The Rule of Law and the Judiciary Under Assault?
Or Exposed? Are We All Legal Realists Now?

I. “The Least Dangerous Branch”: Some Thoughts on the Role of the Supreme Court in American Democracy
   A. The Liberal and Democratic Counter-majoritarian Interpretation
      1. John Locke (1632-1704, Two Treatises of Government) on “the constituent power of the people” and the need to preserve their higher law against the infringement by the ordinary law of legislatures
      2. Another Tradition: Baron de Montesquieu (1689-1755, The Spirit of the Laws) and the Idea of Separation of Powers and Judicial Equality
      3. The American Innovation: the Democratic Interpretation of Judicial Review—Hamilton in Federalists #78, and Mayberry vs. Madison (1803)
   B. Bringing the American Tradition into the Present
      1. The Liberal Interpretation: Ronald Dworkin (1931-2013, Law’s Empire) on the Court as the “Forum of Principle” and John Rawls (1921-2002, Political Liberalism) on “the Exemplar of Public Reason”
      2. The Democratic Interpretation: Bruce Ackerman (1943, We the People) on the role of the Court and Other Branches in Maintaining “The Living Constitution”
   C. The Anti-Democratic Interpretation: Legal Realism, etc.

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