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The Constitution, the Supreme Court, and the New Deal

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THE “CONSTITUTIONAL REVOLUTION OF 1937” MAKES FOR DRAMATIC LECTURES. According to the abridged story line, first the Court led liberals to hope for the best by upholding state legislation aimed at fighting the Depression in 5–4 opinions in *Blaisdell* and *Nebbia* in 1934. Then it vitiated the National Industrial Recovery Act and the Agricultural Adjustment Act—the centerpieces of the early New Deal—in *Schechter* and *Butler* in 1935–1936, and struck down the Railroad Retirement Act as well in *Alton*. Soon afterward, a bare majority bent on protecting property rights and privileging the market routinely struck down New Deal and state redistributive legislation designed to cope with the Depression. Thus...

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