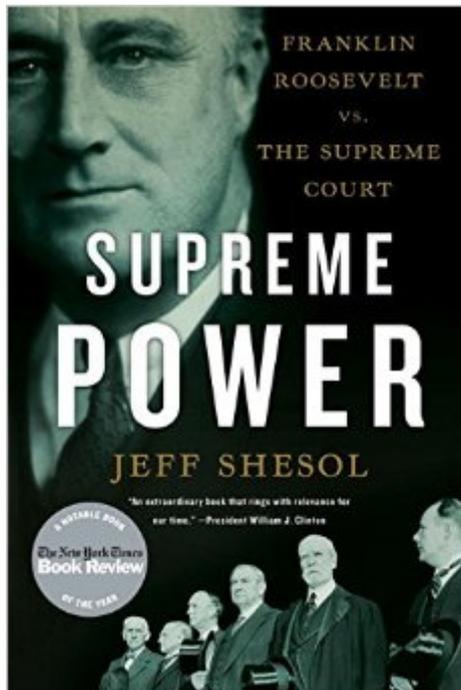


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# Supreme Power: Franklin Roosevelt Vs. The Supreme Court



## Synopsis

"A stunning work of history." —Doris Kearns Goodwin, author of *No Ordinary Time* and *Team of Rivals* Beginning in 1935, the Supreme Court's conservative majority left much of FDR's agenda in ruins. The pillars of the New Deal fell in short succession. It was not just the New Deal but democracy itself that stood on trial. In February 1937, Roosevelt struck back with an audacious plan to expand the Court to fifteen justices — and to "pack" the new seats with liberals who shared his belief in a "living" Constitution. 16 pages black-and-white photographs

## Book Information

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## Customer Reviews

In *Supreme Power: Franklin Roosevelt vs. the Supreme Court*, Jeff Shesol manages to do something rare: combine excellent research and a gripping narrative. (For those familiar with Rick Perlstein's *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus*, I think the writing style and amount of detail are similar). The book deals with Franklin D. Roosevelt's attempt to pack the Supreme Court with extra justices in 1937 - an attempt that ultimately failed and, unfortunately, few people remember today. Shesol brings this important episode in our history to life. First of all, Shesol resists the temptation of many historians to make the past prologue. He doesn't recite the whole history of the U.S. Supreme Court, nor does he stretch historical analogies to draw "lessons" or "comparisons" for today. Rather, *Supreme Power* stays focused like a laser on the subject of the book, beginning in 1932 with FDR's election. This allows Shesol to really delve into detail, spending almost all of the book's 530 pages on FDR and the court. (Incidentally, if you know absolutely nothing about the Supreme Court or its history, you might want to scan wikipedia

quickly before reading this book). And the detail in the book is extraordinary. I studied FDR's court-packing scheme in law school and read the major cases discussed in the book, but I felt I learned much more reading *Supreme Power* than I did in 3 years of law school. For example, I had read the Schechter case, which invalidated important New Deal legislation, but I did not even know about the businessmen and activists who formed associations, such as the American Liberty League, to launch test cases like Schechter. It turns out the Schechter brothers even voted for FDR in the 1936 elections! Another fascinating trivia bit revealed early in the book is that the whole issue almost became moot because Justices Sutherland and Van Devanter almost retired in 1932 - but refused to do so when Congress lowered their pensions. Shesol also strives - and for the most part achieves - the ideal of historical objectivity (pay the reviewer who claims Shesol is sympathetic to FDR no heed). He is quite willing to point out the flaws of the New Deal and the fact that it wasn't universally popular (raising concerns similar to Amity Shales' *The Forgotten Man*). He also seeks to uncover the ulterior motivations of men like Senator Burton K. Wheeler (against court-packing) and Joe Robinson (for). However - and this I found remarkable - Shesol also tries to understand the logic and motivations behind the court-packing plan itself. All too often, historians deride the plan as a mistake or doomed to fail. Yet, Shesol shows that the plan did in fact have an organic history and genesis of its own. He discusses the longstanding concern that many observers, including former president and chief justice Taft, had regarding judges over the age of 70. In fact, FDR's chief foe on the Supreme Court, arch-conservative Justice McReynolds, proposed a similar plan during the Wilson administration. In short, Shesol shows readers the type of information bombarding the White House about elder judges, as well as how FDR and his advisors could convince themselves that adding additional judges for each over the age of 70 was a brilliant solution. My one complaint - and it is a small one - is that Shesol does not seem to make much use of the political science literature about courts and judicial review. This is a shame. I think political science offers many compelling explanations about why elites would oppose limits on judicial review. For example, Tom Ginsburg's *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* advances the theory that elites view judicial review as important to protect themselves if they ever become relegated to minority status (for example, Republicans becoming the minority party in Congress). Some of these theories can be found in some form in *Supreme Power*, but Shesol, who is primarily a historian, primarily credits the political dynamics of the 1930s for defeating FDR's plan rather than larger political and institutional forces. *Supreme Power* will probably become the primary account of FDR's court-packing scheme for some time. Highly recommended for anybody interested in American history or the politics of courts.

There are a number of excellent books on the battle over the 1937 Court packing plan put forward by President Roosevelt in 1937 by, for example, Marian C. McKenna, Burt Solomon, and William E. Leuchtenburg. Each book takes a slightly different approach from the others; combined they afford an expansive and thorough view of this fascinating episode. This most recent recounting of the tale stands high, in my opinion, even in this distinguished group. For one thing, the author keeps his primary focus at all times where it should be: on FDR, his Attorney General Homer Cummings, and the FDR intimate circle of advisors: Tommy the Cork, Harold Ickes, Ben Cohen, Warner Gardner, James Roosevelt and Felix Frankfurter. Moreover, the author labors hard to give us the most complete peek into what was going on inside the Court during this period. This involves extensive manuscript research, reviews of published letters and unpublished diaries, information drawn from judicial biographies, and extensive press research. By its very secret nature, we will never know as much as we would like about what was taking place within the Court, but this book offers us certainly the most complete picture to date. Another strong advantage of the book is that the author sequentially introduces each element (and character) of the story so that the reader is not overwhelmed with everything (and massive detail) occurring all at once. This makes it much easier to understand what is happening since the reader can build upon what has already been explained as each new development takes place. I found the book particularly helpful in its depiction of the key players in the White House, Congress, among interest groups such as the Liberty League, and within the Court itself. Enough biographical background is given to help establish the context within which the key actors played their roles--Justices McReynolds, Hughes, Brandeis and Roberts; Senator Joe Robinson who led the fight; press lord Frank E. Gannett; and Senator Burt Wheeler who directed the opposition are a few examples. The author squarely lays the blame for the fiasco with the White House group, who bungled, delayed, miscalculated, misrepresented key facts, and refused to compromise when a partial victory could still have been claimed (maybe two additional justices rather than five). It is interesting that the author sees this battle as not so much between branches as rather being within factions of the Democratic Party. The portrait of FDR that emerges is one of personality weaknesses, overconfidence, and a love for the secret and dramatic. This examination of FDR under the microscope, I think, is one of the book's major contributions. Finally, probably the greatest virtue of the many demonstrated in this book is that the reader understands not only what happens but why. That is to say, the book explains and does not just recount facts. The book takes around 600 pages (including notes) to deliver its analysis. The 66 pages of valuable notes attest to the diligence of the author's research in manuscript collections, published

sources, interviews, and especially diaries held in various archives such as the Library of Congress and the University of Virginia. A twelve page bibliography and thorough index also are included. There is a reason so much has been written about this amazing episode since 1937. And all these fascinating elements are on display in this excellent study.

Mr. Shesol has created a wonderful and readable account of politics in the 1930's. Even the chapter titles are colorful and implies the high stakes involved in the political showdown between the liberal President and the conservative Supreme Court. The author does not begin his tale in 1937 (the year of the court-packing political battle), but in 1932 with Roosevelt's election in a time of economic turmoil. He clearly covers Roosevelt's first term with the New Deal programs that were overturned by the Supreme Court, the 1936 landslide victory by Roosevelt and then his political decision to deal with all the 5-4 and 6-3 court rulings that he lost. With 500+ pages of text and 100 pages of supporting documentation/index, this is an excellent work of political history.

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