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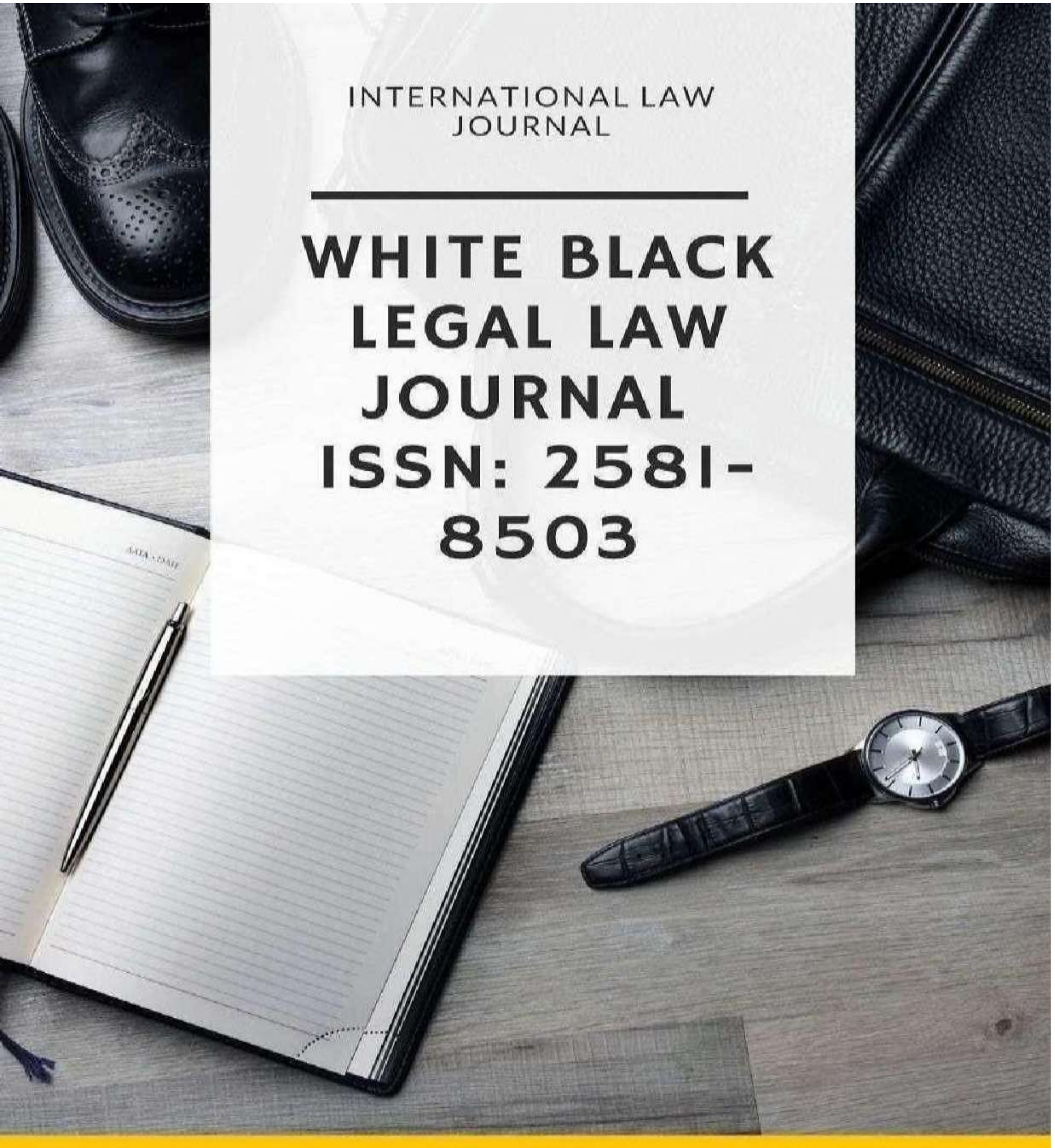

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LAW IN THE SHADOW OF DEPRESSION: THE NEW DEAL AND THE REMAKING OF U.S. CONSTITUTIONAL AUTHORITY

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Abstract

The New Deal marked a transformative period in United States constitutional and legal history, reshaping the relationship between the federal government, the economy, and individual rights. This article examines the legal foundations of the New Deal through an analysis of key legislative measures and landmark Supreme Court decisions between 1933 and 1938. Focusing on labour law, home debt relief, monetary regulation, interstate commerce, and social security, it explores how the judiciary initially resisted, and later accommodated, expanded federal intervention. Particular attention is given to cases such as *NLRB v. Jones & Laughlin Steel Corp*., *Home Building & Loan Association v. Blaisdell*, the Gold Clause Cases, *United States v. Carolene Products Co.*, and *Helvering v. Davis*. Together, these decisions illustrate the Court's departure from *Lochner*-era formalism towards a more pragmatic, cooperative federalism that continues to shape American constitutional doctrine.

Introduction

The economic devastation of the Great Depression posed an unprecedented challenge to the constitutional order of the United States. In response, President Franklin D. Roosevelt's New Deal introduced a sweeping programme of legislative reform aimed at economic recovery, social protection, and structural reform. These measures, however, provoked intense constitutional controversy, particularly concerning the limits of federal power, freedom of contract, and the balance between national and state authority. During Roosevelt's first term, the Supreme Court invalidated several New Deal statutes, adhering to a restrictive interpretation of the Commerce Clause, the Contract Clause, and the Tenth Amendment.

This article examines how New Deal legislation ultimately reshaped American constitutional law through sustained judicial engagement. By analysing pivotal statutes and Supreme Court decisions across labour relations, mortgage relief, monetary regulation, interstate commerce, and social welfare, it traces the Court's gradual shift away from *Lochner*-era jurisprudence. The resulting doctrinal transformation marked the decline of rigid dual federalism and the emergence of a more flexible understanding of federal authority. In doing so, the New Deal not only addressed immediate economic crisis but also permanently altered the constitutional framework governing the relationship between law, markets, and democratic governance.

Employment Law Reform

The National Labor Relations Act,[1] also referred to as the Wagner Act, is regarded in several aspects as a law of constitutional significance in the USA. It established a novel composite of legal relations, produced a new body of laws, and announced an audacious and distinct stance for labour relations. While it is not formally included in the Constitution, it has significantly transformed the American labour landscape, warranting its classification as an integral component of its constitutional structure. It has been characterised by several individuals as a 'Magna Carta' for workers. When Congress approved the National Labour Relations Act, it established the new policy on a solid foundation of justice and fairness aimed at facilitating collaboration between labour and management. It opted to eschew direct coercive measures by the government in determining compensation rates and other aspects of employment contracts. It sought to balance negotiating strength among industrial leadership and their labour forces, allowing them the autonomy to negotiate conditions via collective bargaining. Compensation and labour regulations would be established by collective bargaining and mutual consent. The new approach emphasised collaboration among individuals in business rather than government pressure. The prologue of the Act established the overarching framework upon which it was constructed and the essence of the new policy. It articulated the disparity in bargaining power among workers without complete freedom of association or genuine liberty of contract; the suppression of pay rates and the buying power of wage earners, together with the resultant detrimental impact on the flow of commerce. The United States stated its intention to safeguard complete freedom of association, self-organisation, and collective bargaining.[2]

[1] National Labor Relations Act 1935
[2] Robert F Wagner, 'The Philosophy of the Wagner Act of 1935 the Philosophy of the Wagner Act of 1935' (1957) 32 St. John's Law Review <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=4527&context=lawreview>.

The Wagner Act has been described as the most significant labour law passed in the United States during the 20th century. The primary objective was to confer the legal entitlement upon the majority of workers (particularly excluding agricultural and domestic workers) to organise or affiliate with labour unions and to engage in collective bargaining with their employers. Introduced by Democratic Senator Robert F. Wagner of New York, the Wagner Act designated the federal government as the watchdog and last authority on employment relations. A continuous three-member (subsequently five-member) National Labor Relations Board (NLRB) was established, endowed with the authority to adjudicate and settle labour disagreements using quasi-judicial processes. The NLRB was authorised to determine, upon worker petition, the existence of a suitable bargaining unit for collective bargaining; to administer secret-ballot elections allowing workers to choose union representation; and to deter or rectify unjust labour procedures by firms, and subsequently by unions as well. The legislation forbade employers from participating in improper industrial conduct, including the establishment of a corporate union and the termination or discrimination against employees who organised or joined unions. The legislation prohibited employers from declining to negotiate with any union that has been recognised by the NLRB as the preferred option of a majority of workers. The Wagner Act faced vehement opposition from Republicans and large corporations, leading to legal challenges on the grounds that it infringed upon the "freedom of contract" for both employers and employees, and amounted to an unconstitutional encroachment by the federal government into sectors not directly involved in interstate commerce, which Congress is authorised to regulate under the commerce clause (Article I, section 8). The U.S. Supreme Court ultimately affirmed (5–4) the validity of the Wagner Act in *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937).[3] [4]

As highlighted by the Center for the Study of Federalism, in the first term of President Franklin D. Roosevelt's administration, the Supreme Court nullified several New Deal initiatives, asserting that they surpassed Congress's authority over interstate commerce and encroached into powers assigned to the states by the Tenth Amendment.[5] The Court determined that essential economic activities, including agriculture, manufacturing, and mining, had only a “indirect” influence on interstate trade and were hence exempt from federal control. In 1937,

[3] National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937) 301 U.S. 1
[4] The Editors of Encyclopedia Britannica, ‘Wagner Act | Summary, History, & Facts’, Encyclopædia Britannica (2018) <https://www.britannica.com/topic/Wagner-Act> accessed 28 December 2025.
[5] Tenth Amendment (U.S. Constitution)

the Court ruled in the aforementioned case of *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, affirming the applicability of the federal Wagner Act to labour relations in the steel sector.

On behalf of a five-member majority, Chief Justice Charles Evans Hughes dismissed the antiquated "direct-indirect" distinction that had previously exempted agriculture, manufacturing, and mining from federal oversight, acknowledging that the determination of whether a specific economic activity influences "commerce among the states" as defined by the Constitution is an empirical inquiry. Regarding the Jones and Laughlin Steel Corporation and other substantial national enterprises, Hughes enquired rhetorically that, when enterprises consolidate on a national level, prioritising their connection to interstate commerce in their operations, how can it be argued that their industrial labour relations represent a prohibited domain that Congress cannot regulate when it is essential to safeguard interstate commerce from the debilitating effects of industrial conflict? Hughes acknowledged that this commerce power must be viewed within the framework of the dual/federal framework of government to maintain the division between national and local matters. However, he determined that when economic activities bore an immediate and significant relationship to interstate commerce, such that their regulation is necessary or suitable to safeguard those trades from obstacles and impediments, Congress cannot be denied the authority to exert that influence. The case of *National Labor Relations Board v. Jones and Laughlin Steel Corporation* represents a pivotal moment in the growth of American constitutional law. Initially, it concluded deliberation on Roosevelt's controversial 'court-packing' scheme, and the idea was returned to committee, never to be subjected to a vote in Congress. Secondly, Hughes's developing empirical perspective on the extent of federal power under the Commerce Clause [6]facilitated the spread of federal control into nearly all facets of American life, including the economy and society. The ruling signified the Court's departure from "dual federalism" and its endorsement of "cooperative federalism" as the new framework for comprehending American federalism.[7]
As noted by James A. Gross in the '*University of Pennsylvania Journal of Labor and Employment Law*,' the capacity to engage in collective bargaining is an intrinsic component of the freedom of association. The Wagner Act aimed to empower workers to assert their human

[6] Commerce Clause (U.S. Constitution, Article I, Section 8)
[7] Ellis Katz, 'National Labor Relations Board v. Jones and Laughlin Steel Corporation (1937) | Center for the Study of Federalism '(Center for the Study of Federalism2006) <https://federalism.org/encyclopedia/no-topic/national-labor-relations-board-v-jones-and-laughlin-steel-corpor-1937ation/>.

rights effectively, ensuring that respect for these rights was not primarily reliant on the interests of the state, employers, or other entities. The Act represented an ethical stance against subservience. Servility is antithetical to human rights. Wagner's legislation also demonstrated his comprehension of the essential interconnection between political and economic rights. Wagner acknowledged that for those without basic sustenance, the assurances of freedom of association, freedom of expression, and political engagement are essentially inconsequential. Wagner recognised that both the state and the employer had the express authority to infringe upon individuals' rights. He understood that an individual had the right to be free from subjugation, irrespective of its origin. The federal government establishes a policy to promote and safeguard collective bargaining practices while prohibiting interference with labour organisations, underscoring Wagner's recognition that governmental support and protection are crucial for the exercise of participatory rights in the workplace. The essential rights necessary for individuals to have a dignified existence include not only those that the government must refrain from infringing upon but also those that it is obligated to give or foster. Furthermore, Wagner's Act was designed to provide government protection and empowerment for those most in need. Understanding the ideals of the Wagner Act as human rights principles alters the hierarchy of prioritising some rights over others. If freedom of association is acknowledged as a human right, it takes precedence. This does not suggest that property rights, efficiency, or management rights are abandoned; it only indicates that these rights are no longer given the precedence that courts, administrative bodies, and labour arbitrators have traditionally granted them. Gross asserts that the basic human right of freedom of association should take precedence over both the property and speech rights of the employer in the workplace. This may be achieved without unjustly compromising genuine employer interests.[8]

However, Jean-Christian Vinel notes that the legislation said that it was the public policy of the United States to foster industrial calm and prevent strikes, and that, while the Act briefly mentioned freedom of association, however it conferred no substantive rights. The freedom to organise was subordinate to a state policy aimed at sustaining consumption and maintaining industrial calm. In 1938, after the constitutional crisis of the 1930s, the Supreme Court declared that it would distinguish between economic regulations and legislation impacting basic rights,

[8] James A Gross, 'Worker Rights as Human Rights: Wagner Act Values and Moral Choices' [2002] University of Pennsylvania Journal of Labor and Employment Law <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1117&context=jbl> accessed 28 December 2025.

with the latter subject to increased judicial examination. Significantly, it did not designate the right to organise as a basic right. The Wagner Act advocated not for a civil right, but for what Vinel termed a “public right” - a right whose philosophical foundations were less robust than its economic justifications.[9]

C.E. French, writing in 1938, noted that, overall, it could be asserted that the Wagner Act has significantly enhanced employee procedures related to terminations and has greatly bolstered the stability of wage earners by restraining arbitrary actions by local management and supervisory staff, while also supporting employee consultants in ensuring equitable treatment.[10]

Also in 1937 was the landmark ruling in *West Coast Hotel Co. v. Parrish*.[11] This federal Supreme Court decision affirmed a state statute establishing minimum pay for women and children, so reversing two prior decisions (*Adkins v. Children's Hospital*[12] and *Morehead v. New York ex. rel Tipaldo*[13]) and imposing restrictions on contractual freedom. Justice George Sutherland dissented, asserting that establishing a minimum salary for women was arbitrary gender discrimination, a viewpoint endorsed by other feminists of the time.[14]

Reform of Law in Property Debt

The Supreme Court case *Home Building and Loan Association v. Blaisdell* (1934)[15] resulted in a narrow 5–4 decision that affirmed a Minnesota mortgage moratorium statute enacted during the Great Depression, revealing significant divisions among the Court over the appropriate response to the economic crisis. The issue involved Minnesota's 1933 Mortgage Moratorium Act,[16] which permitted courts to temporarily postpone foreclosures to save distressed homeowners, especially farmers. John and Mrs. Blaisdell utilised legal provisions to prolong their mortgage redemption time, and the courts of Minnesota adjudicated in their favour. The

[9] Jean-Christian Vinel, ‘Reconstructing the Wagner Act’ [2003] Transatlantica.
[10] CE French, ‘The Effect of the Wagner Act on Industrial Relations’ (Duke Law Scholarship Repository 1938) <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1907&context=lcp> accessed 28 December 2025.
[11] West Coast Hotel Co. v. Parrish (1937) U.S. 379
[12] Adkins v. Children's Hospital (1923) 261 U.S. 525
[13] Morehead v. New York ex rel. Tipaldo (1936) 298 U.S. 587
[14] ‘West Coast Hotel Co. V. Parrish’ (Merriam-Webster Legal Dictionary) <https://www.merriam-webster.com/legal/West%20Coast%20Hotel%20Co.%20v.%20Parrish> accessed 28 December 2025.
[15] Home Building and Loan Association v. Blaisdell (1934) 290 U.S. 398
[16] Minnesota Mortgage Moratorium Act (1933)

finance group said that the legislation infringed upon the Constitution's Contract Clause[17] and the Fourteenth Amendment.[18] Chief Justice Charles Evans Hughes, articulating the majority opinion, determined that the Contract Clause is not unconditional and that governments may justifiably interfere to safeguard public welfare amid crises. He contended that while crises may not generate new authorities, they may validate the use of existing ones to reconcile individual rights with overarching economic stability. In dissent, Justice George Sutherland advocated for a stringent interpretation of the Contract Clause, cautioning that permitting authorities to modify contracts, especially during crises, jeopardised constitutional boundaries and the integrity of contracts. His perspective mirrored the overarching opposition of the Court's conservative justices to New Deal-era economic policies.[19]

The Center for the Study of Federalism records that the U.S. Supreme Court case, which affirmed the Minnesota Mortgage Moratorium Act of 1933, was seen as indicating the end of the Contract Clause's function as a limitation on governmental police authority. Evans concluded that in crises, governments may execute activities that are otherwise forbidden under normal conditions. This effort wasn't in breach of the Contract Clause of the Constitution, provided the mortgages continued to be due.[20]

In 1934, the U.S. Congress enacted the Frazier-Lemke Farm Bankruptcy Act.[21] This law amended the Bankruptcy Act of 1898[22] by deferring foreclosure on insolvent farmers for five years, allowing them to choose between agreement to buy back the asset at its current appraised value over six years at a 1 percent interest rate or maintain occupancy as a paying tenant if the mortgagor chose not to part with it.[23] In 1935, the U.S. Supreme Court ruled the Frazier-Lemke Farm Bankruptcy Act of 1934 unconstitutional in the matter of *Louisville Joint Stock Land*

[17] Contract Clause (U.S. Constitution, Article I, Section 10)
[18] Fourteenth Amendment (U.S. Constitution)
[19] James Ely and Kermit Hall (eds), 'Home Building and Loan Association v. Blaisdell (1934)', The Oxford Guide to United States Supreme Court Decisions (Oxford University Press 2009) <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095942753> accessed 28 December 2025.
[20] 'Home Building and Loan v. Blaisdell (1934) | Center for the Study of Federalism' (Center for the Study of Federalism2006) <https://federalism.org/encyclopedia/no-topic/home-building-and-loan-v-blaisdell-1934> accessed 28 December 2025.
[21] Frazier-Lemke Farm Bankruptcy Act (1934, amended in 1935 as Farm Mortgage Moratorium Act)
[22] Bankruptcy Act 1898
[23] 'Frazier-Lemke Farm Bankruptcy Act' (A Dictionary of American History - Blackwell Reference Online1997) <https://web.archive.org/web/20111003184338/http://www.blackwellreference.com/public/tocnode?id=g9781577180999_chunk_g97815771809998_ss1-175> accessed 28 December 2025.

Bank v. Radford,[24] which aimed to implement a government moratorium; but, in 1937, it approved a modified iteration. The federal farm-credit agencies executed a more successful approach of restructuring mortgage obligations, a scheme that supported lenders by providing essential liquidity, while enabling borrowers to avert repossession. The federal government enacted similar regulations for city mortgage financing.[25]

In *Louisville Joint Stock Land Bank v. Radford* (1935), the U.S. Supreme Court unanimously determined that the Frazier-Lemke Emergency Farm Mortgage Act unconstitutionally appropriated property from secured creditors, contravening the Fifth Amendment.[26] The case emerged when Radford, a Kentucky farmer who had defaulted during the Great Depression, applied for assistance under the Act, which permitted insolvent farmers to halt foreclosures, maintain control over mortgaged farms, and eventually acquire them at court-appraised values beneath the amount owed, irrespective of the mortgagee's consent. In his opinion for the Court, Justice Brandeis determined that while Congress possesses extensive authority under the Bankruptcy Clause, it cannot obliterate the fundamental legal rights of mortgagees without providing just compensation. This includes the rights to maintain a lien until complete payment, to compel a judicial sale, to dictate the schedule of that sale, to safeguard their interests through bidding, and to manage the property during default. The Act mandated lenders to relinquish essential rights in current mortgages, resulting in an uncompensated take that could not be supported, even by the pressing public interest in averting the foreclosures of farms during the Depression.[27]

As previously mentioned, in 1937, the Supreme Court unanimously affirmed the validity of the amended Frazier-Lemke Farm Bankruptcy Act (the Farm Mortgage Moratorium Act 1935) in *Wright v. Vinton Branch of the Mountain Trust Bank*,[28] differentiating it from the prior act annulled in *Radford*. In a subsequent ruling for the Court, Justice Brandeis determined that Congress had effectively eliminated the elements that originally resulted in an uncompensated taking by safeguarding essential mortgagee rights and granting extensive authority to

[24] Louisville Joint Stock Land Bank v. Radford (1935) 295 US 555
[25] ' Mortgage Relief Legislation ' (Dictionary of American History) <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/mortgage-relief-legislation> accessed 28 December 2025.
[26] Fifth Amendment (U.S. Constitution)
[27] ' Bankruptcy Decisions of the US Supreme Court ' (American College of Bankruptcy) <https://www.americancollegeofbankruptcy.com/file.cfm/19/docs/panel%202-bankruptcy%20decisions%20of%20the%20u.s.%20supreme%20court.pdf> accessed 28 December 2025.
[28] Wright v. Vinton Branch of the Mountain Trust Bank (1937) 300 U.S. 440

bankruptcy courts to oversee the farmer's possession, mandate adequate payment of rent, end the stay, and initiate a sale if lender interests were at risk. The amended legislation permitted a bankrupt farmer to maintain occupancy for a maximum of three years under judicial oversight, with payments allocated to taxes, maintenance, and creditor claims, and to reclaim the property at its assessed value, but did not establish a complete moratorium or permanently deprive secured creditors of their legal recourse. The Court, highlighting the parallel to business restructuring and the benefits of retaining farmers' possession during economic recovery, determined that, when interpreted in accordance with congressional intent and subject to judicial oversight, the statute constituted a legitimate exercise of Congress's bankruptcy authority and did not infringe upon the Fifth Amendment, while warning that unconstitutional applications might still occur in specific instances.[29]

The cases of the Gold Clauses

The United States abandoned the gold standard in 1933. When Roosevelt assumed office, the gold standard was on the verge of collapse. Great Britain exited in 1931 because to the pressures of gold outflows and the depreciation of the sterling. The pound saw significant depreciation relative to the dollar. Numerous other nations were compelled to comply, resulting in the United States and the little European "gold bloc" remaining as isolated proponents of the gold standard. During his first week, Roosevelt removed the United States off the gold standard, a decision not compelled by conditions similar to those that had previously driven Britain to forsake it. Roosevelt utilised the debatable power of the 1917 Trading with the Enemy Act[30] to forbid banks from disbursing or exporting gold currency and bullion. Global gold transfers ceased, and any direct connection connecting gold and the money supply was essentially severed. The gold standard may also be seen as an exclusively domestic framework of legal regulations. From that viewpoint, a worldwide gold standard exists only when countries responsible for the majority of international commerce and investment maintain a corresponding home standard. The worldwide gold standard was mostly the outcome of domestic gold standard regulations and their interactions. The Gold Reserve Act of 1934[31] advanced the elimination of the residual symbols of the gold standard. Roosevelt stated that the Act eliminated gold currency from the monetary system. All gold coins were to be removed

[29] ‘ New Farm Mortgage Law Upheld ’The New York Times (30 March 1937) <https://www.nytimes.com/1937/03/30/archives/new-farm-mortgage-law-upheld-revision-saves-frazierlemke-act.html> accessed 28 December 2025.
[30] Trading with the Enemy Act (1917)
[31] Gold Reserve Act (1934)

from circulation and converted into gold bars. The Treasury was thereafter to own gold only as bullion. Gold was subsequently designated as a commodity rather than currency. It could be marketed for commercial and dentistry applications. Coin collectors could keep gold coins only of numismatic significance.[32]

The actions of Roosevelt and Congress were not universally accepted, leading to many cases presented to the U.S. Supreme Court in 1935 to evaluate the legitimacy of the government's demand of domestic gold. These lawsuits were based on the Fifth Amendment to the Constitution, which prohibits the appropriation of private property for public use without equitable compensation. In the instances of *Norman v. Baltimore & Ohio Railroad*[33] and *United States v. Bankers Trust Co.,*[34] the issue presented to the court was whether the federal government has the authority to control contracts including gold provisions. In a five-to-four decision, the court asserted that the government had comprehensive authority over the money supply, hence granting it the right to nullify gold terms in contracts. Meanwhile, in the instances of *Nortz v. United States*[35] and *Perry v. United States,*[36] the plaintiffs contended that they were inadequately rewarded for their gold, having paid the reduced amount of $20.67 after the worldwide market price of gold exceeded $50. The Supreme Court determined that the compensation awarded to the plaintiffs was equitable, since it was based on the nominal value of the currency, rather than the inherent worth of the gold.[37]

The USA was experiencing an unprecedented crisis, necessitating drastic measures, including the annulment of a contractual provision, to enhance overall wellbeing. It was a desperate attempt, and it succeeded despite the judges' reluctance to render their decision. The Court rendered an unusual decision, identifying a constitutional infringement while awarding no damages. Ultimately, the federal government prevailed.[38] The Gold Clause Cases illustrate how necessity is but one aspect of the rule of law. A necessity argument is subject to legal

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[32] Kenneth W Dam, 'From the Gold Clause Cases to the Gold Commission: A Half Century of American Monetary Law' [1983] University of Chicago Law Review <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4327&context=uclrev> accessed 28 December 2025.
[33] Norman v. Baltimore & Ohio Railroad (1935) 294 U.S. 240
[34] United States v. Bankers Trust Co. (1935) 296 U.S. 463
[35] Nortz v. United States (1935) 294 U.S. 317
[36] Perry v. United States (1935) 294 U.S. 330
[37] Adam Hayes, 'What Is the Gold Reserve Act of 1934?' (Investopedia2022) <https://www.investopedia.com/terms/g/gold-reserve-act-1934.asp> accessed 28 December 2025.
[38] ' The "Necessity" Defense in Sovereign Debt Cases' (American Bankruptcy Institute) <https://www.abi.org/feed-item/the-necessity-defense-in-sovereign-debt-cases> accessed 28 December 2025.

investigation. What renders necessity unique is its lack of foundation in doctrine. Nonetheless, attorneys may still evaluate reasoning that relies only on history, structure, language, or even religion. Errors arise only when those asserting a necessity claim forgo meticulous scrutiny.[39]

Regulating Interstate Commerce

In 1923, the U.S. Congress passed the Filled Milk Act,[40] restricting the trade of this commodity in interstate commerce. Whether or not this Act was constitutional was challenged by the Carolene Products Company, a large producer of this filled milk, in the case of *United States v. Carolene Products Co*.[41] [42] The central question in *Carolene* was whether the Filled Milk Act of 1923 was consistent with the Constitution. "Filled milk" referred to condensed milk in which the natural milk fat had been replaced with vegetable oil. It was less expensive than the traditional condensed milk products and, by modern standards, would likely be considered a healthier alternative. Contemporary accounts suggested that it was indistinguishable in taste from ordinary condensed milk. The Filled Milk Act, passed by Congress, prohibited the interstate shipment of this product. The statute characterised filled milk as an adulterated food that was harmful to public health and claimed that its sale amounted to a deception of consumers. It is easy to view the legislation as a form of interest-group protectionism, benefiting the established condensed milk industry by effectively eliminating a lower-cost competitor. Despite these concerns, the Supreme Court upheld the Act. Justice Harlan Fiske Stone authored the majority opinion, emphasising that it was not the role of the judiciary to second-guess Congress in matters of economic regulation. He explained that courts should presume the existence of facts supporting legislative decisions in this area. Laws regulating ordinary commercial activity, he argued, should not be struck down unless the available or commonly assumed facts make it impossible to believe that the legislation rests on some rational basis grounded in the experience and knowledge of lawmakers. It was to this statement that the now-famous Footnote Four was attached. The timing of the decision helps explain its significance. *Carolene* was decided in 1938, marking the close of a deeply contested period in the Court's history. From the late nineteenth century through the mid-1930s, the Supreme Court frequently invalidated economic and social welfare legislation enacted by both Congress and

[39] Gerard N Magliocca, 'The Gold Clause Cases and Constitutional Necessity' (2012) 64 Florida Law Review <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1026&context=flr> accessed 28 December 2025.
[40] Filled Milk Act (1923)
[41] United States v. Carolene Products Co. (1938) 304 U.S. 144
[42] Frank Strong, 'A Post-Script to Carolene Products' [1988] Constitutional Commentary <https://files01.core.ac.uk/download/pdf/217202791.pdf> accessed 28 December 2025.

the states. These laws included measures setting minimum wages, limiting working hours, protecting trade unions, and requiring licences for certain occupations. This era is commonly referred to as the *Lochner* era, named after *Lochner v. New York*,[43] in which the Court struck down a state law imposing maximum working hours for bakers. The Court's decision to move away from this approach can be understood in several ways. It may reflect a pragmatic acknowledgment that judges lack the institutional competence to determine whether economic regulation is genuinely necessary. Alternatively, it may be seen as the Court yielding to the growing political pressures of an increasingly powerful interest-group–driven state. Whatever the explanation, the so-called settlement of 1937 gave rise to an important question: if courts were no longer engaged in rigorous scrutiny of economic and social welfare legislation, what role remained for judicial review? The footnote in *Carolene* represented the Court's first - and perhaps only - systematic effort to articulate the circumstances in which laws should be struck down as unconstitutional.[44]

The Supreme Court's ruling in *United States v. Carolene Products Co*. produced the most renowned footnote, and perhaps the most distinguished excerpt, in the American judiciary's approach to constitutional law. Footnote Four indicated that prejudice towards discrete and isolated minorities could represent a unique circumstance that significantly undermines the efficacy of political processes typically depended upon for minority protection, necessitating a correspondingly rigorous judicial examination. The significance of this idea cannot be exaggerated. It has had a significant position in constitutional debate since that time.[45]

The Creation of Federal Social Security

In June 1934, President Roosevelt announced before Congress his plan to establish a comprehensive programme of social insurance, which ultimately led to the passing of the Social Security Act 1935.[46] [47] The Social Security Act of 1935 was foundational U.S. legislation that established a permanent national pension system for the elderly, funded by payments from both

[43] Lochner v. New York (1905) 198 U.S. 45
[44] David A Strauss, 'Is Carolene Products Obsolete?' [2010] University of Illinois Law Review 1251 <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2988&context=journal_articles> accessed 28 December 2025.
[45] Dan T Coenen, 'The Future of Footnote Four' (Digital Commons at University of Georgia School of Law2007) <https://digitalcommons.law.uga.edu/fac_artchop/730/> accessed 28 December 2025.
[46] Social Security Act (1935)
[47] Jaap Kooijman, 'Soon or Later On: Franklin D. Roosevelt and National Health Insurance, 1933-1945' (1999) 29 Presidential Studies Quarterly 336 <https://www.jstor.org/stable/27551992> accessed 28 December 2025.

employers and employees; this system was subsequently expanded to include dependents, those with disabilities, and other demographics. In response to the economic repercussions of the Great Depression, five million elderly individuals in the early 1930s formed countrywide Townsend clubs, which were advocated by Francis E. Townsend to endorse his initiative for a $200 monthly pension for all individuals over the age of 60. In 1934, President Franklin D. Roosevelt established a committee on economic security to examine the issue; after an analysis of its suggestions, Congress adopted the Social Security Act in 1935, which provided old-age benefits funded by a payroll tax on companies and workers.[48]

Nevertheless, the Social Security Act of 1935 did not achieve the extensive social insurance that several of its architects had anticipated. The original statute did not provide provisions for disability or medical insurance. This was not due to a lack of contemplation. Isidore S. Falk, a Committee on Economic Security (CES) member, recalled that the committee first contemplated a national health insurance scheme; however, this provision was omitted from the original law due to apprehensions that it would undermine the political viability of advancing the comprehensive social security agenda. Moreover, to secure the support of Southern congress-members, lawmakers crafted many clauses of the act to enhance state authority over the management of different benefits and to disqualify Black workers from these benefits. These limits confined eligibility for essential programs to workers in trade and industry, explicitly excluding domestic and rural labourers. As a result of these exclusions, almost 65 percent of employed Black workers were omitted from old-age insurance. Excluded categories comprised ship officers and crew members, government and non-profit workers, self-employed individuals, and those aged 65 or older. Due to these limitations, approximately fifty percent of the labour force lacked coverage from the Social Security Act (SSA). Notwithstanding its constraints, the SSA would function, as articulated by Labour Secretary and CES member Francis Perkins, as a solid foundation upon which they could gradually construct towards their eventual objective. In the more than nine decades after its enactment, legislators have modified the SSA repeatedly, leading to multiple expansions of coverage as well as modifications in criteria and operation. The program originally restricted old-age benefits to employees who had contributed via the payroll tax introduced under the statute. The

[48] The Editors of Encyclopedia Britannica, 'Social Security Act | United States [1935]', Encyclopædia Britannica (2017) <https://www.britannica.com/topic/Social-Security-Act-United-States-1935> accessed 28 December 2025.

law's scope was progressively expanded to include more categories of coverage and deliver compensation to categories beyond contributing workers.[49]

Helvering v. Davis[50] is a seminal Supreme Court decision adjudicated in 1937, which affirmed the validity of the old-age benefits stipulations of the Social Security Act of 1935. The Court, in a 7-2 ruling, liberally construed the federal government's authority to tax and spend according to Article I, Section 8 of the U.S. Constitution. Justice Benjamin N. Cardozo asserted that the Tenth Amendment did not restrict the federal government's involvement in welfare, contending that the Social Security Act was an essential reaction to the prevailing federal economic depression. This decision confirmed the federal government's power to implement social welfare programs designed to assist persons in need. The ruling highlighted the changing perception of government accountability for the welfare of the population, especially during times of economic distress. The case is notable for its ramifications on the scope of federal authority and the progress of social security systems in the United States. Comprehending *Helvering v. Davis* elucidates the prevailing discussions over the extent and boundaries of governmental involvement in social welfare.[51] Furthermore, in addressing the assertion that the Tenth Amendment restricted Congress' authority to utilise its taxing and spending power for purposes typically allocated to the states, Cardozo noted that the Social Security Act emerged as a remedy to a "nation-wide calamity" that could not be resolved without a coordinated federal initiative. Cardozo hypothesised that if some states financed programs while others did not, impoverished individuals would migrate to the states providing financing, just as businesses would relocate from those places to evade the associated additional payroll taxes.[52]

Steward Machine Co. v. Davis[53] is another pivotal Supreme Court decision from 1937 that affirmed the legality of a clause in the Social Security Act concerning unemployment benefits. The verdict signified a significant change in the Court's understanding of the federal

[49] Oskar Dye-Furstenberg, 'What Is the Social Security Act? '(Roosevelt Institute14 August 2025) <https://rooseveltinstitute.org/blog/what-is-the-social-security-act/> accessed 28 December 2025.
[50] Helvering v. Davis (1937) 301 U.S. 619
[51] Richard L Wilson, 'Helvering v. Davis | Research Starters | EBSCO Research '(EBSCO2022) <https://www.ebsco.com/research-starters/law/helvering-v-davis>.
[52] Kermit L Hall and James W Ely (eds), 'Helvering v Davis ', The Oxford Guide to United States Supreme Court Decisions(Oxford University Press 2009) <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095929891?d=%2F10.1093%2Foi%2Fauthority.20110803095929891&p=emailAQbwROSH3fTYY&print> accessed 28 December 2025.
[53] Steward Machine Co. v. Davis (1937) 301 U.S. 548

government's taxing and spending authority, dramatically contrasting with its prior decision in *United States v. Butler*.[54] In a close 5-4 ruling, the majority judgement authored by Justice Benjamin N. Cardozo underscored the federal government's power to impose taxes and distribute funds for social welfare initiatives, therefore strengthening the foundation of the Social Security Act. Dissenting justices contended that the Tenth Amendment constrained this authority, embodying a more cautious viewpoint on federalism. This case is significant for indicating a shift in the Court's stance on economic and social regulation at a period of considerable economic turmoil in the United States.[55]

Conclusion

The New Deal represents a defining constitutional moment in American legal history, not merely for the scope of its legislative ambition but for the profound judicial recalibration it produced. Initially resistant, the Supreme Court’s jurisprudence evolved in response to sustained economic crisis and political pressure, culminating in a doctrinal shift that legitimised expanded federal authority. Decisions such as *NLRB v. Jones & Laughlin Steel Corp*. dismantled formalistic distinctions limiting Congress’s commerce power, while *Blaisdell* and the farm mortgage cases demonstrated a more elastic interpretation of contractual and property rights during emergencies. The Gold Clause Cases further illustrated the Court’s willingness to tolerate extraordinary federal intervention in pursuit of economic stability.

Equally significant was the Court’s retreat from aggressive scrutiny of economic regulation, most clearly articulated in *United States v. Carolene Products Co*. and its celebrated Footnote Four. This recalibration preserved judicial review while redirecting it towards the protection of political process and fundamental rights, rather than economic liberty. The validation of the Social Security Act in *Helvering v. Davis* and *Steward Machine Co. v. Davis* confirmed the constitutional legitimacy of federal social welfare programmes and redefined governmental responsibility in times of national hardship.

Collectively, these cases reveal how constitutional meaning is shaped not only by legal doctrine but by historical context and institutional necessity. The New Deal settlement forged a constitutional order capable of accommodating modern economic governance, embedding

[54] United States v. Butler (1936) 297 US 1
[55] Richard L Wilson, ‘Steward Machine Co. V. Davis | Research Starters | EBSCO Research’ (EBSCO2022) <https://www.ebsco.com/research-starters/history/steward-machine-co-v-davis> accessed 28 December 2025.

cooperative federalism and social regulation at the heart of American constitutional law. Its legacy endures in contemporary debates over federal power, economic justice, and the role of the judiciary in democratic society.

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