




RECONSTRUCTING RECONSTRUCTION

The Supreme Court and the Production of Historical Truth



Pamela Brandwein

Reconstructing Reconstruction The Supreme Court And The Production Of Historical Truth

Julie Lavonne Novkov



Reconstructing Reconstruction The Supreme Court And The Production Of Historical Truth:

Reconstructing Reconstruction Pamela Brandwein, 1999 Looks at the contest to construct history focusing on competing versions of Reconstruction history supported by different factions after the Civil War The author analyzes how the ultimately dominant version of the history won credence and how that in *Memory and Authority* Jack M. Balkin, 2024-02-27 From one of the nation's preeminent constitutional scholars a sweeping rethinking of the uses of history in constitutional interpretation Fights over history are at the heart of most important constitutional disputes in America The Supreme Court's current embrace of originalism is only the most recent example of how lawyers and judges try to use history to establish authority for their positions Jack M Balkin argues that fights over constitutional interpretation are often fights over collective memory Lawyers and judges construct and erase memory to lend authority to their present day views they make the past speak their values so they can then claim to follow it The seemingly opposed camps of originalism and living constitutionalism are actually mirror images of a single phenomenon how lawyers use history to adapt an ancient constitution to a constantly changing world Balkin shows how lawyers and judges channel history through standard forms of legal argument that shape how they use history and even what they see in history He explains how lawyers and judges invoke history selectively to construct authority for their claims and undermine the authority of opposing views And he elucidates the perpetual quarrel between historians and lawyers showing how the two can best join issue in legal disputes This book is a sweeping rethinking of the uses of history in constitutional interpretation

The Oxford Companion to American Law Kermit L. Hall, David S. Clark, James W. Ely, Joel B. Grossman, N. E. H. Hull, 2002-05-02 A landmark in legal publishing The Oxford Companion to the Supreme Court is a now classic text many of whose entries are regularly cited by scholars as the definitive statement on any particular subject In the tradition of that work editor in chief Kermit L Hall offers up The Oxford Companion to American Law a one volume A Z encyclopedia that covers topics ranging from aging and the law wiretapping and electronic eavesdropping the Salem Witch Trials and Plessy vs Ferguson The Companion takes as its starting point the insight that law is embedded in society and that to understand American law one must necessarily ask questions about the relationship between it and the social order now and in the past The volume assumes that American law in all its richness and complexity cannot be understood in isolation as simply the business of the Supreme Court or as a list of common law doctrines Hence the volume takes seriously issues involving law's role in structuring decisions about governance the significance of state and local law and legal institutions and the place of American law in a comparative international perspective Nearly 500 entries are included written by over 300 expert contributors Intended for the working lawyer or judge the high school student working on a term paper or the general adult reader interested in the topic the Companion is the authoritative reference work on the subject of American law

The Federal Courts Peter Charles Hoffer, William James Hoffer, N. E. H. Hull, 2016 There are moments in American history when all eyes are focused on a federal court when its

bench speaks for millions of Americans and when its decision changes the course of history More often the story of the federal judiciary is simply a tale of hard work of finding order in the chaotic system of state and federal law local custom and contentious lawyering The Federal Courts is a story of all of these courts and the judges and justices who served on them of the case law they made and of the acts of Congress and the administrative organs that shaped the courts But even more importantly this is a story of the courts development and their vital part in America s history Peter Charles Hoffer William James Hull Hoffer and N E H Hull s retelling of that history is framed the three key features that shape the federal courts narrative the separation of powers the federal system in which both the national and state governments are sovereign and the widest circle the democratic republican framework of American self government The federal judiciary is not elective and its principal judges serve during good behavior rather than at the pleasure of Congress the President or the electorate But the independence that lifetime tenure theoretically confers did not and does not isolate the judiciary from political currents partisan quarrels and public opinion Many vital political issues came to the federal courts and the courts decisions in turn shaped American politics The federal courts while the least democratic branch in theory have proved in some ways and at various times to be the most democratic open to ordinary people seeking redress for example Litigation in the federal courts reflects the changing aspirations and values of America s many peoples The Federal Courts is an essential account of the branch that provides what Massachusetts Supreme Judicial Court Judge Oliver Wendell Holmes Jr called a magic mirror wherein we see reflected our own lives

Racial Union Julie Novkov, 2009-09-11 In November 2001 the state of Alabama opened a referendum on its long standing constitutional prohibition against interracial marriage A bill on the state ballot offered the opportunity to relegate the state s antimiscegenation law to the dustbin of history The measure passed but the margin was alarmingly slim more than half a million voters 40 percent of those who went to the polls voted to retain a racist and constitutionally untenable law Julie Novkov s Racial Union explains how and why nearly forty years after the height of the civil rights movement Alabama struggled to repeal its prohibition against interracial marriage the last state in the Union to do so Novkov s compelling history of Alabama s battle over miscegenation shows how the fight shaped the meanings of race and state over ninety years Novkov s work tells us much about the sometimes parallel sometimes convergent evolution of our concepts of race and state in the nation as a whole A remarkably nuanced account of interlocked struggles over race gender class and state power Novkov s site is Alabama but her insights are for all America Rogers M Smith Christopher H Browne Distinguished Professor of Political Science University of Pennsylvania Hannah Arendt shocked Americans in the 1950s by suggesting that interracial intimacy was the true measure of a society s racial order Julie Novkov s careful illuminating powerful book confirms Arendt s judgment By ruling on who may be sexually linked with whom Alabama s courts and legislators created a racial order and even a broad political order Novkov shows us just how it worked in all of its painful humiliating power Jennifer L Hochschild Henry LaBarre Jayne Professor of Government Professor of African and

African American Studies and Harvard College Professor Felony Disenfranchisement in America Katherine Irene Pettus, 2013-04-01 State felony disenfranchisement laws that date back to Reconstruction fracture the American electorate into those who are citizens in the fullest sense of the term in Aristotle's words and those who are deprived of political voice still have the status of slaves. The existence of this invisible constituency, approximately 5.8 million or 2.5% of the national voting population who live alongside the ruling enfranchised electorate, is one of the scandals of our generation. In this second edition of Felony Disenfranchisement in America, Katherine Irene Pettus draws on philosophy, history, law, and punishment theory to make the compelling argument that state disenfranchisement policies have collective moral and political significance that transcends the personal tragedy of being legally deprived of full citizenship status. Pettus argues that the war on drugs, mass incarceration, and racially unbalanced disenfranchisement rates distort and disfigure the body politic as a whole and undermine the legitimacy of the domestic and foreign policies promulgated by our elected representatives. The History of Ohio Law Michael Les Benedict, John F. Winkler, 2004 In The Two Volume The History of Ohio Law, distinguished legal historians practicing Ohio attorneys and judges present the history of Ohio law and the interaction between law and society in the state. The first history of Ohio law in nearly seventy years and the most comprehensive compilation of essays on any state's law, its twenty-two topics range from the history of Ohio's constitutional conventions and legal institutions to the history of civil procedure, evidence, land use, civil liberties, and utility regulation. The essays describe Ohio's legal institutions, legal procedures, and the substance of Ohio law as it has changed over time; institutions have affected Ohio law, and how the law has affected them. The essays provide important information to practitioners and offer attorneys, legal scholars, historians, and the public a broad understanding of the relationship between law and society in Ohio: intersections between law and race, gender, and labor. Insightful essays also discuss the development of Ohio's legal literature, the impact of federal courts, and Ohio's most important contributions to American constitutional development. Written by twenty-two leading lawyers and historians, The History of Ohio Law will be the indispensable reference and invaluable first source for learning about law and society in Ohio. **Interpretation and Method** Dvora Yanow, Peregrine Schwartz-Shea, 2015-03-04 Exceptionally clear and well-written chapters provide engaging discussions of the methods of accessing, generating, and analyzing social science data using methods ranging from reflexive historical analysis to critical ethnography. Reflecting on their own research experiences, the contributors offer an inside, applied perspective on how research topics, evidence, and methods intertwine to produce knowledge in the social sciences. **Race and American Political Development** Joseph E. Lowndes, Julie Novkov, Dorian T. Warren, 2012-11-12 Race has been present at every critical moment in American political development, shaping political institutions, political discourse, public policy, and its denizens' political identities. But because of the nature of race, its evolving and dynamic status as a structure of inequality, a political organizing principle, an ideology, and a system of power, we must study the politics of race historically, institutionally, and discursively. Covering more than three hundred years of American

political history from the founding to the contemporary moment the contributors in this volume make this extended argument Together they provide an understanding of American politics that challenges our conventional disciplinary tools of studying politics and our conservative political moment s dominant narrative of racial progress This volume the first to collect essays on the role of race in American political history and development resituates race in American politics as an issue for sustained and broadened critical attention

Narrowing the Nation's Power John T. Noonan Jr., 2002-08-21 Narrowing the Nation s Power is the tale of how a cohesive majority of the Supreme Court has in the last six years cut back the power of Congress and enhanced the autonomy of the fifty states The immunity from suit of the sovereign Blackstone taught is necessary to preserve the people s idea that the sovereign is a superior being Promoting the common law doctrine of sovereign immunity to constitutional status the current Supreme Court has used it to shield the states from damages for age discrimination disability discrimination and the violation of patents trademarks copyrights and fair labor standards Not just the states themselves but every state sponsored entity a state insurance scheme a state university s research lab the Idaho Potato Commission has been insulated from paying damages in tort or contract Sovereign immunity as Noonan puts it has metastasized It only hurts when you think about it Noonan s Yalewoman remarks Crippled by the states immunity Congress has been further brought to heel by the Supreme Court s recent invention of two rules The first rule Congress must establish a documentary record that a national evil exists before Congress can legislate to protect life liberty or property under the Fourteenth Amendment The second rule The response of Congress to the evil must then be both congruent and proportionate The Supreme Court determines whether these standards are met thereby making itself the master monitor of national legislation Even legislation under the Commerce Clause has been found wanting illustrated here by the story of Christy Brzonkala s attempt to redress multiple rapes at a state university by invoking the Violence Against Women Act The nation s power has been remarkably narrowed Noonan is a passionate believer in the place of persons in the law Rules he claims are a necessary framework but they must not obscure law s task of giving justice to persons His critique of Supreme Court doctrine is driven by this conviction

A Rift in the Clouds Brent J. Aucoin, 2007-08-01 A Rift in the Clouds chronicles the efforts of three white southern federal judges to protect the civil rights of African Americans at the beginning of the twentieth century when few in the American legal community were willing to do so Jacob Treiber of Arkansas Emory Speer of Georgia and Thomas Goode Jones of Alabama challenged the Supreme Court s reading of the Reconstruction amendments that were passed in an attempt to make disfranchised and exploited African Americans equal citizens of the United States These unpopular white southerners two of whom who had served in the Confederate Army and had themselves helped to bring Reconstruction to an end in their states asserted that the amendments not only established black equality but authorized the government to protect blacks Although their rulings won few immediate gains for blacks and were overturned by the Supreme Court their legal arguments would be resurrected and meet with greater success over half a century later

during the civil rights movement

The Fourteenth Amendment and the Privileges and Immunities of American Citizenship Kurt T. Lash, 2014-04-07 This exhaustively researched book presents the history behind a revolution in American liberty the 1868 addition of the Privileges or Immunities Clause of the Fourteenth Amendment It follows the evolution in public understanding of the privileges and immunities of citizens of the United States from the early years of the Constitution to the election of 1866 For 92 years nothing in the American Constitution prevented states from abridging freedom of speech prohibiting the free exercise of religion or denying the right of peaceful assembly The suppression of freedom in the southern states convinced the Reconstruction Congress and supporters of the Union to add an amendment forcing the states to respect the rights announced in the first eight amendments But rather than eradicate state autonomy the people embraced the Fourteenth Amendment that expanded the protections of the Bill of Rights and preserved the Constitution's original commitment to federalism and the principle of limited national power

The Forgotten Emancipator Rebecca E. Zietlow, 2018 Zietlow explores the ideological origins of Reconstruction and the constitutional changes in this era through the life of James Mitchell Ashley

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

Guns, Crime, and Punishment in America Bernard E. Harcourt, 2003-07 Guns Crime and Punishment in America assembles a diverse group of the nation's leading authorities on guns and gun violence to present the most up to date research currently available Exploring such controversial issues as gun tracing initiatives the possible extension of the Brady Bill gun oriented policing federal law enforcement initiatives such as Project Exile and civil litigation against gun manufacturers Guns Crime and Punishment in America embarks upon a more balanced and nuanced discussion about firearms Though the book's contributors operate from a wide variety of political perspectives and methodological approaches a central desire unifies the book to end the extreme polarization that currently characterizes the debate on guns and generate reasonable and practical gun policies in the United States Contributors Sara Sun Beale Anthony A Braga Carl Bogus Jenny Berrien Abigail Caplovitz Philip J Cook Garth Davies Christopher Eisgruber Jeffrey A Fagan Mark Geistfeld James B Jacobs Dan M Kahan David Kairys David B Kopel Sanford Levinson Jens Ludwig Daniel C Richman Jerome H Skolnick Richard Slotkin Chris Winship and Franklin E Zimring

The Mormon Question Sarah Barringer Gordon, 2002 From the Mormon Church's public

announcement of its sanction of polygamy in 1852 until its formal decision to abandon the practice in 1890 people on both sides of the Mormon question debated central questions of constitutional law Did principles of re

Claiming the Union Susanna Michele Lee,2014-04-14 This book examines Southerners claims to loyal citizenship in the reunited nation after the American Civil War Southerners male and female elite and non elite white black and American Indian disagreed with the federal government over the obligations citizens owed to their nation and the obligations the nation owed to its citizens Susanna Michele Lee explores these clashes through the operations of the Southern Claims Commission a federal body that rewarded compensation for wartime losses to Southerners who proved that they had been loyal citizens of the Union Lee argues that Southerners forced the federal government to consider how white men who had not been soldiers and voters and women and racial minorities who had not been allowed to serve in those capacities could also qualify as loyal citizens Postwar considerations of the former Confederacy potentially demanded a reconceptualization of citizenship that replaced exclusions by race and gender with inclusions according to loyalty

The Body and the State Cary Federman,2012-02-01 The writ of habeas corpus is the principal means by which state prisoners many on death row attack the constitutionality of their conviction in federal courts In The Body and the State Cary Federman contends that habeas corpus is more than just a get out of jail free card it gives death row inmates a constitutional means of overturning a jury s mistaken determination of guilt Tracing the history of the writ since 1789 Federman examines its influence on federal state relations and argues that habeas corpus petitions turn legal language upside down threatening the states sovereign judgment to convict and execute criminals as well as upsetting the discourse created by the Supreme Court that the federal state relationship ought not be disturbed by convicted criminals making habeas corpus appeals He pays particular attention to the changes in the discourse over federalism and capital punishment that have restricted the writ s application over time

The Slaughterhouse Cases Ronald M. Labbé,Jonathan Lurie,2005 While ruling that Louisiana had legitimately exercised its powers the Court s majority went much further to declare that the amendment and its due process and equal protection clauses applied exclusively to the plight of former slaves and thus were unavailable to any other American

BOOK JACKET **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

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