

The Lochner Era
Robert H. Smith Seminar
The Institute for Constitutional History
George Washington University Law School
January 10-February 14, 2013
Professor Barry Cushman
University of Notre Dame

The texts for the course are Cushman, *Rethinking the New Deal Court: The Structure of a Constitutional Revolution* (Oxford, 1998), and a set of materials made available by the Institute.

January 10 Substantive Due Process in the Lochner Era

Munn v. Illinois (1877)
Lochner v. New York (1905)
Muller v. Oregon (1908)
Bunting v. Oregon (1917)
Coppage v. Kansas (1915)
Adkins v. Childrens Hospital (1923)
Wolff Packing v. Court of Industrial Relations (1923)
Tyson & Bro. v. Banton (1927)
Ribnik v. McBride (1928)
Williams v. Standard Oil (1929)

January 17 Lochner Historiography

David Bernstein, “*Lochner* Era Revisionism, Revised: *Lochner* and the Origins of Fundamental Rights Constitutionalism,” 92 Geo. L. J. 1 (2003)
Robert Post, “Defending the Lifeworld: Substantive Due Process in the Taft Court Era,” 78 B. U. L. Rev. 1489 (1998)
Cushman, “Some Varieties and Vicissitudes of Lochnerism,” 85 B. U. L. Rev. 881-982, 998-1000 (2005)

January 24 Federalism in the Progressive Era

Charles McCurdy, “The *Knight Sugar* Decision of 1895 and the Modernization of American Corporation Law, 1869-1903,” 53 Bus. Hist. Rev. 304 (1979)
Cushman, “Formalism and Realism in Commerce Clause Jurisprudence,” 67 U. Chi. L. Rev. 1089-1131 (2000)
Cushman, “*Carolene Products* and Constitutional Structure,” 2012 Sup. Ct. Rev. ____

January 31 New Deal Historiography

Cushman, *Rethinking the New Deal Court* (1998), pp. 3-46

Cushman, "The Hughes Court and Constitutional Consultation," 23-1 *J. Sup. Ct. Hist.* 79 (1998)

Cushman, "The Secret Lives of the Four Horsemen," 83 *Va. L. Rev.* 559 (1997)

Cushman, "Clerking for Scrooge," 70 *U. Chi. L. Rev.* 721 (2003)

February 7 Substantive Due Process in the New Deal Era

Nebbia v. New York (1934)

Cushman, *Rethinking the New Deal Court*, pp. 45-138

Cushman, "Some Varieties and Vicissitudes of Lochnerism," 85 *B. U. L. Rev.* 881, 982-98 (2005)

February 14 Federalism in the New Deal Era

Cushman, *Rethinking the New Deal Court*, pp. 139-225

Cushman, "The Health Care Decision and the Lost Generation of Child Labor Reform" (draft)