctrine and Congress's Commerce Power (Leuchtenburg, 1966, p. 357-359), *Morehead v. New York ex rel. Tipaldo* (1936), which struck down a state minimum wage law (Leuchtenburg, 1966, p. 376-378), and *United States v. Butler* (1936), which declared the Agricultural Adjustment Act unconstitutional (Leuchtenburg, 1966, p. 369-372). As a result of these cases, Roosevelt desired to influence the ideological makeup of the Court by adding new justices who are ideologically friendly to the administration (Rehnquist, 2011, p. 119-120). However, as we will later explain, a closer examination of the Court's jurisprudence during this period suggests that while the Court was ideologically conservative, it was showing indications of transformation toward a more liberal construction of the Constitution.

Roosevelt won a landslide re-election victory in 1936. Emboldened, he proposed the Judicial Procedures Reform Bill of 1937 to Congress, where the President could appoint a new justice for each current justice on the Court over 70 years old. Six of the nine sitting justices met this requirement, which meant Roosevelt could add six new justices (Rehnquist, 2011, p. 120). The ultimate purpose of this legislation was to pack the Court with justices who are more supportive of New Deal legislation. The bill would neuter the Supreme Court's power of judicial review, as the Court would lose its independence and become another instrument for the President to pass legislation.

Roosevelt proposed the bill with the expectation that Democratic Party leadership would automatically fall in line behind the bill; however, this bill would be more polarizing than he would have anticipated, especially within his own party.

“I WOULD JUDGE THAT THE BATTLE LINES WERE FORMING...” (SHESOL, 2011, P. 324)

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Amidst the announcement of the Court-Packing Plan, opposition began to coalesce. Two thirds of the press that originally supported Roosevelt in his 1936 campaign opposed the Court-Packing Plan (Shesol, 2011, p. 301). Journalists accused Roosevelt of dictatorial tendencies, portraying his bill as a usurpation of the Court's power to unite the three branches under his control (Shesol, 2011, p. 302-303). These arguments took on additional force during that time period, when democracies were threatened and fascism arose in Nazi Germany, Italy, and the Soviet Union (Biela, 2024, p. 31-32).

Within Congress, coalitions of Senators began to form in opposition of the bill. One group were the Republicans, who would understandably oppose any attempt by the liberal executive to usurp the power of other branches. They refrained from speaking out explicitly against the bill because they were afraid that the Democrats would turn the debate around the bill into a partisan issue. Republicans would stand on the sidelines and watch the Democratic Party divide itself (Shesol, 2011, p. 310-312). In addition to the Republicans, Democratic Senators who represented Southern states objected to the bill. Democrats in the South were always uncomfortable with the expansion of federal intervention in the states; the independence of the state over the federal government had been a central principle in the South. The New Deal also uplifted the African American community in the South, which conflicted with traditional ideas of white supremacy in the region. Southern Democrats have come to believe that the Supreme Court remained the only method through which they could protect their white privilege (Shesol, 2011, p. 312-315). Finally, progressive Democratic Senators opposed the Court-Packing Plan. While they have been reliably loyal to Roosevelt previously, progressives believed that the Supreme Court remained an important protector of minority rights, and the consolidation of power by the executive branch was in conflict with any liberal ideology (Shesol, 2011, p. 315-317). For progressive Democratic Senator Burton K. Wheeler in particular, the leader of the opposition forces, his opposition stemmed from a combination of both personal animus against Roosevelt and a suspicion of an overly powerful executive branch (Solomon, 2009, p. 107). This Court-Packing episode saw the unification of a diverse group of politicians with various interests that did not typically cooperate with each other.

Congressional opponents also collaborated with publishers like Frank E. Gannett, Edward Rumely, and Amos Pinchot to spread their message (Shesol, 2011, p. 356-364). However, this opposition was not enough to kill the bill entirely. From the beginning, a "tentative survey" from the Wall Street Journal showed a 53-43 split in favor of the bill in the Senate (Shesol, 2011, p. 300). Organized labor like the American Federation of Labor and the Labor Non-Partisan League expressed their support for the bill (Shesol, 2011, p. 329).

Roosevelt sought to increase support for the bill by reframing his contention for packing the Court. The confrontation around the Court-Packing Plan approached a stalemate at the beginning of 1937 (Shesol, 2011, p. 372). Roosevelt originally contended that the dockets were congested, so adding new justices will enable the Court to adjudicate more cases more quickly (Solomon, 2009, p. 92-93). However, this framing of the issue threatened his credibility because people suspected he had an ulterior motive (Shesol, 2011, p. 368). His advisors suggested that he directly present his true underlying reason, which was the claim that the Court must be reformed ideologically because it was imposing its interpretation of public policy onto Congress and the will of the people under the guise of judicial review

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(Shesol, 2011, p. 368-369). Roosevelt gave two speeches that employed this new reasoning: the Democratic Victory Dinner on March 4 and a fireside chat on March 9 (Solomon, 2009, p. 128-129, 138). Roosevelt's earnest, urgent, and forceful arguments that the Court was hindering economic progress and exacerbating the struggles of the people resonated with the public. According to Jeff Shesol:

Roosevelt's persuasive power [in the Democratic Victory Dinner speech] was so legendary that some Americans, according to The Nation, had actually "refused to listen to [the speech] on the radio, lest ... they be seduced into agreement with it." Many newspapers, on the basis of abundant anecdotal evidence, declared that the president had won himself many converts (Shesol, 2011, p. 377).

After these two speeches, public support for the bill climbed steadily, and Congressional opposition were apprehensive about their chances of blocking the bill (Shesol, 2011, p. 386).

When the Senate Judiciary Committee hearings on the bill began, strikes broke out across the country, which increased the perceived urgency of the Court-Packing Plan (Shesol, 2011, p. 387-388). Labor unrest exposed the need for more government regulation, so the Court-Packing Plan was deemed more necessary to reform the Court so that it no longer hindered the administration's agenda (Shesol, 2011, p. 388). Even though Wheeler presented a letter from Chief Justice Charles Evans Hughes to the Senate Judiciary Committee to disprove Roosevelt's claim that the Court's docket was congested, the letter addressed an argument that proponents of the Court-Packing Plan had already abandoned (Shesol, 2011, p. 389-401). As a result, the Hughes Letter did little to undermine the administration's current rationale and position.

Ultimately, even amidst opposition, the bill seemed likely to pass.

THE SWITCH IN TIME

Amidst what seemed like a likely passing of the Court-Packing Plan, the key turning point in the discussion around the legislation occurred when the Court handed down two decisions in the spring that would severely deflate support for the bill: *West Coast Hotel v. Parrish* (1937) and *NLRB v. Jones & Laughlin Steel Corp.* (1937). *West Coast Hotel v. Parrish* (1937) upheld a Washington state minimum wage law and decisively pivoted away from the constitutional interpretations of the *Lochner* era, giving the government significant discretion to protect the welfare of the community even if that meant impeding the freedom of contract (Chemerinsky, 2019, p. 675-676). In *NLRB v. Jones & Laughlin Steel Corp.* (1937), the Court upheld the Wagner Act and based its Commerce Clause analysis not on the abstract, theoretical connections between industrial activity and interstate commerce, but on the actual experiences of the nation (Chemerinsky, 2019, p. 273).

Prior to the release of these two cases, Congress and the public faced the difficult choice between preserving the rule of law and sacrificing it to achieve substantive policy goals. After the announcement of these two rulings, however, Senators realized that this is no longer a difficult decision

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because the government can now achieve Roosevelt's goals without harming the Court's independence. Harry Truman, a reliable New Deal supporter, began to waver in his support for the Court-Packing bill: "It looks like the Supreme Court has reformed" (Solomon, 2009, p. 186). According to political scientist Gregory Caldeira, these cases decreased public support for the Court-Packing Plan by over 5 percentage points (Caldeira, 1987, p. 1147-1148). This statistic shows how people viewed these cases as demonstrating that the Court's jurisprudence has changed once and for all (Caldeira, 1987, p. 1148).

Senators Joseph O'Mahoney and Pat McCarran, two originally undecided Senators on the Senate Judiciary Committee responsible for writing a report on the bill for the entire Senate, were now opposed to the plan (Solomon, 2009, p. 191). According to Senate Majority Leader Joe Robinson who had been the primary driver of the bill in Congress, Roosevelt no longer has the votes in the Senate to pass the bill (Solomon, 2009, p. 190). This was the first time since the announcement of the Court-Packing Plan Democratic Party leadership expressed pessimistic sentiments regarding the prospects of the bill in Congress, and for this reason, these two cases are the key reasons that sparked the bill's demise.

The Court's Jurisprudential Evolution

Legal scholars commonly portray *West Coast Hotel v. Parrish* (1937) and *NLRB v. Jones & Laughlin Steel Corp.* (1937) as the "Constitutional Revolution of 1937," a drastic change in the Court's jurisprudence (Kalman, 2005, p. 1052). In *Parrish*, the Court rejected the precedent that the freedom of contract can block government regulation of bargaining power between workers and their employers, expressly overruling *Adkins v. Children's Hospital* (1923) (Chemerinsky, 2019, p. 676). In *NLRB*, the Court declared that the government had broad discretion to regulate the free flow of commerce even if the obstruction of commerce arises from the activity of production (Chemerinsky, 2019, p. 273). In isolation, these two cases may seem like a radical shift in jurisprudence from the previous era, where the Court was deeply committed to a reading of the Constitution that limited government intervention in economic affairs.

However, a closer examination of the Court's decisions during this period suggests that the doctrinal change toward an interpretation that allowed more government regulation had not been as dramatic. The Court had been showing signs of jurisprudential evolution prior to the Court-Packing Plan in three cases in particular: *Nebbia v. New York* (1934), *Home Building & Loan Association v. Blaisdell* (1934) (Chemerinsky, 2019, p. 674-675), and, interestingly, *United States v. Butler* (1936), one significant case that prompted Roosevelt to propose the Court-Packing Plan.

In *Nebbia v. New York* (1934), the Court showed initial signs of changing their jurisprudence, pivoting away from the economic substantive due process approach of the *Lochner* era. The *Nebbia* decision upheld a New York law that regulated milk prices (Chemerinsky, 2019, p. 674). In writing its decision, the Court used language that challenged the principle that the freedom of contract is protected by the Due Process Clauses of the Fifth and Fourteenth Amendments expounded upon by the *Lochner* era decisions:

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The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest (Nebbia v. New York, 1934).

This was a departure from previous cases where the Court allowed for far fewer economic regulations to impede the freedom of contract.

In *Home Building & Loan Association v. Blaisdell* (1934), the Court upheld a Minnesota law that prevented foreclosures of mortgages from 1933 to 1935. The Court recognized the importance of the government's interest to ensure the economic wellbeing of the community, setting the precedent that government interference in contracts is permitted if it served a valid police purpose (Chemerinsky, 2019, p. 687). This case illustrates how the Court is beginning to acknowledge the economic reality that more government regulation is necessary and allow more instances for government involvement in the freedom of contract, further differentiating from the *Lochner* era jurisprudence that defended the freedom of contract (Chemerinsky, 2019, p. 675).

Finally, the key case that demonstrates a Court in transition is *United States v. Butler* (1936). The Court invalidated the Agricultural Adjustment Act (AAA), a law where the government taxed agricultural production and subsidized farmers to produce less, because it violated states' rights. The AAA was an attempt by the government to artificially decrease the supply of farm products in the markets, thereby increasing the price (Chemerinsky, 2019, p. 291). Writing in the dissent, Justice Harlan F. Stone denounced the decision as a "tortured construction," and it is this very "tortured" nature of the decision that reflects a Court that strives to maintain its conservative stance while acknowledging a change in judicial philosophy (*United States v. Butler*, 1936).

The majority decision began by declaring a stance on a century-long legal debate between two theories over the proper interpretation of the Taxing and Spending Clause. One theory, argued by Alexander Hamilton, posited that this clause granted Congress authority to tax and spend for purposes beyond the other enumerated powers in Article I, Section 8. The opposing theory, proposed by James Madison, argued that the clause only allowed Congress to tax and spend in furtherance of the other enumerated powers (Farber & Siegel, 2019, p. 164). The *Butler* Court explicitly endorsed Hamilton's expansive view of federal power as "the correct one" (*United States v. Butler*, 1936). Such an endorsement leads to ramifications that give the federal government significant discretion to tax and spend. This is indicative of the Court's continued evolution toward a constitutional interpretation that allows for more government intervention.

However, the majority recognized that the AAA tax was part of a larger regulatory scheme to control agricultural production, and this purpose of regulating agricultural production is unconstitutional because production is a purely local activity, an area of authority only reserved to the states under the Tenth Amendment:

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The act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end (United States v. Butler, 1936).

The Court struck down the act on the grounds that it was a violation of the Tenth Amendment, and the taxing and spending power cannot be abused to achieve a purpose prohibited by another constitutional provision (Chemerinsky, 2019, p. 341).

Consequently, the above examination of the Court's analysis reveals a more complex decision than the holding indicates: the Court ultimately declared the AAA unconstitutional, but at the same time, unequivocally expanded the government's power to tax and spend. Because the Court struck down the AAA on grounds "wholly apart" from the scope of the taxing and spending power, the ruling did nothing to affect the Court's expansive interpretation of the Taxing and Spending Clause (*United States v. Butler*, 1936).

Contemporary commentators at the time like legal scholar John W. Holmes support this thesis. He observes that "the AAA decision, instead of being a victory for state rights and conservatism, is believed to point the way toward unprecedented expansion of federal functions" (Holmes, 1936, p. 637). He argues that the reason the AAA failed was a matter of statutory interpretation. As long as legislators do not mix their tax provisions with regulatory goals in the same bill, the Court will likely uphold it as a legitimate exercise of the power (Holmes, 1936, p. 640-641). As Holmes put it, "nothing contained in *United States v. Butler* should encourage the belief that, with proper bill writing, Congress cannot vindicate a broad power of regulation based upon its taxing and spending authority" (Holmes, 1936, p. 648). Holmes' analysis also interprets the *Butler* decision as an expansion of government power, supporting the argument that the Court had been becoming more receptive to government regulation prior to the handing down of *Parrish* and *NLRB*.

Furthermore, *Butler's* liberal construction has been used as precedent in later cases to uphold laws as valid exercises of Congressional power (Chemerinsky, 2019, p. 291). In *Helvering v. Davis* (1937), a case decided after *Parrish* and *NLRB*, the Court cited *Butler* to uphold the Social Security Act of the New Deal through *Butler's* expansive interpretation of the Taxing and Spending Clause (*Helvering, Commissioner of Internal Revenue v. Davis*, 1937). Therefore, the *Butler* decision allowed for broader discretion for government to tax and spend, revealing a Court that is beginning to incorporate judicial philosophies that are more deferential to the government's authority in the economic sphere.

But Roosevelt, and the public in general, recognized no such distinction in cases like *Butler*. According to William Leuchtenburg, "The *Butler* decision aroused acrimonious criticism of the Court" from the public (Leuchtenburg, 1966, p. 366). In a cabinet meeting, Secretary of the Interior Harold Ickes recorded that Roosevelt "said that word is coming to him from widely separated parts of the country that people are beginning to show a great deal of interest in the constitutional questions that have

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been raised by recent Supreme Court decisions” (Leuchtenburg, 1985, p. 369). This suggests that Roosevelt sensed greater popular unrest as a result of decisions like *Butler*. In a memorandum, Roosevelt writes that *Butler* “virtually prohibits the President and Congress from the right, under modern conditions, to intervene reasonably in the regulation of nation-wide commerce and nation-wide agriculture” (Leuchtenburg, 1966, p. 369-370). As a result of *Butler*, Roosevelt began to consider legislative avenues to undermine the power of the Court.

Holmes himself confronted the question of reforming the Court:

The cry for constitutional change ... has risen to a new pitch following decapitation of the AAA by the United States Supreme Court in United States v. Butler ... It seems timely, therefore, to inquire how far the current conception of the Supreme Court as an obstacle to the exercise of legislative power by the central government is justified, and to canvass the extent of the need, if any, for curtailment of the functions of that tribunal (Holmes, 1936, p. 648).

Holmes ultimately concluded, given how Congress can easily invoke *Butler*’s expansive construction of the Taxing and Spending Clause by changing statutory form, “there is no occasion for curtailment of the power of judicial review possessed by the Court” (Holmes, 1936, p. 648). Indeed, Roosevelt seemed to have miscalculated by initiating a confrontation with the Court when, according to our nuanced analysis of the *Butler* decision and the Court’s jurisprudence during this time, no such confrontation was necessary since the Court was already showing indications of change.

In light of these cases that we analyzed above, we are able to see that *West Coast Hotel v. Parrish* (1937) and *NLRB v. Jones & Laughlin Steel Corp.* (1937) are the results of a gradual and natural outgrowth from cases like *Nebbia*, *Blaisdell*, and *Butler*. Upholding a Washington state minimum wage law, *Parrish* echoes much of the deferential language from *Nebbia* and *Blaisdell*:

... the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process (West Coast Hotel Co. v. Parrish, 1937).

Like *Nebbia* and *Blaisdell*, the Court in *Parrish* recognized the importance of government regulation as a way to promote public wellbeing and how the Due Process Clause does not absolutely protect the freedom of contract.

Parrish can thus be viewed as the culmination of gradual evolution in the Court’s jurisprudential application of economic substantive due process. In turn, the *NLRB* case can be interpreted as an application of post-*Lochner* era reasoning to the doctrine of the Commerce Clause. By “post-*Lochner* era” reasoning, we mean greater deference to government regulation of the economy to protect the interests of the community. The gradual jurisprudential change has occurred in the domain of the

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economic due process as described above, and once we emerge from the other side of that change, we have a Court that likewise interprets its other doctrine with this post-*Lochner* era reasoning. We see the Court's greater deference in the case's reasoning upholding the Wagner Act:

The fundamental principle is that the power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement," to adopt measures "to promote its growth and insure its safety," "to foster, protect, control and restrain." That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it" (National Labor Relations Board v. Jones & Laughlin Steel Corporation, 1937).

This excerpt from the case demonstrates the broad discretion Congress possesses under the Commerce Clause to ensure the free flow of commerce even if that means regulating intrastate industrial activity.

Thus, the analysis of the jurisprudence leading up to the Court-Packing episode provides evidence on how the Court is beginning to embrace a constitutional interpretation that is more deferential to government power prior to the two cases of *Parrish* and *NLRB*. Given how the Court had already begun to show signs of change before the Court-Packing Plan, a more accurate characterization of the Court's jurisprudential change is a more gradual evolution, rather than a "Constitutional Revolution."

COUNTERARGUMENTS

There remain certain counterarguments not addressed elsewhere in the paper.

Firstly, the traditional historical narrative, commonly summarized in the quip "a switch in time that saved nine," claims that Justice Owen Roberts switched his vote on the minimum wage issue in *West Coast Hotel v. Parrish* (1937) from his previous position on minimum wage law in *Tipaldo* in order to create the perception that the Court was taking a more supportive stance of Roosevelt's policies (Solomon, 2009, p. 162). Based on this interpretation of history, the jurisprudential shift that occurred in *Parrish* and *NLRB* would not be the result of years of gradual evolution, but rather the result of acquiescing to political pressure. However, an examination of the timeline of events shows that Justice Roberts had already voted in favor of upholding the minimum wage law in *Parrish* before the introduction of the Court-Packing bill to Congress. This shows that Justice Roberts had independently arrived at this judgment without influence from the bill (Shesol, 2011, p. 414-415). In his memorandum to future Justice Felix Frankfurter, Justice Roberts himself recounted the events leading up to the *Parrish* decision and observed, "these facts make it evident that no action taken by the President in the interim had any causal relation to my action in the *Parrish* case" (Frankfurter, 1955, p. 315). Writing about Justice Roberts later on, dean and law professor Erwin Griswold similarly concluded, "it is wholly clear that Roberts did not 'switch' his vote either in awe or fear or respect for the President, or otherwise ... that Roberts' vote was given and the decision was a *fait accompli* many weeks before the announcement of the Court-packing plan" (Griswold, 1955, p. 343).

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Indeed, Justice Roberts' change in jurisprudential reasoning can be better interpreted as the result of his observation of the nation's changing economic realities that required the expansion of government power. In a lecture on the "Conflicts of Police Power," Roberts reflected on the Court's decision in *NLRB*: "Looking back, it is difficult to see how the Court could have resisted the popular urge for uniform standards throughout the country—for what in effect was a unified economy" (Solomon, 2009, p. 217). Historian Burt Solomon interprets this sentence as explaining the change in Justice Roberts' vote: "Two factors had moved him in 1937. One was reality—*what in effect was a unified economy*. The other was democracy—the *popular urge*, the people's will" (Solomon, 2009, p. 217). In other words, the reason for Justice Roberts' jurisprudential shift can be better understood as due to his recognition of socioeconomic conditions of Americans living at the time, rather than the result of the Court-Packing Plan.

Secondly, William Leuchtenburg argues that "it was, in the final analysis, not the impact of Supreme Court decisions or broad social forces that brought about the defeat of Court packing, but the death of Joe Robinson, an altogether fortuitous event" (Leuchtenburg, 1985, p. 687). After the change in Supreme Court jurisprudence, the Senate Judiciary Committee issued its report on the bill, recommending the Senate to reject the bill. At this point, the prospects of the bill seemed hopeless, but to soften the hostile sentiments in Congress against the administration, Roosevelt invited Congressmembers to a picnic on the Jefferson Islands Club (Leuchtenburg, 1985, p. 677-678). Amidst this more amiable atmosphere, Roosevelt proposed a revised bill that changed the age requirement to over 75 years, and allowed the President to appoint only one justice per calendar year. Despite these changes, Leuchtenburg argues that the concept of Court-Packing was still effectively intact because Roosevelt will still be able to achieve his goals of appointing multiple justices in the near future (Leuchtenburg, 1985, p. 680). Leuchtenburg posits that Joe Robinson played an essential role in persuading Senators to vote in favor of the bill, and his efforts resulted in a majority that would pass the bill (Leuchtenburg, 1985, p. 680).

However, Leuchtenburg's argument overemphasizes the strength of the majority that Robinson recreated in being able to pass the bill. As the Senate debates around the revised bill began, opposition forces gave searing speeches drawing similarities between Roosevelt and other dictators. Senator Wheeler used Roosevelt's own diction of "meeting the needs of the times":

Why should we be zealous about this cause? When we look at world affairs we realize that in Germany there is a dictator, under whose iron heel are 70,000,000 people. How did he come into power? ... He came in under the constitution of Germany. Every step that was taken by him at first was taken in a constitutional way. Mr. Hitler acted "to meet the needs of the times." Mussolini came into office upon the plea that he would improve economic conditions and he assumed the power of a dictator and abolished the legislative body of Italy and set up his own court, in order that he might "meet the needs of the times" in that country. In every place where a dictatorship has been set up it has been done "in order to meet the needs of the times" (81 Cong. Rec., 1937).

Wheeler continues:

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There are courts in Germany, there are courts in Italy, there are courts in Russia, and men are placed on them to meet the needs of the times as the dictators see the needs, and those judges do what the dictators want them to do. Can the Democratic Party afford to be placed in the position of saying to the people of this country, "We are going to put men on the Supreme Bench to meet the needs of the times as we see them"? (81 Cong. Rec., 1937).

After these speeches by the opposition leaders like Senator Wheeler, Robinson began to lose his hold on his majority. Right before his death, Robinson estimated that there were 43 in favor and 44 opposed to the revised bill, and it was unclear how the other Senators would vote (Solomon, 2009, p. 238). Robinson called the White House to express his worries (Shesol, 2011, p. 486). The bill was already going to fail due to opposition forces regardless of Robinson's death. Therefore, contrary to Leuchtenburg's characterization that the bill was likely to pass if not for Robinson's death, the bill had already suffered significantly at the hands of the opposition. Consequently, Leuchtenburg overemphasizes the role of Robinson in revitalizing the prospects of the bill.

CONCLUSION

Ultimately, the reason the Court-Packing Plan failed was because of the Court's gradual jurisprudential evolution that eliminated the necessity to pass the bill. Congress did not have to choose between maintaining judicial independence and pursuing their substantive policy goals. Congress recognized that with the Court's jurisprudential evolution, lawmakers were able to realize their agenda without jeopardizing the Court's independence.

Returning to our original research question on how the independence of the Supreme Court has persisted throughout history, our study concludes that the Court's independence depended on the will of the other two branches, since the fate of the Court-Packing Plan lay in Congress's hands. Additionally, we cannot conclude for certain whether judicial independence will be prioritized when juxtaposed with substantive policy goals because the reason Congress decided to preserve the Court's independence is that they were ultimately able to achieve their goals, not necessarily because they prioritized judicial independence.

Another takeaway from this incident is that any issue around the Supreme Court will be extremely polarizing. As explained above, the Court-Packing Plan realigned political alliances and galvanized the interests of various groups of people, including Southerners, business owners, and Progressives. This episode shows how even with a widely popular President with party allegiances in both the executive and the legislative, tampering with the Supreme Court will instigate division.

Indeed, recent efforts to reform the Court further support the conclusion that Supreme Court reform would likely receive backlash. In 2021, former President Joe Biden assembled a commission to study proposals to reform the Court, including proposals to expand the Court and setting term limits (Shear & Hulse, 2021). However, in their final report, the members in the commission indicated strong disagreements amongst themselves around the issue of court-packing, with arguments on both sides that

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track the debate in the aftermath of Roosevelt's original Court-Packing Plan: supporters argue that the Supreme Court's jurisprudence needs to be more in line with the views of the public, while opponents contend that court-packing will jeopardize the independence of the courts and threaten the judiciary's ability to check the government (Presidential Commission on the Supreme Court of the United States, n.d., p. 75-80). This disagreement within the commission demonstrates how court-packing continues to divide people today (Savage, 2021). In 2024, Biden again proposed reform like term limits and a binding code of ethics for justices (Garrison, 2024). However, his proposal never garnered enough support, facing bipartisan opposition in Congress (Stepansky, 2024). While Biden did not possess the same degree of cooperation with Congress, it is clear that reactions to recent proposals have largely mirrored the division that resulted from Roosevelt's original Court-Packing Plan.

Finally, the jurisprudential evolution of the Court during this time period shows that it is virtually impossible for the Court to operate in a complete intellectual vacuum. With the advent of the Great Depression, while the Court remained mostly detached from the public with its commitment to an economically conservative interpretation of the Constitution, the Court was showing indications of change since 1934 in the cases of *Nebbia* and *Blaisdell*. In addition, the analysis of Roberts' own reasons for change as the recognition of economic realities and the indirect influence of popular will demonstrate that justices on the Court are able to observe shifting societal dynamics, which may affect how they rule on cases. This gradual evolution of the Court in the leadup to the Court-Packing Plan exemplifies the inherent nature of the Court: an institution that is not completely isolated from public opinion and sees realities in society.

Besides all of the above reflections, the most important takeaway is the realization that the rule of law is not a given. The rule of law hinges on the Court's ability to effectively exercise judicial review, and effective judicial review relies on the independence of the judiciary to make its own decisions without influence from the other branches. As we ultimately concluded as the answer to our research question of how the Court's independence has persisted, judicial independence—and by extension, the rule of law—depends on whether Congress, and the public that Congress represents, prioritizes it.

However, prioritizing the rule of law over policy goals is challenging, especially when achieving those goals is enticing. It is difficult to focus on the long-term benefits of preserving judicial independence as the cornerstone of the rule of law when immediate policy success seems within reach. As we observed, the bill was initially likely to pass, suggesting that most legislators were willing to compromise judicial independence for substantive policies. At several points, Roosevelt's administration successfully swayed public opinion in favor of suspending judicial independence, posing a tangible threat to the rule of law. The Court-Packing Plan itself stemmed from Roosevelt's frustration with a judiciary that obstructed his agenda, leading him to justify undermining judicial independence. Ultimately, the rule of law endures only if society recognizes its value, even at the cost of short-term political setbacks.

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