

Jeffrey D. Hockett, *New Deal Justice: The Constitutional Jurisprudence of Hugo L. Black, Felix Frankfurter, and Robert H. Jackson* (Lanham, MD: Rowman and Littlefield, 1996) pp. 322.

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The first thing to note about *New Deal Justice* is that the subtitle describes the book far better than the title. In the work, Jeffrey Hockett, Assistant Professor of Political Science at the University of Tulsa, provides an excellent study of the constitutional jurisprudence of three significant justices: Hugo Black, Felix Frankfurter, and Robert Jackson. He compares and contrasts the justices, arguing that they are best understood in light of their ideological backgrounds.

Hockett begins by providing a broad sketch of the historical and cultural background preceding the justices' arrival on the Court. He briefly describes pre-industrial America, focusing on the roles of political parties, lawyers, and courts in an era marked by decentralized authority. He then explores the effects of industrialization and the Populist and Progressive movements that arose to combat the worst of these effects.

After setting the historical context, Hockett turns to his three subjects. In each case he provides a biography of the justice's pre-Court years before examining his jurisprudence and voting record. He argues that their experiences formed their ideologies, which in turn affected their judicial performances.

For instance, Hockett argues that Hugo Black's participation in Alabama Populist politics caused him to develop a hierarchical view of society. Once on the Court, he adopted a "profoundly result-oriented" jurisprudence aimed at antihierarchical ends (15). Black disguised his result-oriented jurisprudence by claiming to adhere to a "literalist" approach to the Constitution that required him to decide cases without

regard to his personal preferences but which, Hockett suggests, almost always led him to vote in an antihierarchical manner.

Felix Frankfurter, on the other hand, was deeply influenced by his involvement in the Progressive politics of the Northeast. His view that modern society was enormously complex and interdependent, along with his skepticism about the fact-finding ability of courts, led him to almost always defer to elected officials and administrative agents. Frankfurter's famous but rare departures from this doctrine, such as where he advocated striking down actions of officials if their conduct "shocks the conscious," are merely exceptions that prove the rule.

Finally, Hockett argues that Robert Jackson, the last person appointed to the Court who did not have a college or law degree, was tremendously influenced by the "court-centered thought patterns of the pre-industrial legal community (215)." Jackson learned his law as an apprentice from lawyers who had him read the great nineteenth century treatise writers (most notably James Kent), study the common law, and practice law in county courts where facts were of central importance. His education led him to embrace a pragmatic jurisprudence that emphasized judicial supremacy and a respect for minority rights. Significantly, Hockett argues, contrary to received wisdom, that Jackson's role as U.S. Chief Prosecutor at the Nuremberg Nazi War Crime Trials, did not change the substance of his jurisprudence.

This brief summary does not do justice to Hockett's long and extensive discussion of Black, Frankfurter, and Jackson. He examines virtually every important case decided by the justices and he carefully compares and contrasts their opinions. Further, he discusses each justice in the light of the relevant secondary literature, which in the case of Black and Frankfurter is no small feat.

Hockett's analysis is generally persuasive, although I am not convinced that Black's jurisprudence is as "profoundly result oriented" as he suggests. Hockett admits that there are numerous instances where Black's decisions went against his personal preferences (e.g. *Griswold v. Connecticut*), and it seems plausible that in other areas, such as his First Amendment jurisprudence and his view of incorporation, that he sincerely believed he was merely interpreting the Constitution literally. Hockett's analysis of Frankfurter and Jackson is thoroughly convincing, however, and his discussion of Jackson will go a long way toward remedying that justice's undeserved neglect.

In the final analysis Hockett provides an excellent study of the constitutional jurisprudence of Hugo Black, Felix Frankfurter, and Robert Jackson. His book will obviously be of interest to students of these justices, but it will also be valuable to political scientists, historians, and academic lawyers who study or teach about this period of the Supreme Court's history.

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