

ORIGINALISM
— AMERICAN
LAW *and*
POLITICS

A
Constitutional
History



JOHNATHAN O'NEILL

Originalism In American Law And Politics

**Martin Scheinin, Helle Krunke, Marina
Aksenova**



Originalism In American Law And Politics:

Originalism in American Law and Politics Johnathan O'Neill, 2005-07-12 This book explains how the debate over originalism emerged from the interaction of constitutional theory U S Supreme Court decisions and American political development Refuting the contention that originalism is a recent concoction of political conservatives like Robert Bork Johnathan O'Neill asserts that recent appeals to the origin of the Constitution in Supreme Court decisions and commentary especially by Justices Antonin Scalia and Clarence Thomas continue an established pattern in American history Originalism in American Law and Politics is distinguished by its historical approach to the topic Drawing on constitutional commentary and treatises Supreme Court and lower federal court opinions congressional hearings and scholarly monographs O'Neill's work will be valuable to historians academic lawyers and political scientists **In the Balance: Law and Politics on the**

Roberts Court Mark Tushnet, 2013-09-30 Examines the initial years of the Roberts Court covering the legal philosophies that have informed decisions on such major cases as the Affordable Care Act the political structures behind appointments and the struggle for dominance of the Court **Against Constitutional Originalism** Jonathan Gienapp, 2024-09-03 A detailed and compelling examination of how the legal theory of originalism ignores and distorts the very constitutional history from which it derives interpretive authority Constitutional originalism stakes law to history The theory's core tenet that the U S

Constitution should be interpreted according to its original meaning has us decide questions of modern constitutional law by consulting the distant constitutional past Yet originalist engagement with history is often deeply problematic And now that a majority of justices on the U S Supreme Court champion originalism the task of scrutinizing originalists' use and abuse of history has never been more urgent In this comprehensive and novel critique of originalism Jonathan Gienapp targets originalists' unspoken assumptions about the Constitution and its history Originalists are committed to recovering the Constitution laid down at the American Founding yet they often assume that the Constitution is fundamentally modern Rather than recovering the original Constitution they project their own understandings onto it assuming that eighteenth century constitutional thinking was no different than their own They take for granted what it meant to write a constitution down what law was how it worked and where it came from and how a constitution's meaning was fixed In the process they erase the Constitution that eighteenth century Americans in fact created By understanding how originalism fails we can better understand the Constitution that we have Conservative Thought and American Constitutionalism since the New Deal

Deal Johnathan O'Neill, 2022-11-29 An intellectual history of American conservatism since the New Deal The New Deal fundamentally changed the institutions of American constitutional government and in turn the relationship of Americans to their government Johnathan O'Neill's Conservative Thought and American Constitutionalism since the New Deal examines how various types of conservative thinkers responded to this significant turning point in the second half of the twentieth century O'Neill identifies four fundamental transformations engendered by the New Deal the rise of the administrative state

the erosion of federalism the ascendance of the modern presidency and the development of modern judicial review He then considers how various schools of conservative thought traditionalists neoconservatives libertarians Straussians responded to these major changes in American politics and culture Conservatives frequently argued among themselves and their responses to the New Deal ranged from adaptation to condemnation to political mobilization Ultimately the New Deal pulled American governance and society permanently leftward Although some of the New Deal's liberal gains have been eroded a true conservative counterrevolution was never O'Neill argues a realistic possibility He concludes with a plea for conservative thinkers to seriously reconsider the role of Congress a body that is relatively ignored by conservative intellectuals in favor of the courts and the presidency in America's constitutional order

Conservative Thought and American Constitutionalism since the New Deal explores the scope and significance of conservative constitutional analysis amid the broader field of American political thought

The President Shall Nominate Mitchel A. Sollenberger, 2008 A comprehensive and path breaking study of what happens behind the scenes before presidents publicly announce to the Senate and thus the nation their nominees for federal positions

Russian Discourses on International Law P. Sean Morris, 2018-09-03 A number of recent events in the last decade have renewed interest in Russian discourses on international law This book evaluates and presents a contemporary analysis of Russian discourses on international law from various perspectives including sociological theoretical political and philosophical The aim is to identify how Russia interacts with international law the reasons behind such interactions and how such interactions compare with the general practice of international law It also examines whether legal culture and other phenomena can justify Russia's interaction in international law

Russian Discourses on International Law explains Russia's interpretation of international law through the lens of both leading western scholars and contemporary western based Russian scholars It will be of value to international law scholars looking for a better understanding of Russia's behavior in international legal relations law and society foreign policy and domestic application of international law Further those in fields such as sociology politics philosophy or general graduate students lawyers think tanks government departments and specialized Russian studies programs will find the book helpful

Scalia Bruce Allen Murphy, 2015-06-30 A deeply researched portrait of the controversial Supreme Court justice covers his career achievements his appointment in 1986 and his resolve to support agendas from an ethical rather than political perspective

The Cycles of Constitutional Time Jack M. Balkin, 2020-08-17 What will happen to American democracy The nation's past holds vital clues for understanding where we are now and where we are headed In *The Cycles of Constitutional Time* the eminent constitutional theorist Jack Balkin explains how America's constitutional system changes through the interplay among three cycles the rise and fall of dominant political parties the waxing and waning of political polarization and alternating episodes of constitutional decay and constitutional renewal If America's politics seems especially fraught today it is because we are nearing the end of the Republican Party's political dominance at the height of a long cycle of political polarization and suffering from an

advanced case of what he calls constitutional rot In fact when people talk about constitutional crisis Balkin explains they are usually describing constitutional rot the historical process through which republics become less representative and less devoted to the common good Brought on by increasing economic inequality and loss of trust constitutional rot threatens our constitutional system But Balkin offers a message of hope We have been through these cycles before and we will get through them again He describes what our politics will look like as polarization lessens and constitutional rot recedes Balkin also explains how the cycles of constitutional time shape the work of the federal courts and theories about constitutional interpretation He shows how the political parties have switched sides on judicial review not once but twice in the twentieth century and what struggles over judicial review will look like in the coming decades Drawing on literatures from history law and political science this is a fascinating ride through American history with important lessons for the present and the future

Beyond Origins Angélica Maria Bernal, Angélica Reyna Bernal, 2017 *Beyond Origins* challenges the common view of foundings as singular extraordinary moments of political origin and creation Engaging with cases of founding across political traditions from classical Greece to contemporary Latin America the book argues that it is only through pragmatist understandings of democratic origins that we can realize the potential for radical democratic change **Beyond Origins** Angélica Maria Bernal, 2017-06-30 The foundings of constitutional democracies are commonly traced to singular moments In turn these moments of national origin are characterized as radical political innovations notable for their civic unity perfect legitimacy and binding authority This common view is attractive as it suggests original founding events actors and ideals that can be evoked to legitimize state authority and unify citizens Angélica Maria Bernal challenges this view of foundings however explaining that it is ultimately dangerous misguided and unsustainable *Beyond Origins* argues that the ascription of a universal authority to original founding events is problematic because it limits our understanding of subsequent foundational changes political transformation and innovation This singular view also confounds our ability to account for all of the actors and venues through which foundation building and constitutional transformation occurs Because such understandings of national foundings obscure the many power struggles at work in them these origin stories are troubling and unhelpful In the wake of these limited views of founding Bernal develops an alternate approach founding beyond origins Rather than asserting that founding events are authoritatively settled and relegated to history this framework redefines foundings as contentious uncertain and incomplete Indeed the book looks at a wide variety of contexts early imperial Rome revolutionary Haiti and France the mid 20th century racially segregated United States and contemporary Latin America to reconsider political foundings as a contestatory and ongoing dimension of political life Bridging classic and contemporary political and constitutional theory with historical readings Bernal reorients approaches to foundings arguing that it is only through context specific and pragmatist understandings of political origins that we can realize the potential for radical democratic change **The Madisonian Constitution** George Thomas, 2008-08-01 Today we think of constitutional

questions as being settled by the Supreme Court But that is not always the case nor is it what the framers intended in constructing the three branch federal government This volume examines four crucial moments in the United States political history the Civil War and Reconstruction the Progressive Era Franklin Delano Roosevelt s presidency and the New Deal and the Reagan revolution to illustrate the Madisonian view that the present rise of judicial supremacy actually runs counter to the Constitution as established at the nation s founding George Thomas opens by discussing how the Constitution encourages an antagonistic approach to settling disputes thereby preserving itself as the nation s fundamental law rather than ceding that role to the president Congress or Supreme Court In considering the four historical case studies he focuses on judicial interpretations and the political branches responses to them to demonstrate that competing conceptions of constitutional authority and meaning as well as intergovernmental disputes themselves rather than any specific outcome strengthen the nature of the nation s founding document as a political instrument Engagingly written and soundly argued this study clarifies and highlights the political origins of the nation s foundational document and argues that American constitutionalism is primarily about countervailing power not legal limits enforced by courts

Church, State, and Original Intent Donald L. Drakeman, 2010 This provocative book shows how the justices of the United States Supreme Court have used constitutional history portraying the Framers actions in a light favoring their own views about how church and state should be separated Drakeman examines church state constitutional controversies from the Founding Era to the present arguing that the Framers originally intended the establishment clause only as a prohibition against a single national church

Judges as Guardians of Constitutionalism and Human Rights Martin Scheinin, Helle Krunke, Marina Aksenova, 2016-04-29 There are many challenges that national and supranational judges have to face when fulfilling their roles as guardians of constitutionalism and human rights This book brings together academics and judges from different jurisdictions in an endeavour to uncover the intricacies of the judicial function The contributors discuss several points that each represent contemporary challenges to judging analysis of judicial balancing of conflicting considerations the nature of courts legitimacy and its alleged dependence on public support the role of judges in upholding constitutional values in the times of transition to democracy surveillance and the fight against terrorism and the role of international judges in guaranteeing globally recognized fundamental rights and freedoms This book will be of interest to human rights scholars focusing on the issues of judicial oversight as well as constitutional law scholars interested in comparative perspectives on the role of judges in different contexts It will also be useful to national constitutional court judges and law clerks aiming to familiarise themselves with judicial practices within other jurisdictions

Controversies in Equal Protection Cases in America Anne Richardson Oakes, 2016-03-03 This collection engages with current issues on equal protection in the USA as seen from the perspectives of leading academics in this area Contributors with a range of perspectives interrogate the legal theoretical and factual assumptions which shape case law and consider the extent to which they satisfactorily address contemporary concerns with social hierarchies and

norms Divided into five parts the study focusses on the connections between equal protection jurisprudence discrimination in its contemporary manifestations the implications of identity politics and the moral and political conceptualizations of equality that represent the parameters of debate Drawing on historical analysis and disciplinary insights of the social sciences the book bridges the gap between theory and practice The themes presented and analyses developed are among some of the most contentious currently in America and will be of interest not just to lawyers and legal academics but also to interdisciplinary social science researchers including sociologists economists and political scientists

Constitutional Politics in a Conservative Era Austin Sarat, 2008-05-05 Aims to bring together the work of leading scholars of Constitutionalism Constitutional law and politics in the United States to take stock of the field to chart its progress and point the way for its future development

The Justice of Contradictions Richard L. Hasen, 2018-03-20 Superbly written filled with brilliant insights Both liberals and conservatives will see Scalia and his legacy in a new and more illuminating light Adam Winkler author of *Gunfight The Battle Over the Right to Bear Arms in America* Engaging but caustic and openly ideological Antonin Scalia was among the most influential justices ever to serve on the United States Supreme Court In this fascinating new book legal scholar Richard L Hasen assesses Scalia s complex legacy as a conservative legal thinker and disruptive public intellectual The left saw Scalia as an unscrupulous foe who amplified his judicial role with scathing dissents and outrageous public comments The right viewed him as a rare principled justice committed to neutral tools of constitutional and statutory interpretation Hasen provides a more nuanced perspective demonstrating how Scalia was crucial to reshaping jurisprudence on issues from abortion to gun rights to separation of powers A jumble of contradictions Scalia promised neutral tools to legitimize the Supreme Court but his jurisprudence and confrontational style moved the Court to the right alienated potential allies and helped to delegitimize the institution he was trying to save Absorbing a book that at least for this reader shed new light on the law and how it is made interpreted and applied Los Angeles Review of Books

Fragmented Citizens Stephen M. Engel, 2016-05-24 The landmark Supreme Court decision in June 2015 legalizing the right to same sex marriage marked a major victory in gay and lesbian rights in the United States Once subject to a patchwork of laws granting legal status to same sex couples in some states and not others gay and lesbian Americans now enjoy full legal status for their marriages wherever they travel or reside in the country For many this means that gay and lesbian citizens are one step closer to full equality with the rest of America However author Stephen M Engel contends that there remains much to be done in shaping American institutions to recognize gays and lesbians as full citizens Tracing the relationship between gay and lesbian individuals and the government from the late 19th century through the early 21st Engel shows that LGBT Americans are more accurately described as fragmented citizens who still do not have full legal protections against workplace housing family and other kinds of discrimination There remains a continuing struggle of the state to control their sexuality Further he argues that it was the state s ability to identify and control gay and lesbian citizens that allowed it to develop strong administrative capacities to

manage all of its citizens in matters of immigration labor relations and even national security The struggle for gay and lesbian rights then affected not only the lives of those seeking equality but also the very nature of American governance itself

Fragmented Citizens is a sweeping historical and political account of how our present day policy debates around citizenship and equality came to be Adapted from dust jacket

The "Stench" of Politics Joseph Russomanno, 2022-11-08 The U S Supreme Court is as important as ever in the lives of Americans Contrary to the image enhancing claims of independence that many of its members claim however the Court s current supermajority has transformed it into a powerful political institution that wages ideological war meant to return the nation to a previous period at the same time denying rights to millions

The Stench of Politics Polarization and Worldview on the Supreme Court opens a window into the Supreme Court that helps us to understand the institution and its rulings At the heart of this analysis is worldview a phenomenon that every person including Supreme Court justices possesses Whether someone s worldview is fixed or fluid affects who they are what they believe and what they do In addition interpreting the Constitution as an originalist or living constitutionalist often dictates case outcomes By applying these and other constructs to the Supreme Court the book reveals how the once revered institution has evolved into one whose majority not only has neglected its commitment to the inscription on its own building Equal Justice Under Law but is also determined to remake both the law and the nation

A More Perfect Constitution Larry Sabato, 2008-09-15 The political book of the year from the acclaimed founder and director of the Center for politics at the University of Virginia

The Supreme Court Peter Charles Hoffer, William James Hoffer, N. E. H. Hull, 2007 For more than two centuries the U S Supreme Court has provided a battleground for nearly every controversial issue in our nations history This veteran team of talented historians produces the most readable astute and up to date single volume history of this venerated institution

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