

The
Lost World
of
Classical
Legal
Thought

*Law and Ideology
in America, 1886–1937*

William M. Wiecek

Lost World Of Classical Legal Thought

Mark V. Tushnet



Lost World Of Classical Legal Thought:

The Lost World of Classical Legal Thought William M. Wiecek, 2001 This text examines the ideology of elite lawyers and judges from the Gilded Age to the New Deal Between 1866 and 1937 this coherent outlook or legal orthodoxy shaped the way the American bar interpreted and understood the law

The Lost World of Classical Legal Thought William Michael Wiecek, 1998 *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

Preclassical Conflict of Laws Nikitas E. Hatzimihail, 2021-07-22 To better appreciate present day private international law and its future prospects and challenges we should consider the history and historiography of the field This book offers an original approach to the study of conflict of laws and legal history that exposes doctrinal lawyers to historical context and legal historians to the intricacies of legal doctrine The analysis is based on an in depth examination of Medieval and Early Modern conflict of laws focusing on the classic texts of Bartolus and Huber Combining theoretical insights textual analysis and historical perspectives the author presents the preclassical conflict of laws as a rich world of doctrines and policies theory and practice context and continuity This book challenges preconceptions and serves as an advanced introduction which illustrates the relevance of history in commanding private international law while aspiring to make private international law relevant for history

Reconstructions Thomas J. Brown, 2008-09-23 The pivotal era of Reconstruction has inspired an outstanding historical literature In the half century after W E B DuBois published *Black Reconstruction in America* 1935 a host of thoughtful and energetic authors helped to dismantle racist stereotypes about the aftermath of emancipation and Union victory in the Civil War The resolution of long running interpretive debates shifted the issues at stake in Reconstruction scholarship but the topic has remained a vital venue for original exploration of the American past In *Reconstructions New Perspectives on the Postbellum United States* eight rising historians survey the latest generation of work and point to promising directions for future research They show that the field is opening out to address a wider range of adjustments to the experiences and effects of Civil War Increased interest in cultural history now enriches understandings traditionally centered on social and political history Attention to gender has joined a focus on labor as a powerful strategy for analyzing negotiations over private and public authority The contributors suggest that Reconstruction historiography might further thrive by strengthening connections to such subjects as western history legal history and diplomatic history and by redefining the chronological boundaries of the postwar period The essays provide more than a variety of attractive vantage points for fresh examination of a major phase of American history By identifying the most

exciting recent approaches to a theme previously studied so ably the collection illuminates the creative process in scholarly historical literature

International Legal Theory and the Cognitive Turn Anne van Aaken, Moshe Hirsch, 2025-04-02

Cognitive and behavioural studies are making inroads into international law international policy and literature Firstly international practice is drawing increasingly on behavioural studies The United Nations UN and its agencies have turned to behavioural science to confront new challenges faced by the international community including the Sustainable Development Goals climate change and gender equality Similarly the World Bank and World Health Organization have created teams of experts to advise on the incorporation of behavioural insights to support their operations Other international organizations are likewise following suit Secondly the cognitive behavioural turn is generating innovative research work in disciplines neighbouring international law and is gaining similar traction in international legal scholarship Yet despite this the implications of cognitive behavioural studies for international legal theory remain under explored With few exceptions international legal theories have long failed to explicitly address the cognitive behavioural assumptions of their respective theoretical approaches To fill this gap this book systematically examines the impact of the cognitive behavioural turn on the main theoretical schools within international legal scholarship Across thirteen chapters the contributors uncover the cognitive bases of their respective theories exploring both the cognitive similarities underlying the assumptions of different theories of international law as well as the limitations of the use of behavioural science in international law theories

International Legal Theory and the Cognitive Turn makes explicit the relationship between cognitive behavioral methodologies and other ways of thinking about international law including TWAIL feminist and legal realist approaches and more This is an open access title available under the terms of a CC BY NC ND 4.0 International licence It is free to read on Oxford Scholarship Online and offered as a free PDF download from OUP and selected open access locations

The Hughes Court: Volume 11 Mark V. Tushnet, 2022-02-03

The Hughes Court From Progressivism to Pluralism 1930 to 1941 describes the closing of one era in constitutional jurisprudence and the opening of another This comprehensive study of the Supreme Court from 1930 to 1941 when Charles Evans Hughes was Chief Justice shows how nearly all justices even the most conservative accepted the broad premises of a Progressive theory of government and the Constitution The Progressive view gradually increased its hold throughout the decade but at its end interest group pluralism began to influence the law By 1941 constitutional and public law was discernibly different from what it had been in 1930 but there was no sharp or instantaneous Constitutional Revolution in 1937 despite claims to the contrary This study supports its conclusions by examining the Court's work in constitutional law administrative law the law of justiciability civil rights and civil liberties and statutory interpretation

Legalist Empire Benjamin Allen Coates, 2016-06-01

America's empire expanded dramatically following the Spanish American War of 1898 The United States quickly annexed the Philippines and Puerto Rico seized control over Cuba and the Panama Canal Zone and extended political and financial power throughout Latin America This age

of empire Benjamin Allen Coates argues was also an age of international law Justifying America's empire with the language of law and civilization international lawyers serving simultaneously as academics leaders of the legal profession corporate attorneys and high ranking government officials became central to the conceptualization conduct and rationalization of US foreign policy Just as international law shaped empire so too did empire shape international law Legalist Empire shows how the American Society of International Law was animated by the same notions of civilization that justified the expansion of empire overseas Using the private papers and published writings of such figures as Elihu Root John Bassett Moore and James Brown Scott Coates shows how the newly created international law profession merged European influences with trends in American jurisprudence while appealing to elite notions of order reform and American identity By projecting an image of the United States as a unique force for law and civilization legalists reconciled American exceptionalism empire and an international rule of law Under their influence the nation became the world's leading advocate for the creation of an international court Although the legalist vision of world peace through voluntary adjudication foundered in the interwar period international lawyers through their ideas and their presence in halls of power continue to infuse vital debates about America's global role The Hughes Court Mark V. Tushnet, 2021 This book describes the closing of one era in

constitutional jurisprudence and the opening of another This study of the Supreme Court from 1930 to 1941 when Charles Evans Hughes was Chief Justice shows how nearly all justices even the most conservative accepted the broad premises of a progressive theory of government and the Constitution The progressive view gradually increased its hold throughout the decade but at its end interest group pluralism began to influence the law By 1941 constitutional and public law was discernibly different from what it had been in 1930 but there was no sharp or instantaneous Constitutional Revolution in 1937 despite claims to the contrary This study supports its conclusions by examining the Court's work in constitutional law administrative law the law of justiciability civil rights and civil liberties and statutory interpretation **Research Methods**

in International Law Deplano, Rossana, Tsagourias, Nicholas, 2021-07-31 This timely Handbook contains a wide ranging overview of the diverse research methods used within international law Providing an insightful examination of how international legal knowledge is analysed and adopted this Handbook offers the reader a deeper understanding on the role and place of research methods in international legal theory reasoning and practice The Oxford Handbook of Legal History Markus D. Dubber, Christopher Tomlins, 2018-07-26 Some of the most exciting and innovative legal scholarship has been driven by historical curiosity Legal history today comes in a fascinating array of shapes and sizes from microhistory to global intellectual history Legal history has expanded beyond traditional parochial boundaries to become increasingly international and comparative in scope and orientation Drawing on scholarship from around the world and representing a variety of methodological approaches areas of expertise and research agendas this timely compendium takes stock of legal history and methodology and reflects on the various modes of the historical analysis of law past present and future Part I

explores the relationship between legal history and other disciplinary perspectives including economic philosophical comparative literary and rhetorical analysis of law Part II considers various approaches to legal history including legal history as doctrinal intellectual or social history Part III focuses on the interrelation between legal history and jurisprudence by investigating the role and conception of historical inquiry in various models schools and movements of legal thought Part IV traces the place and pursuit of historical analysis in various legal systems and traditions across time cultures and space Finally Part V narrows the Handbooks focus to explore several examples of legal history in action including its use in various legal doctrinal contexts

The History of the Supreme Court of the United States William M. Wiecek, 2006-01-23 The Birth of the Modern Constitution recounts the history of the United States Supreme Court in the momentous yet usually overlooked years between the constitutional revolution in the 1930s and Warren Court judicial activism in the 1950s 1941 1953 marked the emergence of legal liberalism in the divergent activist efforts of Hugo Black William O Douglas Frank Murphy and Wiley Rutledge The Stone Vinson Courts consolidated the revolutionary accomplishments of the New Deal and affirmed the repudiation of classical legal thought but proved unable to provide a substitute for that powerful legitimating explanatory paradigm of law Hence the period bracketed by the dramatic moments of 1937 and 1954 written off as a forgotten time of failure and futility was in reality the first phase of modern struggles to define the constitutional order that will dominate the twenty first century

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

John Henry Wigmore and the Rules of Evidence Andrew Porwancher, 2017-06-30 Honorable Mention 2017 Scribes Book Award The American Society of Legal Writers At the dawn of the twentieth century the United States was reeling from the effects of rapid urbanization and industrialization Time honored verities proved obsolete and intellectuals in all fields sought ways to make sense of an increasingly unfamiliar reality The legal system in particular began to buckle under the weight of its anachronism In the midst of this crisis John Henry Wigmore dean of the Northwestern University School of Law single handedly modernized the jury trial with his 1904 5 Treatise on Evidence an encyclopedic work that dominated the conduct of trials In so doing he inspired generations of progressive jurists among them Oliver Wendell Holmes Jr Benjamin Cardozo and Felix Frankfurter to reshape American law to meet the demands of a new era Yet Wigmore s role as a prophet of modernity has slipped into

obscurity This book provides a radical reappraisal of his place in the birth of modern legal thought **Rethinking the Judicial Settlement of Reconstruction** Pamela Brandwein,2011-02-21 American constitutional lawyers and legal historians routinely assert that the Supreme Court's state action doctrine halted Reconstruction in its tracks But it didn't Rethinking the Judicial Settlement of Reconstruction demolishes the conventional wisdom and puts a constructive alternative in its place Pamela Brandwein unveils a lost jurisprudence of rights that provided expansive possibilities for protecting blacks physical safety and electoral participation even as it left public accommodation rights undefended She shows that the Supreme Court supported a Republican coalition and left open ample room for executive and legislative action Blacks were abandoned but by the president and Congress not the Court Brandwein unites close legal reading of judicial opinions some hitherto unknown sustained historical work the study of political institutions and the sociology of knowledge This book explodes tired old debates and will provoke new ones **The Taming of Free Speech** Laura Weinrib,2016-10-10 In the early decades of the twentieth century business leaders condemned civil liberties as masks for subversive activity while labor sympathizers denounced the courts as shills for industrial interests But by the Second World War prominent figures in both camps celebrated the judiciary for protecting freedom of speech In this strikingly original history Laura Weinrib illustrates how a surprising coalition of lawyers and activists made judicial enforcement of the Bill of Rights a defining feature of American democracy The Taming of Free Speech traces our understanding of civil liberties to conflict between 1910 and 1940 over workers right to strike As self proclaimed partisans in the class war the founders of the American Civil Liberties Union promoted a bold vision of free speech that encompassed unrestricted picketing and boycotts Over time however they subdued their rhetoric to attract adherents and prevail in court At the height of the New Deal many liberals opposed the ACLU's litigation strategy fearing it would legitimize a judiciary they deemed too friendly to corporations and too hostile to the administrative state Conversely conservatives eager to insulate industry from government regulation pivoted to embrace civil liberties despite their radical roots The resulting transformation in constitutional jurisprudence often understood as a triumph for the Left was in fact a calculated bargain America's civil liberties compromise saved the courts from New Deal attack and secured free speech for labor radicals and businesses alike Ever since competing groups have clashed in the arena of ideas shielded by the First Amendment *Power, Prose, and Purse* Alison L. LaCroix,Saul Levmore,Martha Craven Nussbaum,2019 *Power Prose and Purse* is an edited collection of essays that draw connections between literature economics and law The essays discuss novels that explore the time period between the Industrial Revolution and the Great Depression and analyze the insights that novelists may offer to law and economics while noting the tensions among these paradigms Good Governing Daniel B. Rodriguez,2024-06-30 Explores the origins and functions of state police power and its connection to state constitutionalism and government regulation **The Decline of Natural Law** Stuart Banner,2021-04-01 An account of a fundamental change in American legal thought from a conception of law as something

found in nature to one in which law is entirely a human creation Before the late 19th century natural law played an important role in the American legal system Lawyers routinely used it in their arguments and judges often relied upon it in their opinions Today by contrast natural law plays virtually no role in the legal system When natural law was part of a lawyer's toolkit lawyers thought of judges as finders of the law but when natural law dropped out of the legal system lawyers began thinking of judges as makers of the law instead In *The Decline of Natural Law* the eminent legal historian Stuart Banner explores the causes and consequences of this change To do this Banner discusses the ways in which lawyers used natural law and why the concept seemed reasonable to them He further examines several long term trends in legal thought that weakened the position of natural law including the use of written constitutions the gradual separation of the spheres of law and religion the rapid growth of legal publishing and the position of natural law in some of the 19th century's most contested legal issues And finally he describes both the profession's rejection of natural law in the late 19th and early 20th centuries and the ways in which the legal system responded to the absence of natural law The first book to explain how natural law once worked in the American legal system *The Decline of Natural Law* offers a unique look into how and why this major shift in legal thought happened and focuses in particular on the shift from the idea that law is something we find to something we make

Legal Realisms Christine Holbo, 2019-08-01 United States historians have long regarded the U S Civil War and its Reconstruction as a second American revolution Literary scholars however have yet to show how fully these years revolutionized the American imagination Emblematic of this moment was the post war search for a Great American Novel a novel fully adequate to the breadth and diversity of the United States in the era of the Fourteenth Amendment While the passage of the Reconstruction Amendments declared the ideal of equality before the law a reality persistent and increasing inequality challenged idealists and realists alike The controversy over what full representation should mean sparked debates about the value of cultural difference and aesthetic dissonance and it led to a thoroughgoing reconstruction of the meaning of realism for readers writers politics and law The dilemmas of incomplete emancipation which would damage and define American life from the late nineteenth century onwards would also force novelists to reconsider the definition and possibilities of the novel as a genre of social representation *Legal Realisms* examines these transformations in the face of uneven developments in the racial ethnic gender and class structure of American society Offering provocative new readings of Mark Twain Henry James William Dean Howells Helen Hunt Jackson Albion Tourgée and others Christine Holbo explores the transformation of the novel's distinctive modes of social knowledge in relation to developments in art philosophy law politics and moral theory As *Legal Realisms* follows the novel through the worlds of California Native American removal and the Reconstruction era South of the Mississippi valley and the urban Northeast this study shows how violence prejudice and exclusion haunted the celebratory literatures of national equality but it demonstrates as well the way novelists' representation of the difficulty of achieving equality before the law helped Americans articulate the need for a more robust concept of social

justice

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