

REASON OVER PRECEDENTS

Origins of American Legal Thought

Craig Evan Klaffer

Reason Over Precedents Origins Of American Legal Thought

Wilfrid Prest



Reason Over Precedents Origins Of American Legal Thought:

Reason Over Precedents Craig E Klafter,1993-08-30 This legal and intellectual history shows how the education of American lawyers between 1779 and 1829 manifested a unique and distinct process of legal thought into the United States This new American legal thought based upon ideas imported from the works of European natural law writers had a significant impact on the creation of a distinctly American legal system and was and continues to be instrumental in shaping American society

Reason Over Precedents Craig Evan Klafter,1991

A Companion to American Legal History Sally E. Hadden,Alfred L. Brophy,2013-02-22 A Companion to American Legal History presents a compilation of the most recent writings from leading scholars on American legal history from the colonial era through the late twentieth century Presents up to date research describing the key debates in American legal history Reflects the current state of American legal history research and points readers in the direction of future research Represents an ideal companion for graduate and law students seeking an introduction to the field the key questions and future research ideas

Failures of American Methods of Lawmaking in Historical and Comparative Perspectives James Maxeiner,2018-03-08 What Americans sought What Americans got deranged laws What Americans can do improve legal methods

Legal Science in the Early Republic , Steven J. Macias,2016-05-31 This work examines the intellectual motivations behind the concept of legal science the first coherent American jurisprudential movement after Independence Drawing mainly upon public but also private sources this book considers the goals of the bar s professional leaders who were most adamant and deliberate in setting out their visions of legal science It argues that these legal scientists viewed the realm of law as the means through which they could express their hopes and fears associated with the social and cultural promises and perils of the early republic Law perhaps more so than literature or even the natural sciences provided the surest path to both national stability and international acclaim While legal science yielded the methodological tools needed to achieve these lofty goals its naturalistic foundations more importantly were at least partly responsible for the grand impulses in the first place This book first considers the content of legal science and then explores its application by several of the most articulate legal scientists working and writing in the early republic

The Constitution and the Pride of Reason Steven D. Smith,1998-01-01 Attempting to realize Plato s vision of a republic governed by reason American constitutionalists according to Steven D Smith s bold new critical study have instead reenacted the Tower of Babel myth producing a constitutional discourse marked by rampant confusion elaborate sophistry and thinly veiled authoritarian bullying How is it that the pursuit of such lofty aims by yesterday s framers and today s scholars has left us mired in a constitutional morass This timely book ponders that question with the intellectual vigor it deserves Observing that standard accounts of constitutional law both the conservative and liberal varieties have lost their power to illuminate *The Constitution and the Pride of Reason* explores how constitutional law hangs together and how it falls apart by investigating the perennial claim that the Constitution and its interpretation somehow

embody a commitment to governance by reason What does this claim mean and is it valid In confronting these queries Smith offers revealing and iconoclastic assessments of constitutionalists ranging from Madison and Jefferson to Dworkin and Bork Also detailed in these pages is a provocative overview of the whole constitutional project from its noble aspirations to its tragic failures A truly visionary work that investigates the scholarship the design and the history of the quintessential American legal document this volume also sensibly reflects on the meaning and possibility of the ethical commitment to the life of reason It will appeal not only to students of constitutional law but also to those interested in political science philosophy and American history

Heart versus Head Peter Karsten, 2000-11-09 Challenging traditional accounts of the development of American private law Peter Karsten offers an important new perspective on the making of the rules of common law and equity in nineteenth century courts The central story of that era he finds was a struggle between a jurisprudence of the head which adhered strongly to English precedent and a jurisprudence of the heart a humane concern for the rights of parties rendered weak by inequitable rules and a willingness to create exceptions or altogether new rules on their behalf Karsten first documents the tendency of jurists particularly those in the Northeast to resist arguments to alter rules of property contract and tort law He then contrasts this tendency with a number of judicial innovations among them the sanctioning of deep pocket jury awards and the creation of the attractive nuisance rule designed to protect society's weaker members In tracing the emergence of a pro plaintiff humanitarian jurisprudence of the heart Karsten necessarily addresses the shortcomings of the reigning economic oriented paradigm regarding judicial rulemaking in nineteenth century America Originally published in 1997 A UNC Press Enduring Edition UNC Press Enduring Editions use the latest in digital technology to make available again books from our distinguished backlist that were previously out of print These editions are published unaltered from the original and are presented in affordable paperback formats bringing readers both historical and cultural value

[History of the Yale Law School](#) Anthony T. Kronman, 2008-10-01 The entity that became the Yale Law School started life early in the nineteenth century as a proprietary school operated as a sideline by a couple of New Haven lawyers The New Haven school affiliated with Yale in the 1820s but it remained so frail that in 1845 and again in 1869 the University seriously considered closing it down From these humble origins the Yale Law School went on to become the most influential of American law schools In the later nineteenth century the School instigated the multidisciplinary approach to law that has subsequently won nearly universal acceptance In the 1930s the Yale Law School became the center of the jurisprudential movement known as legal realism which has ever since shaped American law In the second half of the twentieth century Yale brought the study of constitutional and international law to prominence overcoming the emphasis on private law that had dominated American law schools By the end of the twentieth century Yale was widely acknowledged as the nation's leading law school The essays in this collection trace these notable developments They originated as a lecture series convened to commemorate the tercentenary of Yale University A distinguished group of scholars assembled to explore the history of the

School from the earliest days down to modern times This volume preserves the highly readable format of the original lectures supported with full scholarly citations Contributors to this volume are Robert W Gordon Laura Kalman John H Langbein Gaddis Smith and Robert Stevens with an introduction by Anthony T Kronman

The Cambridge Companion to the United States Constitution Karen Orren, John W. Compton, 2018-03-22 This Companion provides a broad historically informed introduction to the study of the US constitutional system In place of the usual laundry lists of cases doctrines and theories it presents a picture of the constitutional system in action with separate sections devoted to constitutional principles organizational structures and the various legal and extra legal actions through which litigators and average citizens have attempted to bring about constitutional change Finally the volume covers a number of subjects that are rarely discussed in works aimed at a general audience but which are critical to ensuring that constitutional rights are honored in the day to day lives of citizens These include standing and causes of action suits against officeholders and the inner workings of the Foreign Intelligence Surveillance Court FISC This Companion places present day constitutional controversies in historical context and offers insights from a range of disciplines including history political science and law

Blackstone and his Commentaries Wilfrid Prest, 2009-07-06 One of the most celebrated works in the Anglo American legal tradition William Blackstone's Commentaries on the Laws of England 1765 9 has recently begun to attract renewed interest from legal and other scholars The Commentaries no longer dominate legal education as they once did especially in North America during the century after their first publication But they continue to be regularly cited in the judgments of superior courts of review on both sides of the Atlantic and elsewhere throughout the common law world They also provide constitutional cultural intellectual and legal historians with a remarkably comprehensive account of the role of law lawyers and the courts in the imperial superpower that was England on the cusp of the industrial revolution The life and character of Blackstone himself the nature and sources of his jurisprudence as expounded in the Commentaries and the impact of his great book both within and beyond his native shores are the main themes of this collection Individual essays treat Blackstone's early architectural treatises and their relationship to the Commentaries his idiosyncratic book collecting his views of the role of judges interpretation of statutes the law of marriage the status of wives natural law property law and the legalities of colonisation and the varied reception of the Commentaries in America and continental Europe Blackstone's bibliography and iconography also receive attention Combining the work of both eminent and emerging scholars this interdisciplinary venture sheds welcome new light on a legal classic and its continued influence

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Blackstone's Commentaries Tim Stretton 9 Blackstone's Commentaries on Colonialism Australian Judicial Interpretations Thalia Anthony 10 Restoring the Real to Real Property Law A Return to Blackstone Nicole Graham III Influence 11 American Blackstones Michael Hoeflich 12 Did Blackstone get the Gallic Shrug John Emerson 13 Blackstone in Germany Horst Dippel IV Sources 14 Bibliography Morris Cohen 15 Iconography J H Baker and Wilfrid Prest Contributors Thalia Anthony lectures in law at the University of Sydney Norma Aubertin Potter is Librarian in Charge of the Codrington Library All Souls College Oxford J H Baker Downing Professor of the Laws of England at the University of Cambridge is Literary Director of the Selden Society Morris Cohen Professor Emeritus and Professorial Lecturer in Law is the former Librarian of Yale Law School Horst Dippel is Professor of British and American Studies at the University of Kassel Ian Doolittle formerly a Junior Research Fellow at Christ Church Oxford is a partner in the law firm Trowers and Hamlin LLP in London John Emerson holds a Visiting Research Fellowship in the Law School University of Adelaide Nicole Graham is Senior Lecturer in the Faculty of Law University of Technology Sydney Michael Hoeflich is John H and John M Kane Distinguished Professor in the Law School University of Kansas John Langbein is Sterling Professor of Law and Legal History at Yale Law School Carol Matthews teaches in the School of History and Politics at the University of Adelaide John V Orth holds the William Rand Kenan Jr Chair of Law at the University of North Carolina Chapel Hill Wilfrid Prest is Professor Emeritus and Visiting Research Fellow in the Law School and School of History and Politics University of Adelaide Mary Sokol holds an Honorary Research Fellowship in the Bentham Project at University College London Tim Stretton teaches history at St Mary's University Halifax Nova Scotia

Remaking Custom Ellen Holmes Pearson, 2011-03-22 History has largely forgotten the writings both public and private of early nineteenth century America's legal scholars However Ellen Holmes Pearson argues that the observers from this era had a unique perspective on the young nation and the directions in which its legal culture might go Remaking Custom draws on the law lectures treatises speeches and papers of the early republic's legal scholars to examine the critical role that they played in the formation of American identities As intermediaries between the founders of America's newly independent polities and the next generation of legal practitioners and political leaders the nation's law educators expressed pride in the retention of the republican parts of England's common law while at the same time identifying some of the central features that distinguished American law from that of Britain From their perspective the new nation's blending of tradition and innovation produced a superior national character Because American law educators interpreted both local and national legal trends Remaking Custom reveals how national identities developed through Americans articulation of their local customs and identities Pearson examines the innovations that legists could celebrate such as constitutional changes that placed the people at the center of their governments and more egalitarian property laws that accompanied America's abundant supply of land The book also deals with innovations that presented uncomfortable challenges to law educators as they sought creative ways to justify the legal cultures that grew up around slavery and Anglo Americans hunger for land occupied by Native Americans

The End of Anglo-America Robert Arthur Burchell,1991 This collection of essays examines the phenomenon of the gradually evolving cultural differences which took place between America and Britain after the American revolution A culture of individualism began to emerge in contrast with elitism leading to suspicion of government and emerging personal ambitions particularly with regard to one's children However cultural changes emerged at a different pace in different parts of the country One author argues that Britain and America continued as members of a single political family which in turn belonged to a wider European community Another suggests that a clear but selective emancipation from the British political culture took place and that a development of distinctly American institutions and practices emerged Yet another believes that in the United States there was less criticism of business success and less possibility of the generations that succeeded business success being seduced by gentrification

Advanced Artificial Intelligence and Robo-Justice Georgios I. Zekos,2022-05-16 The book deals with digital technology which is transforming the landscape of dispute resolution It illustrates the application of AI in the legal field and shows the future prospect of robo justice for an AAI society in the advanced artificial intelligence era In other words the present justice system and the influence of current AI upon courts and arbitration are investigated The transforming role of AI on all legal fields is examined thoroughly by giving answers concerning AI legal personality and liability The analysis shows that digital technology is generating an ever growing number of disputes and at the same time is challenging the effectiveness and reach of traditional dispute resolution avenues To that extent the book presents in tandem the impact of AI upon courts and arbitration and reveals the role of AAI in generating a new robo justice system Finally the end of the perplexing relation of courts and arbitration is evidenced methodically and comprehensively

Originalism's Promise Lee J. Strang,2019-08-08 Provides the first natural law justification for an originalist interpretation of the American Constitution

Kentucky's First Asylum Alma Wynelle Deese,2012-01-20 Asylums were first established to care for the unfortunates of society It was only later they acquired a negative image In Kentucky's First Asylum author Alma Wynelle Deese explores this issue by dissecting the inner workings of the Eastern Kentucky Asylum Kentucky's first asylum and the second state supported asylum to be established in the United States She describes the people who were involved in the creation and maintenance of a medical school law department and lunatic asylum in Lexington Kentucky Using historical data Deese presents a fictionalized narrative to explore this institution's history from 1817 to the 1990s including a chapter dedicated to 1906 a pivotal year for Eastern Kentucky Asylum That year four employees were charged in the murder of a patient and this incident set the stage for the past and present history of this facility Kentucky's First Asylum provides a historical understanding of one early asylum that became a state hospital and serves to give broader context for the understanding of the current mental health system It provides a platform to better comprehend the problems and processes of American psychiatric care

Judicial Policy Making and the Modern State Malcolm M. Feeley,Edward L. Rubin,2000-03-28 Investigates the role of federal judges in prison reform and policy making in

general *Lawyers and Vampires* W. W. Pue, David Sugarman, 2003-04 Analyses aspects of the cultural history of the legal profession in England Canada Australia France Germany Italy Sweden Switzerland Norway and Finland It examines ways in which lawyers were imaginatively and institutionally constructed and their larger cultural significance *State and Citizen* Peter Thompson, Peter S. Onuf, 2013-03-25 Pointing the way to a new history of the transformation of British subjects into American citizens *State and Citizen* challenges the presumption that the early American state was weak by exploring the changing legal and political meaning of citizenship The volume s distinguished contributors cast new light on the shift from subjecthood to citizenship during the American Revolution by showing that the federal state played a much greater part than is commonly supposed Going beyond master narratives celebratory or revisionist that center on founding principles the contributors argue that geopolitical realities and the federal state were at the center of early American political development The volume s editors Peter Thompson and Peter S Onuf bring together political science and historical methodologies to demonstrate that citizenship was a political as well as a legal concept The American state this collection argues was formed and evolved in a more dialectical relationship between citizens and government authority than is generally acknowledged Suggesting points of comparison between an American narrative of state development previously thought to be exceptional and those of Europe and Latin America the contributors break fresh ground by investigating citizenship in its historical context rather than by reference only to its capacity to confer privileges *Contract & Consent* Jack Richon Pole, 2010 In *Contract and Consent* the renowned legal historian J R Pole posits that legal history has become highly specialized while mainstream political and social historians frequently ignore cases that figure prominently in the legal literature Pole makes a start at remedying the situation with a series of essays that reintegrate legal with political and social history A central theme of the essays is the link between Anglo American common law and contract law and American political and constitutional principles Pole also emphasizes the political functions of legal institutions in English and American history going so far as to suggest that we need to divest ourselves of any notion of the separation of powers Instead we need to acknowledge the historical role of courts juries and the common law as agencies of political representation and as promulgators of law and policy Other essays show the implications of independence for American law and how American political scientists converted the concept of sovereignty from its authoritarian claims in the eighteenth century into a product of the political process in the nineteenth and twentieth centuries Although the American colonies made their own versions of the common law there was no simple division between English and American law But it was of fundamental importance that an entitled landed aristocracy was never imported into or allowed to take root in America with the result that American law was much simpler than its English counterpart with the latter s accretion of esoteric language and procedures Having established the basis of Anglo American legal history in contract and common law in part one in the second half of the volume Pole explores various constitutional and legal themes from bicameralism in Britain and America and the role of the Constitution in the making of

American nationality to the performance of representative institutions in the century following the American Revolution

American States of Nature Mark Somos, 2019-04-01 *American States of Nature* transforms our understanding of the American Revolution and the early makings of the Constitution. The journey to an independent United States generated important arguments about the existing condition of Americans in which rival interpretations of the term state of nature played a crucial role. State of nature typically implied a pre-political condition and was often invoked in support of individual rights to property and self-defense and the right to exit or to form a political state. It could connote either a paradise or a baseline condition of virtue and health or a hell on earth. This mutable phrase was well known in Europe and its empires. In the British colonies, state of nature appeared thousands of times in juridical, theological, medical, political, economic, and other texts from 1630 to 1810. But by the 1760s, a distinctively American state of nature discourse started to emerge. It combined existing meanings and sidelined others in moments of intense contestation such as the Stamp Act crisis of 1765-66 and the First Continental Congress of 1774. In laws, resolutions, petitions, sermons, broadsides, pamphlets, letters, and diaries, the American states of nature came to justify independence at least as much as colonial formulations of liberty, property, and individual rights did. In this groundbreaking book, Mark Somos focuses on the formative decade and a half just before the American Revolution. Somos' investigation begins with a 1761 speech by James Otis that John Adams described as a dissertation on the state of nature and celebrated as the real start of the Revolution. Drawing on an enormous range of both public and personal writings, many rarely or never before discussed, the book follows the development of America's state of nature discourse to 1775. The founding generation transformed this flexible concept into a powerful theme that shapes their legacy to this day. No constitutional history of the Revolution can be written without it.

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