

T H E
STRANGE
CAREER
OF LEGAL
LIBERALISM

LAURA KALMAN

Strange Career Of Legal Liberalism

Daniel A. Farber, Suzanna Sherry



Strange Career Of Legal Liberalism:

The Strange Career of Legal Liberalism Laura Kalman, 1998-08-11 Legal scholarship is in a state of crisis Laura Kalman argues in this history of the most prestigious field in law studies constitutional theory Since the time of the New Deal says Kalman most law scholars have identified themselves as liberals who believe in the power of the Supreme Court to effect progressive social change In recent years however new political and interdisciplinary perspectives have undermined the tenets of legal liberalism and liberal law professors have enlisted other disciplines in the attempt to legitimize their beliefs Such prominent legal thinkers as Cass Sunstein Bruce Ackerman and Frank Michelman have incorporated the work of historians into their legal theories and arguments turning to eighteenth century republicanism which stressed communal values and an active citizenry to justify their goals Kalman a historian and a lawyer suggests that reliance on history in legal thinking makes sense at a time when the Supreme Court repeatedly declares that it will protect only those liberties rooted in history and tradition There are pitfalls in interdisciplinary argumentation she cautions for historians reactions to this use of their work have been unenthusiastic and even hostile Yet lawyers law professors and historians have cooperated in some recent Supreme Court cases and Kalman concludes with a practical examination of the ways they can work together more effectively as social activists

The Strange Career of Legal Liberalism Laura Kalman, 1996-01-01 Legal scholarship is in a state of crisis argues Laura Kalman in this history of the most prestigious field in law studies constitutional theory Since the New Deal Kalman says most law scholars have identified themselves as liberals who believe in the power of the Supreme Court to effect progressive social change In recent years however new political and interdisciplinary perspectives have undermined the tenets of legal liberalism and liberal law professors have enlisted other disciplines in the attempt to legitimize their beliefs Such prominent legal thinkers as Cass Sunstein Bruce Ackerman and Frank Michelman have incorporated the work of historians into their legal theories and arguments turning to eighteenth century republicanism which stressed communal values and an active citizenry to justify their goals Kalman a historian and a lawyer suggests that reliance on history in legal thinking makes sense at a time when the Supreme Court repeatedly declares that it will protect only those liberties rooted in history and tradition There are pitfalls in interdisciplinary argumentation she cautions for historians reactions to this use of their work have been unenthusiastic and even hostile Yet lawyers law professors and historians have cooperated in some recent Supreme Court cases and Kalman concludes with a practical examination of the ways they can work together more effectively as social activists

Beyond All Reason Daniel A. Farber, Suzanna Sherry, 1997-10-30 Would you want to be operated on by a surgeon trained at a medical school that did not evaluate its students Would you want to fly in a plane designed by people convinced that the laws of physics are socially constructed Would you want to be tried by a legal system indifferent to the distinction between fact and fiction These questions may seem absurd but these are theories being seriously advanced by radical multiculturalists that force us to ask them These scholars

assert that such concepts as truth and merit are inextricably racist and sexist that reason and objectivity are merely sophisticated masks for ideological bias and that reality itself is nothing more than a socially constructed mechanism for preserving the power of the ruling elite In *Beyond All Reason* liberal legal scholars Daniel A Farber and Suzanna Sherry mount the first systematic critique of radical multiculturalism as a form of legal scholarship Beginning with an incisive overview of the origins and basic tenets of radical multiculturalism the authors critically examine the work of Derrick Bell Catherine MacKinnon Patricia Williams and Richard Delgado and explore the alarming implications of their theories Farber and Sherry push these theories to their logical conclusions and show that radical multiculturalism is destructive of the very goals it wishes to affirm If for example the concept of advancement based on merit is fraudulent as the multiculturalists claim the disproportionate success of Jews and Asians in our culture becomes difficult to explain without opening the door to age old anti Semitic and racist stereotypes If historical and scientific truths are entirely relative social constructs then Holocaust denial becomes merely a matter of perspective and Creationism has as much validity as evolution The authors go on to show that rather than promoting more dialogue the radical multiculturalist preferences for legal storytelling and identity politics over reasoned argument produces an insular set of positions that resist open debate Indeed radical multiculturalists cannot critically examine each others ideas without incurring vehement accusations of racism and sexism much less engage in fruitful discussion with a mainstream that does not share their assumptions Here again Farber and Sherry show that the end result of such thinking is not freedom but a kind of totalitarianism where dissent cannot be tolerated and only the naked will to power remains to settle differences Sharply written and brilliantly argued this book is itself a model of the kind of clarity civility and dispassionate critical thinking which the authors seek to preserve from the attacks of the radical multiculturalists With far reaching implications for such issues as government control of hate speech and pornography affirmative action legal reform and the fate of all minorities *Beyond All Reason* is a provocative contribution to one of the most important controversies of our time

Local Citizenship in a Global Age Kenneth A. Stahl, 2020-05-14 Presents a distinctly local idea of citizenship that with the advance of globalization often conflicts with national citizenship

The Adaptability Paradox Stephen Skowronek, 2025-09-29 Has American democracy outstripped its constitutional accommodations Faith in the resilience and adaptability of the US Constitution rests on a long history of finding new ways to make the system work In *The Adaptability Paradox* political scientist Stephen Skowronek examines the rearrangements that regenerated the American government in the past and brings that experience to bear on our current predicament He shows how a constitution framed in writing some 230 years ago can run into serious difficulties directly related to its long and impressive history of adaptation Skowronek connects questions about the Constitution's adaptability to the challenges of democratization For most of American history serial rearrangements of constitutional relationships widened the government's purview as a national democracy without giving either nationalism or democracy free rein Skowronek argues that the politics of adaptation shifted

fundamentally with the Rights Revolution of the 1960s and 70s when American national democracy approached the inclusion of all its citizens on equal footing Since then power and authority have been reconfigured in ways that have steadily magnified conflicts over the essentials of good order Conservatives aim to dismantle a Constitution that progressives are intent on building upon and the consensus necessary for a constitutional democracy to function effectively has all but evaporated No longer a socially bound framework for national action the Constitution has become an abstract matrix of possibilities a disembodied opportunity structure open to starkly different mutually unacceptable futures Rather than being liberated by this unbound Constitution the American people now appear entrapped by it Is it possible that the development of American democracy has exhausted the adaptive capacities of the Constitution A timely reminder that constitutional democracies do not survive on faith alone **The Adaptability Paradox** is a sober appraisal of the unfamiliar ground on which we now tread

Law as Culture and Culture as Law John Phillip Reid, 2000 Law as Culture and Culture as Law presents a spectrum of historical inquiries developing and engaging John Phillip Reid's insights and methodological approaches to legal and constitutional history The essays gathered in this volume span nearly three centuries and two continents ranging from the agonizing struggles over law religion and governance in late seventeenth century Ireland to the legal and constitutional regimes of governmental regulation in twentieth century New York

The Pragmatism and Prejudice of Oliver Wendell Holmes Jr. Seth Vannatta, 2019-06-26 This book investigates the extent to which various scholarly labels are appropriate for the work of Oliver Wendell Holmes Jr As Louis Menand wrote Holmes has been called a formalist a positivist a utilitarian a realist a historicist a pragmatist not to mention a nihilist Each of the eight chapters investigates one label analyzes the secondary texts that support the use of the term to characterize Holmes's philosophy and takes a stand on whether or not the category is appropriate for Holmes by assessing his judicial and nonjudicial publications including his books articles and posthumously published correspondences The thrust of the collection as a whole nevertheless bends toward the stance that Holmes is a pragmatist in his jurisprudence ethics and politics The final chapter by Susan Haack makes that case explicitly Edited by Seth Vannatta this book will be of particular interest to students and faculty working in law jurisprudence philosophy intellectual history American Studies political science and constitutional theory

Critiquing Free Speech

Matthew D. Bunker, 2001-04-01 In this exceptional volume Matthew D Bunker explores the work of contemporary free speech critics and argues that while at times these critics provide important lessons many of their conclusions must be rejected Moreover Bunker suggests that we be wary of interdisciplinary approaches to free speech theory that by their very assumptions and techniques are a poor fit with existing free speech theory and doctrine In his investigation of diverse critiques of free speech theory and his sophisticated rebuttal he provides an innovative and important examination of First Amendment theory In doing so he establishes a new agenda for First Amendment theory scholarship that incorporates some of the critics insights without abandoning the best aspects of the free speech tradition COPY FOR MAILER Distinctive

features in this volume include an overview of the traditional approaches to First Amendment theory an examination of work from key First Amendment scholars and theorists at both the individual and group level an emphasis on interdisciplinarity ranging from feminist and critical legal scholars to economists and literary theorists and a new agenda for First Amendment theory scholarship which incorporates critical comment while preserving the best aspects of the free speech tradition

Experimental Legal Education in a Globalized World Mutaz Qafisheh, Stephen A. Ronenbaum, 2016-06-22 Legal education is currently undergoing a paradigm shift Traditional law instruction lecturing and memorizing have become a fading fashion with legal clinics increasingly cropping up These allow law students to practice while studying and to contribute to social justice as part of the educational process Students no longer accept one way interaction from their professors and demand interaction with their peers in various corners of the globe The Middle East is no exception here Legal clinics can be found in most countries of the region though there is scant literature on legal education in the area particularly with regards to clinical legal education This book fills this gap and offers comparative cases that will benefit legal educators and justice practitioners in the Middle East and beyond The region needs reform in all dimensions including the political economic social religious legal and educational Legal education lies at the heart of securing such long awaited reforms The book examines legal education within selected locations in the region underscoring successful pedagogical models from various parts of the world This peer reviewed book focuses on practical legal education where learning is student centered particularly clinical legal education field work street law pro bono service legal advice simulations placements internships moot courts and mock trials problem based learning case analysis group work role play and brainstorming The book brings together 28 chapters written by leading legal scholars from across the globe all concerned with the advancement of legal education with making it more interactive and contributing to bridging the gap between powerful and powerless communities

Legal Positivism in American Jurisprudence Anthony J. Sebok, 1998-10-28 This work represents a serious and philosophically sophisticated guide to modern American legal theory demonstrating that legal positivism has been a misunderstood and underappreciated perspective through most of twentieth century American legal thought

New Deal Law and Order Anthony Gregory, 2024-06-11 Anthony Gregory traces the origins of America's modern law and order politics to a surprising source the New Deal the crucible of modern liberalism FDR's tough on crime agenda played a crucial role in the New Dealers reform agenda which greatly expanded the limits of federal power and fundamentally altered the future of the state

The Constitutional Bind Aziz Rana, 2024-04-16 An eye opening account of how Americans came to revere the Constitution and what this reverence has meant domestically and around the world Some Americans today worry that the Federal Constitution is ill equipped to respond to mounting democratic threats and may even exacerbate the worst features of American politics Yet for as long as anyone can remember the Constitution has occupied a quasi mythical status in American political culture which ties ideals of liberty and equality to assumptions about the inherent

goodness of the text's design The Constitutional Bind explores how a flawed document came to be so glorified and how this has impacted American life In a pathbreaking retelling of the American experience Aziz Rana shows that today's reverential constitutional culture is a distinctively twentieth century phenomenon Rana connects this widespread idolization to another relatively recent development the rise of US global dominance Ultimately such veneration has had far reaching consequences despite offering a unifying language of reform it has also unleashed an interventionist national security state abroad while undermining the possibility of deeper change at home Revealing how the current constitutional order was forged over the twentieth century The Constitutional Bind also sheds light on an array of movement activists in Black Indigenous feminist labor and immigrant politics who struggled to imagine different constitutional horizons As time passed these voices of opposition were excised from memory Today they offer essential insights

Theory and Method in Socio-Legal

Research Reza Banakar, Max Travers, 2005-12-19 Socio legal researchers increasingly recognise the need to employ a wide variety of methods in studying law and legal phenomena and the need to be informed by an understanding of debates about theory and method in mainstream social science The papers in this volume illustrate how a range of topics including EU law ombudsmen judges lawyers Shariah Councils and the quality assurance industry can be researched from a socio legal perspective The objective of the collection is to show how different methods can be used in researching law and legal phenomena how methodological issues and debates in sociology are relevant to the study of law and the importance of the debate between structural and action traditions in researching law It also approaches the methodological problem of how sociology of law can address the content of legal practice from a variety of perspectives and discusses the relationship between pure and applied research The editors provide a critical introduction to each of the six sections and a general introduction on law sociology and method The collection will provide an invaluable resource for socio legal researchers law school researchers and postgraduates

Critical Legal Studies and the Campaign for American Law Schools

Paul Baumgardner, 2021-09-08 Recent political science research into the American legal academy has been captured by conservatism this research has framed the institutional and ideological developments occurring within the law schools over the past forty years solely through the prism of modern conservatism As a result political scientists have ignored the political struggles of one of the most important legal reform movements of the 1980s and overlooked the hope for leftist reform that existed within American law schools during this period Critical Legal Studies and the Campaign for American Law Schools tells the story of the critical legal studies movement This formidable movement sought to fundamentally reconstruct law schools train a new generation of leftist lawyers and replace the dominant form of legal consciousness governing the American legal system Instead of projecting a fatalism onto leftist reform this book relies on extensive archival research and interviews to illuminate the radical potential that lived in the American legal academy of the 1980s The critical legal studies movement was a towering presence in the law schools and its legacy continues to hold out political possibilities and reform

lessons for leftist legal scholars today **Climate Change Litigation in the Asia Pacific** Jolene Lin, Douglas A. Kysar, 2020-10-29 Comprehensively examines the role that litigation can play in galvanizing climate action in the Asia Pacific Region *The Supreme Court* Peter Charles Hoffer, William James Hull Hoffer, N. E. H. Hull, 2018-08-28 For more than two centuries the U S Supreme Court has provided a battleground for nearly every controversial issue in our nation's history Now a veteran team of talented historians including the editors of the acclaimed Landmark Law Cases and American Society series have updated the most readable astute single volume history of this venerated institution with a new chapter on the Roberts Court The Supreme Court chronicles an institution that dramatically evolved from six men meeting in borrowed quarters to the most closely watched tribunal in the world Underscoring the close connection between law and politics the authors highlight essential issues cases and decisions within the context of the times in which the decisions were handed down Deftly combining doctrine and judicial biography with case law they demonstrate how the justices have shaped the law and how the law that the Court makes has shaped our nation with an emphasis on how the Court responded or failed to respond to the plight of the underdog Each chapter covers the Court's years under a specific Chief Justice focusing on cases that are the most reflective of the way the Court saw the law and the world and that had the most impact on the lives of ordinary Americans Throughout the authors reveal how in times of war class strife or moral revolution the Court sometimes voiced the conscience of the nation and sometimes seemed to lose its moral compass Their extensive quotes from the Court's opinions and dissents illuminate its inner workings as well as the personalities and beliefs of the justices and the often contentious relationships among them Fair minded and sharply insightful The Supreme Court portrays an institution defined by eloquent and pedestrian decisions and by justices ranging from brilliant and wise to slow witted and expedient An epic and essential story it illuminates the Court's role in our lives and its place in our history in a manner as engaging for general readers as it is rigorous for scholars **Making Legal History** Daniel J. Hulsebosch, R. B. Bernstein, 2013-09-20 One of the academy's leading legal historians William E Nelson is the Edward Weinfeld Professor of Law at New York University School of Law For more than four decades Nelson has produced some of the most original and creative work on American constitutional and legal history His prize winning books have blazed new trails for historians with their substantive arguments and the scope and depth of Nelson's exploration of primary sources Nelson was the first legal scholar to use early American county court records as sources of legal and social history and his work on legal history in England colonial America and New York has been a model for generations of legal historians This book collects ten essays exemplifying and explaining the process of identifying and interpreting archival sources the foundation of an array of methods of writing American legal history The essays presented here span the full range of American history from the colonial era to the 1980s Each historian has either identified a body of sources not previously explored or devised a new method of interrogating sources already known The result is a kaleidoscopic examination of the historian's task and of the research methods and

interpretative strategies that characterize the rich complex field of American constitutional and legal history *An ^AEqual Place* Scott L. Cummings,2021-01-04 In *An Equal Place* Scott Cummings focuses on the movement for a living wage in Los Angeles and explores greater implications for the role of contemporary lawyers outside of the courtroom The campaign to implement a living wage in L A was the most famous effort in the country and advocates for it were largely successful in part because they used the law to advance their agenda *Cicero and Modern Law* Richard O. Brooks,2017-07-05 *Cicero and Modern Law* contains the best modern writings on Cicero s major law related works such as the *Republic* *On Law* *On Oratory* along with a comprehensive bibliography of writings on Cicero s legal works These works are organized to reveal the influence of Cicero s writings upon the history of legal thought including St Thomas the Renaissance Montesquieu and the U S Founding Fathers Finally the articles include discussions of Cicero s influence upon central themes in modern legal thought including legal skepticism republicanism mixed government private property natural law conservatism and rhetoric The editor offers an extensive introduction placing these articles in the context of an overall view of Cicero s contribution to modern legal thinking *American Exceptionalism and the Remains of Race* Edmund Fong,2014-07-11 In contemporary American political culture claims of American exceptionalism and anxieties over its prospects have resurged as an overarching theme in national political discourse Yet never very far from such debates lie animating fears associated with race Fears about the loss of national unity and trust often draw attention to looming changes in the racial demographics of the body politic Lost amid these debates are often the more complex legacies of racial hybridity Anxieties over the disintegration of the fabric of American national identity likewise forget not just how they echo past fears of subversive racial and cultural difference but also exorcise as well the changing nature of work and social interaction Edmund Fong s book examines the rise and resurgence of contemporary forms of American exceptionalism as they have emerged out of contentious debates over cultural pluralism and multicultural diversity in the past two decades For a brief time serious considerations of the force of multiculturalism entered into a variety of philosophical and policy debates But in the American context these debates often led to a reaffirmation of some variant of American exceptionalism with the consequent exorcism of race within the avowed norms and policy goals of American politics Fong explores how this multicultural exorcism revitalizing American exceptionalism is not simply a novel feature of our contemporary political moment but is instead a recurrent dynamic across the history of American political discourse By situating contemporary discourse on cultural pluralism within the larger frame of American history this book yields insight into the production of hegemonic forms of American exceptionalism and how race continues to haunt the contours of American national identity

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Table of Contents Strange Career Of Legal Liberalism

1. Understanding the eBook Strange Career Of Legal Liberalism
 - The Rise of Digital Reading Strange Career Of Legal Liberalism
 - Advantages of eBooks Over Traditional Books
2. Identifying Strange Career Of Legal Liberalism
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Strange Career Of Legal Liberalism
 - User-Friendly Interface
4. Exploring eBook Recommendations from Strange Career Of Legal Liberalism
 - Personalized Recommendations
 - Strange Career Of Legal Liberalism User Reviews and Ratings
 - Strange Career Of Legal Liberalism and Bestseller Lists
5. Accessing Strange Career Of Legal Liberalism Free and Paid eBooks
 - Strange Career Of Legal Liberalism Public Domain eBooks
 - Strange Career Of Legal Liberalism eBook Subscription Services
 - Strange Career Of Legal Liberalism Budget-Friendly Options

6. Navigating Strange Career Of Legal Liberalism eBook Formats
 - ePub, PDF, MOBI, and More
 - Strange Career Of Legal Liberalism Compatibility with Devices
 - Strange Career Of Legal Liberalism Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Strange Career Of Legal Liberalism
 - Highlighting and Note-Taking Strange Career Of Legal Liberalism
 - Interactive Elements Strange Career Of Legal Liberalism
8. Staying Engaged with Strange Career Of Legal Liberalism
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Strange Career Of Legal Liberalism
9. Balancing eBooks and Physical Books Strange Career Of Legal Liberalism
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Strange Career Of Legal Liberalism
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Strange Career Of Legal Liberalism
 - Setting Reading Goals Strange Career Of Legal Liberalism
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Strange Career Of Legal Liberalism
 - Fact-Checking eBook Content of Strange Career Of Legal Liberalism
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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