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978-0-521-15398-0 - American Politicians Confront the Court: Opposition Politics and Changing Responses to Judicial Power

Stephen M. Engel

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American Politicians Confront the Court

Politicians have long questioned, or have even been openly hostile to, the legitimacy of judicial authority, but that authority seems to have become more secure over time. What explains the recurrence of hostilities and yet the security of judicial power? Addressing this question anew, Stephen M. Engel points to the gradual acceptance of dissenting views of the Constitution, that is, the legitimacy and loyalty of stable opposition. Politicians' changing perception of the threat posed by opposition influenced how manipulations of judicial authority took shape. As politicians' views toward opposition changed over time, their approach toward the judiciary – where opposition could become entrenched – changed as well. Once opposition was no longer seen as a fundamental threat to the Constitution's survival and multiple constitutional interpretations were considered legitimate, judicial power could be construed less as the seat of an illegitimate opposition and more as an instrument to achieve political ends. Politicians were more likely to harness it to serve their aims than to openly undermine its legitimacy. In short, conflicts between the elected branches and the judiciary have not subsided. They have changed form. They have shifted from measures that undermine judicial legitimacy to measures that harness judicial power for political ends. Engel's book brings our understanding of these manipulations into line with other developments, such as the establishment of political parties, the acceptance of loyal opposition, the development of different modes of constitutional interpretation, and the emergence of rights-based pluralism.

Stephen M. Engel is an assistant professor of politics at Bates College and an Affiliated Scholar of the American Bar Foundation. He holds a doctorate in political science from Yale University, an interdisciplinary master of arts in Social Thought from New York University, and a bachelor of arts from the multidisciplinary College of Social Studies at Wesleyan University. His research is at the intersection of political development, constitutional law and theory, and sexuality politics. He is the author of *The Unfinished Revolution: Social Movement Theory and the Gay and Lesbian Movement*, also published by Cambridge University Press. His research has appeared in *Studies in American Political Development*, *Journal of the Philosophy of Education*, and the *Advertising and Society Review*.

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“Stephen Engel’s elegant and deeply empirical account traces the history of political attacks on America’s independent judiciary, showing how these attacks have evolved and provoked changes in both law and politics. His narrative deftly weaves constitutional development into political development, showing how we have gotten to today’s political and politicized federal courts. This book is essential reading for those interested in the American courts. It also poses an unanswerable challenge to anyone who believes that America’s national development can be understood without an account of the courts’ place in it.”

– Julie Novkov, SUNY Albany

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STEPHEN M. ENGEL

Bates College and American Bar Foundation



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Acknowledgments

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Stephen M. Engel

Milwaukee, WI

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