Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-made Law (Basic Series in American Government)

Wolfe, Christopher

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Sotirios A. Barber, James E. Fleming

The Rise of Modern Judicial Review Christopher Wolfe, 1994 This major history of judicial review revised to include the Rehnquist court shows how modern courts have used their power to create new rights with fateful political consequences Originally published by Basic Books Rise Modern Judicial Christopher Wolfe, 1986-04-06 Basic series in American government Jacket Includes indexes Bibliography p 357 380 The History and Growth of Judicial Review, Volume 1 Steven G. Calabresi, 2021 This two volume set gives an account of the origins and growth of judicial review in the democratic countries of the G 20 from its beginnings in the United States to its expansion after World War II Volume 1 covers the The Rise of Modern Judicial Review Christopher Wolfe, 1994-03-29 This major history of common law jurisdictions judicial review revised to include the Rehnquist court shows how modern courts have used their power to create new rights with fateful political consequences Originally published by Basic Books Constitutional Interpretation Sotirios A. Barber, James E. Fleming, 2007-06-27 Ronald Dworkin famously argued that fidelity in interpreting the Constitution as written calls for a fusion of constitutional law and moral philosophy Barber and Fleming take up that call arguing for a philosophic approach to constitutional interpretation In doing so they systematically critique the competing approaches textualism consensualism originalism structuralism doctrinalism minimalism and pragmatism that aim and claim to avoid a philosophic approach Constitutional Interpretation The Basic Ouestions illustrates that these approaches cannot avoid philosophic reflection and choice in interpreting the Constitution Barber and Fleming contend that fidelity in constitutional interpretation requires a fusion of philosophic and other approaches properly understood Within such a fusion interpreters would begin to think of text consensus intentions structures and doctrines not as alternatives to but as sites of philosophic reflection about the best understanding of our constitutional commitments Constitutional Interpretation The Basic Questions examines the fundamental inquiries that arise in interpreting constitutional law In doing so the authors survey the controversial and intriguing questions that have stirred constitutional debate in the United States for over two centuries such as how and for what ends should governmental institutions and powers be arranged what does the Constitution mean under general circumstances and how should it be interpreted during concrete controversies and finally how do we decide what our constitution means and who ultimately decides its meaning Justice Stephen Field's Cooperative Constitution of Liberty Adam M. Carrington, 2017-06-30 This bookexamines liberty s Constitutional meaning through the jurisprudence of Justice Stephen Field one of the late Nineteenth Century s most influential Supreme Court Justices A Lincoln appointee who served on the Court from 1863 1897 Field articulated a view of Constitutional liberty that speaks to contemporary disputes Today some see liberty as protection through government regulation against private oppression Others see liberty as protection from government through limits on governmental power Justice Field is often viewed as siding against government power to regulate acting as a pre cursor to the infamous Lochner Era of the Court This work explains how Field instead saw both these competing conceptions of liberty as legitimate In fact the two cooperated toward a common end In his opinions Field argued that protections through and from government worked in tandem to guard fundamental individual rights In describing this view of liberty Field addressed key Constitutional provisions that remain a source of debate including some of the earliest interpretations of the Due Process Clause its relationship to state police power and civil rights and some of the earliest assertions of a national police power through the Commerce Clause This work furthermore addresses the underpinnings of Field s views namely that he grounded his reading of the Constitution in the context of the common law and the Declaration of Independence In his principles as well as his approach this book argues Justice Field presents a helpful discussant in ongoing debates regarding the meaning of liberty and of the Constitution American Citizenship and Constitutionalism in Principle and Practice Steven F. Pittz, Joseph Postell, 2022-01-13 Questions at the very heart of the American experiment about what the nation is and who its people are have lately assumed a new even violent urgency As the most fundamental aspects of American citizenship and constitutionalism come under ever more powerful pressure and as the nation s politics increasingly give way to divisive partisan extremes this book responds to the critical political challenge of our time the need to return to some conception of shared principles as a basis for citizenship and a foundation for orderly governance In various ways and from various perspectives this volume s authors locate these principles in the American practice of citizenship and constitutionalism Chapters in the book s first part address critical questions about the nature of U S citizenship subsequent essays propose a rethinking of traditional notions of citizenship in light of the new challenges facing the country With historical and theoretical insights drawn from a variety of sources ranging from Montesquieu John Adams and Henry Clay to the transcendentalists Cherokee freedmen and modern identitarians American Citizenship and Constitutionalism in Principle and Practice makes the case that American constitutionalism as shaped by several centuries of experience can ground a shared notion of American citizenship To achieve widespread agreement in our fractured polity this notion may have to be based on thin political principles the authors concede yet this does not rule out the possibility of political community By articulating notions of citizenship and constitutionalism that are both achievable and capable of fostering solidarity and a common sense of purpose this timely volume drafts a blueprint for the building of a genuinely shared political future Marbury V. Madison and Judicial Review Robert Lowry Clinton, 1989 Few Supreme Court decisions are as well known or loom as large in our nation s history as Marbury v Madison The 1803 decision is widely viewed as having established the doctrine of judicial review which permits the Court to overturn acts of Congress that violate the Constitution moreover such judicial decisions are final not subject to further appeal Robert Clinton contends that few decisions have been more misunderstood or misused in the debates over judicial review He argues that the accepted view of Marbury is ahistorical and emerges from nearly a century of misinterpretation both by historians and by legal scholars The Communitarian Constitution Beau Breslin, 2006-09-21 Bowling Alone the title of Robert Putnam s 1995 article later a

bestselling book perfectly captured a sense of national unease Somewhere along the way America had become a nation divided by apathy and the bonds that held together civil society were disappearing But while the phrase resonated with our growing sense of atomization it didn t describe a new phenomenon The fear that isolation has eroded our social bonds had simmered for at least two decades when communitarianism first emerged as a cogent political philosophy Communitarianism as explained in the works of Michael Sandel Alasdair MacIntyre Amitai Etzioni and others elevates the idea of communal good over the rights of individuals Throughout the 1980s and 1990s communitarianism gained popular and political ground The Clintons touted its principles in the 90s and the two presidents Bush make frequent references to its central tenets In its short life the philosophy has generated plenty of books both pro and con Beau Breslin's authoritative and original examination The Communitarian Constitution contributes to the debate from a wholly original standpoint Existing critiques focus on the debate between liberalism and communitarianism in other words the conflict between individual rights and the communal good Breslin takes an entirely different stance examining the pragmatic question of whether or not communitarian policies are truly practicable in a constitutional society In tackling this question Breslin traces the evolution of American communitarianism He examines Lincoln s unconstitutional Civil War suspension of habeas corpus and draws on Federalist and Anti Federalist arguments pegging the Anti Federalists as communitarians intellectual forebearers He also grounds his arguments in the real world examining the constitutions of Germany and Israel which offer further insight into the relationship between constitutionalism and communitarianism At a moment when American politicians and citizenry are struggling to balance competing needs such as civil rights and homeland security The Communitarian Constitution is vital reading for anyone interested in the evolving tensions between individual rights and the good of the community Country I Do Not Recognize Robert H. Bork, 2013-09-01 During the past forty years activists have repeatedly used the court system to accomplish substantive policy results that could not otherwise be obtained through the ordinary political processes of government both in the United States and abroad In five insightful essays the contributors to this volume show how these legal decisions have undermined America's sovereignty and values They reveal how international law challenges American beliefs and interests and exposes U S citizens to legal and economic risks how the right to privacy poses a serious threat to constitutional self government how the Supreme Court's religion decisions have done serious damage to our religious Keeping the Faith John E. Semonche, 2000-01-01 This ambitious and accessible history of the nation s freedom and more highest court contains information important for every American to know The Silence of Constitutions (Routledge **Revivals)** Michael Foley, 2013-01-11 First published in 1989 Michael's Foley's book deals with the abeyances present in both written and unwritten constitutions arguing that these gaps in the explicitness of a constitution and the various ways they are preserved provide the means by which constitutional conflict is continually postponed Abeyances are valuable therefore not in spite of their obscurity but because of it Original Intent and the Framers' Constitution Leonard W. Levy, 2000-08-15

For more than two hundred years a debate has raged between those who believe that jurists should follow the original intentions of the Founding Fathers and those who argue that the Constitution is a living document subject to interpretation by each succeeding generation The controversy has flared anew in our own time as a facet of the battle between conservatives and liberals In Original Intent and the Framers Constitution the distinguished constitutional scholar Leonard Levy cuts through the Gordian Knot of claim and counterclaim with an argument that is clear logical and compelling Rejecting the views of both left and right he evaluates the doctrine of original intent by examining the sources of constitutional law and landmark cases Finally he finds no evidence for grounding the law in original intent Judicial activism the constant reinterpretation of the Constitution he sees as inevitable John Marshall and the Heroic Age of the Supreme Court R. Kent Newmyer, 2007-04-01 John Marshall 1755 1835 was arguably the most important judicial figure in American history As the fourth chief justice of the United States Supreme Court serving from 1801 to 1835 he helped move the Court from the fringes of power to the epicenter of constitutional government His great opinions in cases like Marbury v Madison and McCulloch v Maryland are still part of the working discourse of constitutional law in America Drawing on a new and definitive edition of Marshall's papers R Kent Newmyer combines engaging narrative with new historiographical insights in a fresh interpretation of John Marshall's life in the law More than the summation of Marshall's legal and institutional accomplishments Newmyer's impressive study captures the nuanced texture of the justice's reasoning the complexity of his mature jurisprudence and the affinities and tensions between his system of law and the transformative age in which he lived It substantiates Oliver Wendell Holmes Jr s view of Marshall as the most representative figure in American law <u>Alchemists</u> Tom Gerald Daly, 2017-11-02 This book presents a searching critique of excessive reliance on courts as democracy builders in states emerging from authoritarian rule **Liberty, Property, and Privacy** Edward Keynes, 1996-02-15 In this book Edward Keynes examines the fundamental rights philosophy and jurisprudence that affords constitutional protection to unenumerated liberty property and privacy rights He is critical of the failure of the U S Supreme Court to adopt a coherent theory for identifying which rights are to be considered fundamental and how these private rights are to be balanced against the public interests that the government has a duty to articulate and promote Keynes develops his argument by first surveying how substantive due process grew out of the tradition of Anglo American jurisprudence and came to evolve over time He pays special attention to the shift in its application early in the twentieth century from protecting liberty of contract against economic regulation to protecting privacy and other noneconomic rights as in Roe v Wade against social regulation

The United States Supreme Court Robert McKeever,2016-11-04 The US Supreme Court is arguably the most controversial institution in the American political system Decisions on such hot button issues as abortion race equality the death penalty and gay marriage have sharply divided the Court politicians and public opinion Some say that the Justices are merely politicians in judicial robes while others insist that the Court simply does its best to interpret the Constitution for a

society that differs drastically from the late eighteenth century when it was written All those studying or simply interested in American politics must therefore get to grips with the nature power and role of the Supreme Court in American politics This book provides a comprehensive and balanced account written and organised in an accessible style It assumes no prior knowledge of the Court or constitutional law and will help readers to gain a full appreciation of this much criticised and The Rescue of Joshua Glover H. Robert Baker, 2006-12-31 On March 11 1854 the people of Wisconsin prevented agents of the federal government from carrying away the fugitive slave Joshua Glover Assembling in mass outside the Milwaukee courthouse they demanded that the federal officers respect his civil liberties as they would those of any other citizen of the state When the officers refused the crowd took matters into its own hands and rescued Joshua Glover The federal government brought his rescuers to trial but the Wisconsin Supreme Court intervened and took the bold step of ruling the Fugitive Slave Act unconstitutional The Rescue of Joshua Glover delves into the courtroom trials political battles and cultural equivocation precipitated by Joshua Glover's brief but enormously important appearance in Wisconsin on the eve of the Civil War H Robert Baker articulates the many ways in which this case evoked powerful emotions in antebellum America just as the stage adaptation of Uncle Tom's Cabin was touring the country and stirring antislavery sentiments Terribly conflicted about race Americans struggled mightily with a revolutionary heritage that sanctified liberty but also brooked compromise with slavery Nevertheless as The Rescue of Joshua Glover demonstrates they maintained the principle that the people themselves were the last defenders of constitutional liberty even as Glover's rescue raised troubling questions about citizenship and the place of free blacks in America **Empire of Liberty** Gordon S. Wood, 2009-10-28 The Oxford History of the United States is by far the most respected multi volume history of our nation The series includes three Pulitzer Prize winners two New York Times bestsellers and winners of the Bancroft and Parkman Prizes Now in the newest volume in the series one of America's most esteemed historians Gordon S Wood offers a brilliant account of the early American Republic ranging from 1789 and the beginning of the national government to the end of the War of 1812 As Wood reveals the period was marked by tumultuous change in all aspects of American life in politics society economy and culture The men who founded the new government had high hopes for the future but few of their hopes and dreams worked out guite as they expected They hated political parties but parties nonetheless emerged Some wanted the United States to become a great fiscal military state like those of Britain and France others wanted the country to remain a rural agricultural state very different from the European states Instead by 1815 the United States became something neither group anticipated Many leaders expected American culture to flourish and surpass that of Europe instead it became popularized and vulgarized The leaders also hope to see the end of slavery instead despite the release of many slaves and the end of slavery in the North slavery was stronger in 1815 than it had been in 1789 Many wanted to avoid entanglements with Europe but instead the country became involved in Europe s wars and ended up waging another war with the former mother country Still with a new generation emerging by 1815 most Americans were confident and optimistic about the future of their country Named a New York Times Notable Book Empire of Liberty offers a marvelous account of this pivotal era when America took its first unsteady steps as a new and rapidly expanding nation Historic U.S. Court Cases John W. Johnson, 2003-12-16 This collection of essays looks at over 200 major court cases at both state and federal levels from the colonial period to the present Organized thematically the articles range from 1 000 to 5 000 words and include recent topics such as the Microsoft antitrust case the O J Simpson trials and the Clinton impeachment This new edition includes 43 new essays as well as updates throughout with end of essay bibliographies and indexes by case and subject name

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