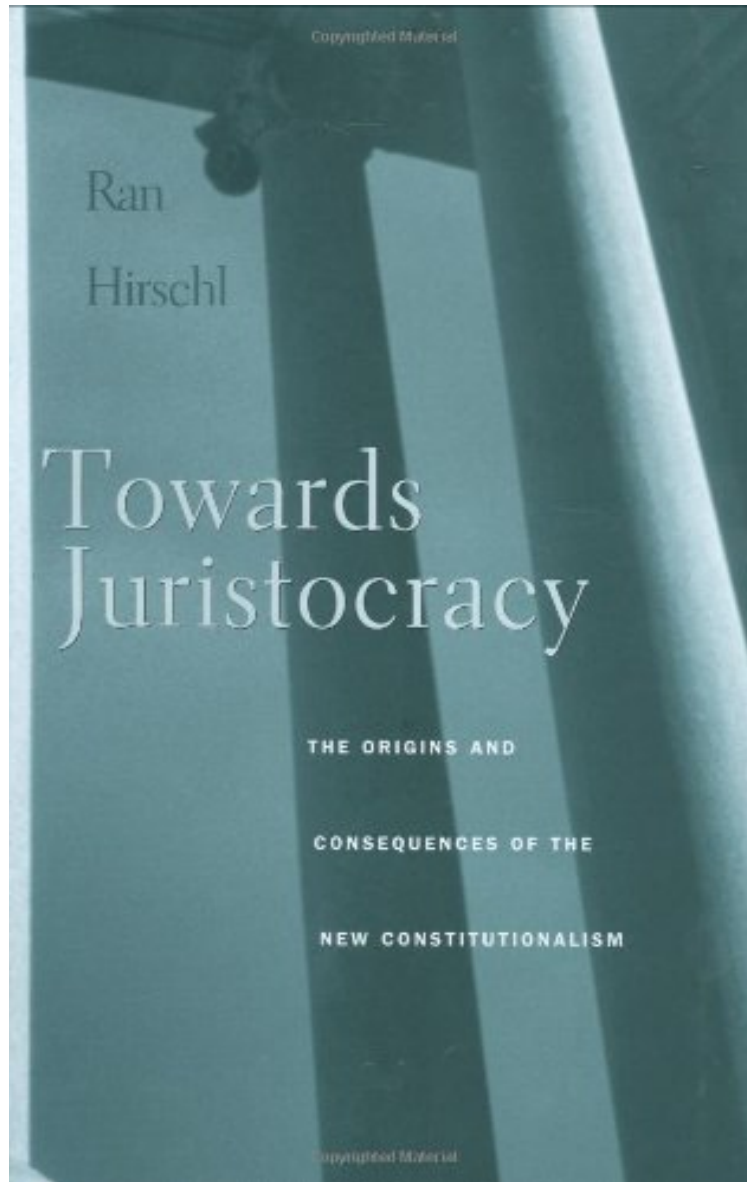


(Download) Towards Juristocracy: The Origins and Consequences of the New Constitutionalism

# Towards Juristocracy: The Origins and Consequences of the New Constitutionalism

*Ran Hirschl*

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**Ran Hirschl : Towards Juristocracy: The Origins and Consequences of the New Constitutionalism** before purchasing it in order to gage whether or not it would be worth my time, and all praised Towards Juristocracy: The Origins and Consequences of the New Constitutionalism:

3 of 4 people found the following review helpful. Time for constitutionalism By Arnold In Towards Juristocracy: The Origins and Consequences of the New Constitutionalism, Hirschl tries to explain not just why countries adopt judicial review, but also when. This is important, because a sufficient theory about the adoption of judicial review must account for the timing. As such, he selects three countries (Canada, New Zealand, and Israel) that did not undergo an obvious political revolution or regime change at the time of their constitutionalisation (a fourth, South Africa, fits the more common pattern of constitutionalism following a democratic transition. Hirschl's thesis - the hegemonic preservation theory - is that political, economic, and judicial elites adopt constitutional review in order to preserve their (often neoliberal) policy preferences in the face of mounting opposition. He analyzes the history of constitutionalisation in his sample countries and shows how changing political and demographic domestic trends, such as immigration, threatened the policies of current elites. He also scrutinizes court opinions, particularly on criminal procedure, privacy, and socio-economic rights, to show how they better match elite neoliberal policy preferences than notions of "progressive" jurisprudence. I found the hegemonic preservation theory compelling, but felt Towards Juristocracy left a few questions open. First, it does not explain variations between elite policy preferences and the final outcome of constitutions. For example, the Canadian Charter does not provide strong protection for property rights, a key element of neoliberal thought. Likewise, the South African Supreme Court has adjudicated socio-economic rights, albeit to a limited degree. To what extent do the negotiations and power dynamics amongst elites and rising political forces affect hegemonic preservation theory? Also, Hirschl's analysis of judicial opinions shows his progressive bias. This is fine, but does tend to distract from the central thesis of the book. This is a good book to read alongside Tom Ginsburg Judicial Review in New Democracies: Constitutional Courts in Asian Cases. It provides plenty to ponder. I'd be interested in more studies of hegemonic preservation theory in developing countries outside the commonwealth/British legal family. 5 of 7 people found the following review helpful. Review for Towards Juristocracy by Ran Hirschl By M. Svajda Had to read this book for a class I'm taking. I'm a political science major and I can honestly say this is one of the more interesting books I have been required to read. The author's format makes it easy to understand also. Overall good book.

In countries and supranational entities around the globe, constitutional reform has transferred an unprecedented amount of power from representative institutions to judiciaries. The constitutionalization of rights and the establishment of judicial review are widely believed to have benevolent and progressive origins, and significant redistributive, power-diffusing consequences. Ran Hirschl challenges this conventional wisdom. Drawing upon a comprehensive comparative inquiry into the political origins and legal consequences of the recent constitutional revolutions in Canada, Israel, New Zealand, and South Africa, Hirschl shows that the trend toward constitutionalization is hardly driven by politicians' genuine commitment to democracy, social justice, or universal rights. Rather, it is best understood as the product of a strategic interplay among hegemonic yet threatened political elites, influential economic stakeholders, and judicial leaders. This self-interested coalition of legal innovators determines the timing, extent, and nature of constitutional reforms. Hirschl demonstrates that whereas judicial empowerment through constitutionalization has a limited impact on advancing progressive notions of distributive justice, it has a transformative effect on political discourse. The global trend toward juristocracy, Hirschl argues, is part of a broader process whereby political and economic elites, while they profess support for democracy and sustained development, attempt to insulate policymaking from the vicissitudes of democratic politics.

The great bulk of scholarship on judicial review suffers two major shortcomings: it lacks any serious attention to what goes on outside the United States, and, even within the American context, it has been marred by the work of a generation of scholars who came of age during the highly unusual era of the Warren Court. Ran Hirschl's superb treatment remedies both these defects, with results that should be profoundly troubling to all partisans of independent courts and judicial review. His rich comparative treatments of the judicialization of politics in Canada, Israel, New Zealand, and South Africa is informed by an masterful grasp of the historical and theoretical literature on the US. Hirschl makes a convincing case that courts do little, if anything, for advancing progressive notions of social justice that are not achieved by democratic politics. Courts protect powerful economic and social interests by taking controversial issues out of politics and off the table, thus moving democracies toward unaccountable juristocracy. Hirschl is to be congratulated for producing this long overdue study. It should be mandatory reading for constitutional and democratic theorists the world over, as well as anyone who has a hand in institutional design of new democracies. --Ian Shapiro, Yale University Towards Juristocracy is one of only a handful of major works on comparative constitutional law. Its account of the origins of modern systems of judicial review in efforts to entrench specific social and economic programs significantly advances our understanding, and its discussion of the way in which constitutional courts around the world have become involved in resolving major controversies about the most basic questions nations face sheds new light on Bush v. Gore. This is one of the most important books about judicial review in recent years. --Mark Tushnet, Georgetown University Law Center One of the most momentous global transformations of the last 30 years has been the spread of political systems in which courts exercise sweeping

constitutional powers. Ran Hirschl's *Towards Juristocracy* is the first substantial empirical inquiry into the consequences of this great shift. It is pathbreaking, compelling, and iconoclastic--destined to be a landmark in comparative legal and political analysis. --Rogers Smith, University of Pennsylvania *Towards Juristocracy* has many virtues. It focuses interestingly and originally on recent constitutionalisms as a distinct phenomenology. It is remarkably well informed by all aspects of constitutional reflection that emanate from the United States and the American experience. This is a book that moves freely and comfortably between political theory and social science, and it will attract wide attention. --Joseph Weiler, New York University School of Law A truly impressive piece of research, comprehensive in coverage of the relevant scholarship, cogently argued, and elegantly presented. --Leslie Friedman Goldstein (*Law and Society* 2004-06-01) Even if the reader does not agree with Hirschl's final thoughts, his thought-provoking conclusions will inspire questions regarding the role of the judiciary in constitutional democracies and encourage critical reflection regarding the future of judicial review. --Shannon M. Roesler (*Comparative Political Studies* 2005-08-01) Hirschl suggests that the 'new constitutionalism,' widely hailed as an important step in the protection of human rights, should instead be understood as part of a larger effort by elites to 'insulate policy making' from democratic impulses. Hirschl draws on the experience of constitutional revolutions in Canada, New Zealand, Israel, and South Africa... This is an ambitious and important book. --J. E. Finn (*Choice* 2004-10-01) Ran Hirschl has written a thought-provoking assessment of the global shift towards judicial empowerment... His conclusions and analysis are bound to elicit praise and criticism from across the spectrum of academic and political thought... *Towards Juristocracy* is an impressive book that will certainly engender more debate than it resolves. For this, Hirschl should be commended for a work that will certainly shape political science analysis of the courts and constitutionalism for some time. --Mark Rush (*Law and Politics Book* 2004-07-01) It casts issues in a novel light and raises questions that tend to be neglected by more normatively focused or legalistic scholarship. It is well written and documented, and it contains a large number of suggestions for further research. It also opens a fruitful path of dialogue between legal and political science scholars that one hopes will be expanded in the future. --Carlos Closa (*International Journal of Contemporary Law*)

About the Author Ran Hirschl is Professor of Political Science and Law, University of Toronto, and Canada Research Chair in Constitutionalism and Democracy.