

Regime Politics and the Roberts Court

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I. Three Lessons from Political Science

- A. Governing coalitions sometimes seek to use the courts to advance their partisan and ideological agendas.
- B. This does not necessarily mean that they want the courts to be deferential.
- C. Nor does it guarantee success.

II. The Roberts Court and the Bush Administration

A. Some numbers: how frequently has the Court . . .

- Joined the Administration?
- Opposed the Administration?
- And Done Things the Administration Doesn't Care About?

B. And some examples

- Rumsfeld v. FAIR (2006)
- Garcetti v. Ceballos (2006)
- Hein v. Freedom from Religion Foundation (2007)
- Sanchez-Llamas v. Oregon (2006)
- Medellin v. Texas (2008)
- Gonzales v. Oregon (2006)
- Hamdan v. Rumsfeld (2006)

III. Deferring to Policies Enacted by . . .

A. The governing coalition in Washington, D.C.

- Gonzales v. Carhart (2007)

B. And its allies at the state level

- LULAC v. Perry (2006)
- Crawford v. Marion County (2008)
- Baze v. Rees (2008)

IV. Actively Promoting Administration Policy

A. Vigorously enforcing federal laws enacted by the governing coalition

- Private Securities Litigation Reform Act of 1995
- Antiterrorism and Effective Death Penalty Act of 1996

B. Narrowing federal laws enacted by partisan opponents

- Ledbetter v. Goodyear Tire & Rubber Company (2007)
- Sprint/United Management Company v. Mendelsohn (2008)
- Rapanos v. United States (2006)

C. Invalidating state and federal laws opposed by the administration

- Randall v. Sorrell (2006)
- FEC v. Wisconsin Right to Life (2007)
- Parents Involved v. Seattle School District (2007)

V. Judicial Resistance to Regime Pressures

A. Defending due process norms that elected officials either oppose or don't care about

- Cunningham v. California (2007)
- Kimbrough v. United States (2007)
- Brendlin v. California (2007)
- Watson v. United States (2007)
- Panetti v. Quarterman (2007)
- Snyder v. Louisiana (2008)

B. Policing the boundaries of authority among lawmaking institutions

- Gonzales v. Oregon (2006)
- Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal (2006)
- Hamdan v. Rumsfeld (2006)
- Massachusetts v. EPA (2007)
- Medellin v. Texas (2008)

VI. Whither the Roberts Court?

A. The Roberts Court and the McCain Administration

B. The Roberts Court and the Obama Administration

Further Reading on Regime Politics and the Supreme Court

- Jonathan D. Casper, "The Supreme Court and National Policy Making," *American Political Science Review* 70 (March 1976): 50-63.
- Cornell W. Clayton and J. Mitchell Pickerill, "The Politics of Criminal Justice: How the New Right Regime Shaped the Rehnquist Court's Criminal Justice Jurisprudence," *Georgetown Law Journal* 94 (June 2006): 1385-1425.
- Robert A. Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policy Maker," *Journal of Public Law* 6 (Fall 1957): 279-95.
- Howard Gillman, "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891," *American Political Science Review* 96 (September 2002): 511-24.
- Howard Gillman, "Martin Shapiro and the Movement from 'Old' to 'New' Institutional Studies in Public Law Scholarship," *Annual Review of Political Science* 7 (2004): 363-382.
- Mark A. Graber, "The Non-Majoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development* 7 (Spring 1993): 35-73.
- Mark A. Graber, "Does it Really Matter? Conservative Courts in a Conservative Era," *Fordham Law Review* 75 (November 2006): 675-708.
- Thomas M. Keck, *The Most Activist Supreme Court in History: The Road to Modern Judicial Conservatism* (University of Chicago Press, 2004).
- Thomas M. Keck, "Party, Policy, or Duty: Why Does the Supreme Court Invalidate Federal Statutes?" *American Political Science Review* 101:2 (May 2007): 321-38.
- Thomas M. Keck, "Party Politics or Judicial Independence: The Regime Politics Literature Hits the Law Schools," *Law and Social Inquiry* 32:2 (Spring 2007): 511-44.
- George I. Lovell, *Legislative Deferrals: Statutory Ambiguity, Judicial Power, and American Democracy* (Cambridge University Press, 2003).
- Kevin J. McMahon, *Reconsidering Roosevelt on Race: How the Presidency Paved the Road to Brown* (University of Chicago Press, 2004).
- Terri Jennings Peretti, *In Defense of a Political Court* (Princeton University Press, 1999).
- J. Mitchell Pickerill and Cornell Clayton, "The Rehnquist Court and the Political Dynamics of Federalism," *Perspectives on Politics* 2 (June 2004): 233-48.
- Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton University Press, 2008)
- Keith Whittington, *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History* (Princeton University Press, 2007).