



Legislative Deferrals: Statutory Ambiguity, Judicial Power, and American Democracy

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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.



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