

Mr. Justice Black and His Critics

BY TINSLEY E. YARBROUGH



Mr Justice Black And His Critics

DP Hallahan



Mr Justice Black And His Critics:

Mr. Justice Black and His Critics Tinsley E. Yarbrough, 1988 Many jurists give lip service to the idea that judicial interpretation of constitutional provisions should be based on the intent of the framers Few if any have been as faithful to that conception as Hugo Black a U S Senator from Alabama Once on the court he played a leading role in establishing freedom of speech and other guarantees the interpretation he and others believed were warranted by the language and intent of the framers Late in his career however Black s commitment to literalism and intent led him to assume apparently conservative positions in civil liberties cases The author analyzes Black s judicial and constitutional philosophy as well as his approach to specific cases through the eyes of Black s critics and through an assessment of scholarly opinion of his jurisprudence from book jacket

Liberty and Coercion Gary Gerstle, 2017-10-24 How the conflict between federal and state power has shaped American history American governance is burdened by a paradox On the one hand Americans don t want big government meddling in their lives on the other hand they have repeatedly enlisted governmental help to impose their views regarding marriage abortion religion and schooling on their neighbors These contradictory stances on the role of public power have paralyzed policymaking and generated rancorous disputes about government s legitimate scope How did we reach this political impasse Historian Gary Gerstle looking at two hundred years of U S history argues that the roots of the current crisis lie in two contrasting theories of power that the Framers inscribed in the Constitution One theory shaped the federal government setting limits on its power in order to protect personal liberty Another theory molded the states authorizing them to go to extraordinary lengths even to the point of violating individual rights to advance the good and welfare of the commonwealth The Framers believed these theories could coexist comfortably but conflict between the two has largely defined American history Gerstle shows how national political leaders improvised brilliantly to stretch the power of the federal government beyond where it was meant to go but at the cost of giving private interests and state governments too much sway over public policy The states could be innovative too More impressive was their staying power Only in the 1960s did the federal government impelled by the Cold War and civil rights movement definitively assert its primacy But as the power of the central state expanded its constitutional authority did not keep pace Conservatives rebelled making the battle over government s proper dominion the defining issue of our time From the Revolution to the Tea Party and the Bill of Rights to the national security state *Liberty and Coercion* is a revelatory account of the making and unmaking of government in America

The Supreme Court Compendium Lee Epstein, Jeffrey A. Segal, Harold J. Spaeth, Thomas G. Walker, 2015-07-29 The Supreme Court Compendium provides historical and statistical information on the Supreme Court its institutional development caseload decision trends the background nomination and voting behavior of its justices its relationship with public governmental and other judicial bodies and its impact With over 180 tables and figures this new edition is intended to capture the full retrospective picture through the 2013 2014 term of the Roberts Court and the

momentous decisions handed down within the last four years including *United States v Windsor*, *National Federation of Independent Business v Sebelius* and *Shelby County v Holder* **No Law** David L. Lange, H. Jefferson Powell, 2008-10-27 The original text of the Constitution grants Congress the power to create a regime of intellectual property protection The first amendment however prohibits Congress from enacting any law that abridges the freedoms of speech and of the press While many have long noted the tension between these provisions recent legal and cultural developments have transformed mere tension into conflict No Law offers a new way to approach these debates In eloquent and passionate style Lange and Powell argue that the First Amendment imposes absolute limits upon claims of exclusivity in intellectual property and expression and strips Congress of the power to restrict personal thought and free expression in the name of intellectual property rights Though the First Amendment does not repeal the Constitutional intellectual property clause in its entirety copyright patent and trademark law cannot constitutionally license the private commodification of the public domain The authors claim that while the exclusive rights currently reflected in intellectual property are not in truth needed to encourage intellectual productivity they develop a compelling solution for how Congress even within the limits imposed by an absolute First Amendment can still regulate incentives for intellectual creations Those interested in the impact copyright doctrines have on freedom of expression in the U S and the theoretical and practical aspects of intellectual property law will want to take a closer look at this bracing resonant work **Hugo L. Black** Howard Ball, 1996 In this volume Howard Ball explores Hugo Black's development from his childhood days growing up in Alabama to his 34 years on the United States Supreme Court Ball illustrates who and what shaped this controversial judge to become known as one of the ten greatest US Supreme Court justices of American history **Great American Judges** John R. Vile, 2003-06-23 Inspiring and instructive biographies of the 100 most influential judges from state and federal courts in one easy to access volume Great American Judges profiles 100 outstanding judges and justices in a full sweep of U S history Chosen by lawyers historians and political scientists these men and women laid the foundation of U S law A complement to Great American Lawyers together these two volumes create a complete picture of our nation's top legal minds from colonial times to today Following an introduction on the role of judges in American history are A Z biographical entries portraying this diverse group from extraordinarily different backgrounds Students and history enthusiasts will appreciate the accomplishments of these role models and the connections between their inspiring lives and their far reaching legal decisions William Rehnquist Oliver Wendell Holmes Jr and 12 other Supreme Court justices are found alongside federal judges like Skelly Wright who ordered school desegregation in 1960 Influential state judges such as Rose Elizabeth Bird California's first woman Supreme Court Chief Justice are also featured Religious Freedom Melvin I. Urofsky, 2002-04-03 This volume provides in a single source a thorough grounding in the origin development and current controversies surrounding the free practice of religion The first boatloads of European settlers did not come to America advocating religious tolerance They came seeking the freedom to practice their own religion Other sects

they believed were wrong at best and at worst not to be tolerated The question of what constitutes legitimate constitutionally protected religious practice has been debated ever since Does it include the use of peyote Polygamy Refusing medical care for a sick child Freedom of Religion follows the evolving understanding of the concept of religious freedom from Great Britain to the New World through hundreds of U S courtrooms to the volatile modern day issues of school prayer and faith based initiatives The thorough responsible and cool headed analysis presented here offers readers a solid grounding in the constitutional issues behind the headlines We Must Not Be Afraid to Be Free Ronald K.L. Collins, Sam Chaltain, 2011-02-25 In a stinging dissent to a 1961 Supreme Court decision that allowed the Illinois state bar to deny admission to prospective lawyers if they refused to answer political questions Justice Hugo Black closed with the memorable line We must not be afraid to be free Black saw the First Amendment as the foundation of American freedom the guarantor of all other Constitutional rights Yet since free speech is by nature unruly people fear it Consequently the impulse to curb or limit it has been a constant danger throughout American history In We Must Not Be Afraid to Be Free two of America's leading free speech scholar activists Ron Collins and Sam Chaltain provide an authoritative history of free speech in modern America Each chapter is an engaging narrative account of a landmark First Amendment case that foregrounds the colorful people involved judges plaintiffs attorneys defendants and the issue at stake Cumulatively the chapters provide a definitive account of how the First Amendment evolved over the course of a century Tracing the development of free speech rights from a more restrictive era the early twentieth century through the Warren Court revolution of the 1960s and up to the current post 9 11 era of heightened security concerns Collins and Chaltain not only cover the history of an ideal but explain in accessible language how the law surrounding the ideal transformed Essential for anyone interested in this most essential of rights We Must Not Be Afraid to Be Free will be a standard work on free speech for years to come **Beyond the First Amendment** Samuel P. Nelson, 2005-07 Americans often believe that the First Amendment and free speech are synonymous and that all restrictions on speech can be addressed by the legal framework of the First Amendment Political theorist Samuel P Nelson argues that the current legal framework for free speech actually undermines attempts to resolve many of these issues and that the law of the First Amendment has supplanted the vital politics of free speech To cut through the confusion Nelson takes a step back from the First Amendment framework to understand the social nature of speech moving toward a more pluralistic and value based understanding He examines three philosophies commonly used to justify speech protection libertarianism expressivism and egalitarianism and finds none of them sufficiently responsive in today's contemporary political landscape Advocating an approach grounded in value pluralism which describes a wider variety of free speech claims than the First Amendment allows Nelson pushes the debate beyond constitutional and legal questions **A Storm Over this Court** Jeffrey D. Hockett, 2013 On the way to offering a new analysis of the basis of the Supreme Court's iconic decision in *Brown v Board of Education* Jeffrey Hockett critiques an array of theories that have arisen to explain it and

Supreme Court decision making generally Drawing upon justices books articles correspondence memoranda and draft opinions A Storm over This Court demonstrates that the puzzle of Brown s basis cannot be explained by any one theory Borrowing insights from numerous approaches to analyzing Supreme Court decision making this study reveals the inaccuracy of the popular perception that most of the justices merely acted upon a shared liberal preference for an egalitarian society when they held that racial segregation in public education violates the equal protection clause of the Fourteenth Amendment A majority of the justices were motivated instead by institutional considerations including a recognition of the need to present a united front in such a controversial case a sense that the Court had a significant role to play in international affairs during the Cold War and a belief that the Court had an important mission to counter racial injustice in American politics A Storm over This Court demonstrates that the infusion of justices personal policy preferences into the abstract language of the Constitution is not the only alternative to an originalist approach to constitutional interpretation Ultimately Hockett concludes that the justices decisions in Brown resist any single elegant explanation To fully explain this watershed decision and by implication others it is necessary to employ a range of approaches dictated by the case in question

Encyclopedia of U.S. Political History Andrew Whitmore Robertson, 2010 Annotation st1 behavior url ieouui Unparalleled coverage of U S political development through a unique chronological framework Encyclopedia of U S Political History explores the events policies activities institutions groups people and movements that have created and shaped political life in the United States With contributions from scholars in the fields of history and political science this seven volume set provides students researchers and scholars the opportunity to examine the political evolution of the United States from the 1500s to the present day With greater coverage than any other resource the Encyclopedia of U S Political History identifies and illuminates patterns and interrelations that will expand the reader s understanding of American political institutions culture behavior and change Focusing on both government and history the Encyclopedia brings exceptional breadth and depth to the topic with more than 100 essays for each of the critical time periods covered With each volume covering one of seven time periods that correspond to key eras in American history the essays and articles in this authoritative encyclopedia focus on the following themes of political history The three branches of government Elections and political parties Legal and constitutional histories Political movements and philosophies and key political figures Economics Military politics International relations treaties and alliances Regional histories Key Features Organized chronologically by political eras Reader s guide for easy topic searching across volumes Maps photographs and tables enhance the text Signed entries by a stellar group of contributors VOLUME 1 Colonial Beginnings through Revolution 1500 1783 Volume Editor Andrew Robertson Herbert H Lehman College The colonial period witnessed the transformation of thirteen distinct colonies into an independent federated republic This volume discusses the diversity of the colonial political experience a diversity that modern scholars have found defies easy synthesis as well as the long term conflicts policies and events that led

to revolution and the ideas underlying independence VOLUME 2 The Early Republic 1784-1840 Volume Editor Michael A. Morrison Purdue University No period in the history of the United States was more critical to the foundation and shaping of American politics than the early American republic This volume discusses the era of Confederation the shaping of the U.S. Constitution and the development of the party system *The Rehnquist Court and the Constitution* Tinsley E.

Yarbrough, 2000-03-30 In *The Rehnquist Court and the Constitution* Tinsley Yarbrough provides a comprehensive look at today's Supreme Court Justices and their record a study all the more valuable for the Court's mixed decisions and hard to categorize course An accomplished biographer Yarbrough offers incisive portraits of the nine who now sit on the high bench and tellingly reviews their nomination hearings He also explores the workings of the Court ranging from the selection and role of the clerks to the work load including the end of term June crunch and assignment of opinions But the heart of the book is a systematic exploration of the Court's record in such fields as government power economic regulation and criminal justice In decision after decision the author discusses the various justices' opinions arguments and legal theories he also offers his own analysis including a sharp critique of the decision to allow the Paula Jones lawsuit to move forward Like many writers on the Rehnquist Court Yarbrough finds a general continuity with the past shaded by a conservative outlook especially in matters of criminal justice and affirmative action but he identifies a significant departure in its rulings on economic regulation Since 1937 he writes the Supreme Court had generally adopted an expansive view of federal power over economic matters the Rehnquist Court has reversed that trend The Rehnquist Court has not launched an all out assault on the Warren Court's precedents as many conservatives hoped but as Yarbrough shows it has embarked on important new departures Thoughtful wide ranging intelligently written this book will stand as the finest study of the Rehnquist Court for years to come *The Vinson Court* Michal R. Belknap, 2004-06-29

Spanning the years from 1946 until 1953 the Vinson Court made the legal transition from World War II to the Korean War and the outspoken justices Felix Frankfurter and Hugo Black helped shape its legacy The Vinson Court summons students and legal professionals to understand the impact and tensions of Fred Vinson's term as Chief Justice from 1946-1953 Court scholar Michal R. Belknap explores McCarthyism the Cold War racial segregation and capital punishment from the Supreme Court's view These controversies shaped the most important decision on presidential powers restrictions on political expression and a nasty conflict over the Rosenbergs Significant rulings are reviewed and the 12 justices on the Vinson Court including Felix Frankfurter and Hugo Black are introduced Clashes were common between some of the Supreme Court's strongest personalities and these are highlighted throughout the text The court's legacy completes this powerful study of constitutional law **Alabama Justice** Steven P.

Brown, 2020-10-06 WINNER OF THE ANNE B. JAMES B. MCMILLAN PRIZE IN SOUTHERN HISTORY Examines the legacies of eight momentous US Supreme Court decisions that have their origins in Alabama legal disputes Unknown to many Alabama has played a remarkable role in a number of Supreme Court rulings that continue to touch the lives of every

American In Alabama Justice The Cases and Faces That Changed a Nation Steven P Brown has identified eight landmark cases that deal with religion voting rights libel gender discrimination and other issues all originating from legal disputes in Alabama Written in a concise and accessible manner each case law chapter begins with the circumstances that created the dispute Brown then provides historical and constitutional background for the issue followed by a review of the path of litigation Excerpts from the Court s ruling in the case are also presented along with a brief account of the aftermath and significance of the decision The First Amendment New York Times v Sullivan racial redistricting Gomillion v Lightfoot the Equal Protection Clause of the Fourteenth Amendment Frontiero v Richardson and prayer in public schools Wallace v Jaffree are among the pivotal issues stamped indelibly by disputes with their origins in Alabama legal political and cultural landscapes By examining such landmark twentieth century milestones and eras such as the Scottsboro Boys trial the Civil Rights movement and the fight for women s rights through a legal lens Brown sheds new and unexpected light on the ways that events in Alabama have shaped the nation In addition to his analysis of cases Brown discusses the three associate Supreme Court justices from Alabama to the Supreme Court John McKinley John Archibald Campbell and Hugo Black Their cumulative influence on constitutional interpretation the institution of the Court and the day to day rights and liberties enjoyed by every American is impossible to measure A closing chapter examines the careers and contributions of these three Alabamians

Judging Free Speech H. Knowles, S. Lichtman, 2016-04-08 Judging Free Speech contains nine original essays by political scientists and law professors each providing a comprehensive yet concise and accessible overview of the free speech jurisprudence of a United States Supreme Court Justice

John Marshall Harlan Tinsley E. Yarbrough, 1992-03-12 When David Souter was nominated by President Bush to the Supreme Court he cited John Marshall Harlan as his model It was an interesting choice Admired by conservatives and deeply respected by his liberal brethren Harlan was a man as Justice William Brennan lamented whose massive scholarship has never been fully recognized In addition he was the second Harlan to sit on the Court following his grandfather also named John Marshall Harlan But while his grandfather was an outspoken supporter of reconstruction on a conservative court the younger Harlan emerged as a critic of the Warren Court s liberal expansion of civil liberties Now in the first biography of this important but neglected jurist Tinsley Yarbrough provides a detailed account of Harlan s life from his privileged childhood to his retirement and death Yarbrough examines the forces and events which shaped the Justice s jurisprudence his early life and often complex family relationships education at Princeton and Oxford his work as a prosecutor during Prohibition Republican Party activities wartime service in the Army Air Force and years as one of the nation s preeminent corporate lawyers a career culminating in his defense of the du Pont brothers in the massive DuPont GM antitrust suit The book focuses however on Harlan s years on the high bench Yarbrough weaves together discussions of the Justice s relations with his brethren clerks and staff an examination of Harlan s role in the decision making process on the Court and an analysis of his jurisprudence The Justice s approach to constitutional

interpretation exalted precedent deference to governmental power and narrow decisions closely tied to case facts but he also accepted an evolving creative model of constitutional construction which permitted expansive readings of constitutional rights Yarbrough's details Harlan's close relationship with Justice Frankfurter showing how despite their friendship and alliance Harlan strongly marked out his own position both personally and judicially on the Warren and Burger courts And he examines the substance and significance of his dissents in such famous cases as Miranda and the Pentagon Papers

Intensively researched smoothly written and incisively argued Yarbrough's biography offers an absorbing account of the life and career of a great dissenter hailed by admirers as a lawyer's lawyer and a judge's judge Coming at a time when the high court has begun to adopt many of Harlan's principles this account provides an essential perspective on the Court civil liberties and a pivotal figure in the history of both

Dissent and the Supreme Court Melvin I. Urofsky, 2017-01-10

Highly illuminating for anyone interested in the Constitution the Supreme Court and the American democracy lawyer and layperson alike The Los Angeles Review of Books In his major work acclaimed historian and judicial authority Melvin Urofsky examines the great dissents throughout the Court's long history Constitutional dialogue is one of the ways in which we as a people reinvent and reinvigorate our democratic society The Supreme Court has interpreted the meaning of the Constitution acknowledged that the Court's majority opinions have not always been right and initiated a critical discourse about what a particular decision should mean before fashioning subsequent decisions largely through the power of dissent Urofsky shows how the practice grew slowly but steadily beginning with the infamous and now overturned case of Dred Scott v Sandford 1857 during which Chief Justice Roger Taney's opinion upheld slavery and ending with the present age of incivility in which reasoned dialogue seems less and less possible Dissent on the court and off Urofsky argues in this major work has been a crucial ingredient in keeping the Constitution alive and must continue to be so

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 nation's history This veteran team of talented historians produces the most readable astute and up to date single volume history of this venerated institution

Battles on the Bench Phillip J. Cooper, 1995 Felix Frankfurter's blustery depiction of debate within the Supreme Court suggests that combat sometimes supersedes collegiality in those hallowed halls In fact as Phillip Cooper shows conflict is an inescapable fact of life in the Marble Temple Cooper peels back the calm quiet public image of our judicial royalty to reveal their family feuds and squabbles He shows that whether motivated by deeply felt principle or by petty and vindictive impulses these disputes dramatically shape the court's decision making process the justices' relations with one another and the public's perception of the court Filled with wonderful vignettes and telling anecdotes Battles on the Bench illuminates the court's legendary and little known clashes from John Marshall to Ruth Ginsberg and helps us understand why they fight how they fight and why their fights matter In the process it reveals a long tradition of strategic flattery cajolery name calling threats subterfuge and

sermonizing all in an effort to win over or run over fellow justices Conflict in such high stakes circumstances is hardly unexpected But some of the court behavior is Fred Vinson going after Frankfurter with a clenched fist and shouting that no son of a bitch can ever say that to me Frankfurter s dismissal of Justice Reed s intellect as largely vegetable James McReynolds undisguised anti semitism toward Louis Brandeis Antonin Scalia s harsh attacks on Sandra Day O Connor and William Rehnquist s sarcastic recital of a nursery rhyme and the Star Spangled Banner before his startled brethren Cooper however makes clear that to a surprising degree these justices do find ways to work together As Earl Warren noted life on the Court is like a marriage one can t tolerate it if it s one battle after another Appointed for life and completely independent these nine scorpions in a bottle are nevertheless compelled to furl their stingers from time to time for no justice can prevail without the support of at least four others Indeed one of the toughest questions Cooper tries to answer is why they don t fight more often A rich treasure trove mined from the vast resources of judicial biography Cooper s engaging study will be especially appealing to students and general readers with limited knowledge of the court s inner workings *The Supreme Court Under Earl Warren, 1953-1969* Michal R. Belknap, 2005 In *The Supreme Court under Earl Warren 1953 1969* Michal Belknap recounts the eventful history of the Warren Court Chief Justice Earl Warren s sixteen years on the bench were among the most dramatic productive and controversial in the history of the Supreme Court Warren s tenure saw the Court render decisions that are still hotly debated today Its rulings addressed such issues as school desegregation separation of church and state and freedom of expression

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