

# THE LAW'S CONSCIENCE

EQUITABLE

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CONSTITUTIONALISM

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IN

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AMERICA



PETER CHARLES HOFFER

# The Laws Conscience Equitable Constitutionalism In America

**Kyle S. Sinisi**



## **The Laws Conscience Equitable Constitutionalism In America:**

**The Law's Conscience** Peter Charles Hoffer, 2000-11-09 The Law's Conscience is a history of equity in Anglo American jurisprudence from the inception of the chancellor's court in medieval England to the recent civil rights and affirmative action decisions of the United States Supreme Court Peter Hoffer argues that equity embodies a way of looking at law including constitutions based on ideas of mutual fairness public trusteeship and equal protection His central theme is the tension between the ideal of equity and the actual availability of equitable remedies Hoffer examines this tension in the trusteeship constitutionalism of John Locke and Thomas Jefferson the incorporation of equity in the first American constitutions the antebellum controversy over slavery the fortunes of the Freedmen's Bureau after the Civil War the emergence of the doctrine of Balance of Equity in twentieth century public interest law and the desegregation and reverse discrimination cases of the past thirty five years *Brown v Board of Education* 1954 was the most important equity suit in American history and Hoffer begins and ends his book with a new interpretation of its lessons

**Legal Memories And Amnesias In America's Rhetorical Culture** Marouf Arif Hasian, 2021-11-28 In *Legal Memories and Amnesias in America's Rhetorical Culture* Marouf Hasian Jr critically examines the rhetoric of law specifically the shifting lines between the notions of liberty and license Hasian Jr explores how such issues as immigration labor national identity race and genetics have caused society to change how it thinks about and uses laws In *Legal Memories and Amnesias in America's Rhetorical Culture* Marouf Hasian Jr critically examines the rhetoric of law specifically the shifting lines between the notions of liberty and license Hasian Jr explores how issues such as immigration labor national identity race and genetics have caused society to change how it thinks about and uses laws The author builds on critical race theory feminist studies of the law and critical legal studies and he uses a case study framework that covers topics such as *Sarah Roberts* and the separate but equal doctrine *John Brown's* enactment of natural law at *Harper's Ferry* *Typhoid Mary* *Mallon* the Holocaust *Susan Smith* the human genome project and *Rosewood* All of the aforementioned are tied together by an introduction that clearly delineates the basic theoretical stance of the book Without a doubt the subject of this book is provocative timely and timeless

**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 laws 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 American Legal System** Albert P. Melone, Allan Karnes, 2008 Firmly anchored in social science concepts the second edition of The American Legal System demonstrates the relationships among private law the business legal environment and public law issues as well as related subjects of interest This fifteen chapter book is divided into three parts Part I places the legal system in a political perspective centering on the origins of the law schools of jurisprudence branches and functions of law legitimacy of law how the judiciary functions in the federal system of government and judicial interpretation and decision making Part II contrasts legal processes civil suits for money damages criminal processes equity justice administrative processes and alternative dispute resolution Part III centers on the legal norms or rules governing both civil and criminal conduct property law family law contract law and government regulation of business Throughout the text features edited court opinions many new to this edition illustrating lively and thought provoking controversies that are certain to spark student interest Among the many compelling issues addressed are the legal and constitutional controversies surrounding the Bush Administration s War on Terror and the socially explosive developments concerning same sex marriage In addition each chapter includes at least three comparative notes showing how other legal cultures in different nation states treat legal matters A wealth of pedagogical features chapter opening objectives key terms names and concepts a glossary discussion questions and appendices are included to aid student comprehension The authors have prepared an Instructor s Manual and Test Bank to facilitate the book s use in the classroom

**An Introduction to the Legal System of the United States, Fourth Edition** E. Allan Farnsworth, 2010-07-16 In the updated fourth edition of this classic text which has been translated into over a dozen languages constitutional scholar and Columbia Law School professor E Allan Farnsworth provides a clear explanation of the structure and function of the U S legal system in one handy reference An Introduction to the Legal System of the United States Fourth Edition is designed to be a general introduction to the structure and function of the legal system of the United States and is especially useful for those readers who lack familiarity with fundamental establishments and practices This text also gives the reader a clear understanding of how to research the law the importance of case law versus statutes and the difference between private and public law It illustrates issues that may be confusing or troublesome and provides a solid general overview It includes a new introduction by Steve Sheppard

**Seward's Law** Peter Charles Hoffer, 2023-01-15 In Seward s Law Peter Charles Hoffer argues that William H Seward s legal practice in Auburn New York informed his theory of relational rights a theory that demonstrated how the country could end slavery and establish a

practical form of justice This theory Hoffer demonstrates had ties to Seward s career as a country lawyer Despite his rise to prominence and indeed preeminence as a US secretary of state Seward s country lawyer mentality endured throughout his life as evinced in his personal attitudes and professional conduct Relational rights identified and termed here for the first time by Hoffer are communal and reciprocal what everyone owed to every other member of their community Such rights are at the center of a jurisprudential outlook that arises directly from living in a village Though Seward was limited by the Victorian mores and the racist presumptions of his day the concept of relational rights that animated him was the natural antithesis to the theories and practices of slavery In the legal regime underpinning the institution masters owed nothing to their bondmen and women while those enslaved unconditionally owed life and labor to their masters The irrepressible conflict was for Seward jurisprudential as well as moral and political Hoffer s leading assumption in Seward s Law is that a lifetime spent as a lawyer influences how a person responds to everyday challenges Seward remained a country lawyer at heart and that fact defined the course of his political career **My Daily Constitution Vol. IV** Richard J.

Rolwing,2004-10-19 Crafting Equality Celeste Michelle Condit,John Louis Lucaites,2012-12-10 Philosophers and historians often treat fundamental concepts like equality as if they existed only as fixed ideas found solely in the canonical texts of civilization In Crafting Equality Celeste Michelle Condit and John Louis Lucaites argue that the meaning of at least one key word equality has been forged in the day to day pragmatics of public discourse Drawing upon little studied speeches newspapers magazines and other public discourse Condit and Lucaites survey the shifting meaning of equality from 1760 to the present as a process of interaction and negotiation among different social groups in American politics and culture They make a powerful case for the critical role of black Americans in actively shaping what equality has come to mean in our political conversation by chronicling the development of an African American rhetorical community The story they tell supports a vision of equality that embraces both heterogeneity and homogeneity as necessary for maintaining the balance between liberty and property A compelling revision of an important aspect of America s history Crafting Equality will interest anyone wanting to better understand the role public discourse plays in affecting the major social and political issues of our times It will also interest readers concerned with the relationship between politics and culture in America s increasingly multi cultural society **The Canadian Department of Justice and the Completion of Confederation 1867-78**

Jonathan Swainger,2011-11-01 The federal Department of Justice was established by John A Macdonald as part of the Conservative party s program for reform of the parliamentary system following Confederation Among other things it was charged with establishing national institutions such as the Supreme Court and the North West Mounted Police and with centralizing the penitentiary system In the process the department took on a position of primary importance in post Confederation politics This was particularly so up to 1878 when Confederation was completed Jonathan Swainger considers the growth and development of the ostensibly apolitical Department of Justice in the eleven years after the union of 1867

Drawing on legal records and other archival documents he details the complex interactions between law and politics exploring how expectations both inside and outside the legal system created an environment in which the department acted as an advisor to the government He concludes by considering the post 1878 legacy of the department s approach to governance wherein any problem legal or otherwise was made amenable to politicized solutions Unfortunately for the department and the federal government this left them ill prepared for the constitutional battles to come One crucial task was to establish responsibilities within the federal government rather than just duplicate offices which had existed prior to union Others were the establishment of national or quasi national institutions such as the Supreme Court 1875 and the North West Mounted Police 1873 the redrafting of the Governor General s instructions which was done between 1875 and 1877 and centralization of the penitentiary system completed by 1875 The Department benefited from a deeply rooted expectation that law was both apolitical and necessary This ideology functioned in a variety of ways it gave the Department considerable latitude for setting policy and solving problems but rationalized the appearance of politicized legal decisions It also legitimized Department officials claim that it was especially suited to review all legislation advise on the royal prerogative of mercy administer national penitentiaries and appoint judges to the bench Ultimately the fictional notion of law as apolitical and necessary placed the Department of Justice squarely in the midst of the completion of Confederation The Canadian Department of Justice and the Completion of Confederation will be of particular interest to students and scholars of Canadian legal and political history

**At Home and Abroad** Elizabeth Shakman Hurd, Winnifred Fallers Sullivan, 2021-03-02 From right to left notions of religion and religious freedom are fundamental to how many Americans have understood their country and themselves Ideas of religion politics and the interplay between them are no less crucial to how the United States has engaged with the world beyond its borders Yet scholarship on American religion tends to bracket the domestic and foreign despite the fact that assumptions about the differences between ourselves and others deeply shape American religious categories and identities At Home and Abroad bridges the divide in the study of American religion law and politics between domestic and international bringing together diverse and distinguished authors from religious studies law American studies sociology history and political science to explore interrelations across conceptual and political boundaries They bring into sharp focus the ideas people and institutions that provide links between domestic and foreign religious politics and policies Contributors break down the categories of domestic and foreign and inquire into how these taxonomies are related to other axes of discrimination asking questions such as What and who counts as home or abroad how and by whom are these determinations made and with what consequences Offering a new approach to theorizing the politics of religion in the context of the American nation state At Home and Abroad also interrogates American religious exceptionalism and illuminates imperial dynamics beyond the United States

*Natural Law in Court* R. H. Helmholz, 2015-06-08 Natural law theory grounds human laws in universal truths of God s creation The task of the judicial system was to build an edifice of

positive law on natural law's foundations R H Helmholz shows how lawyers and judges made and interpreted natural law arguments in the West and concludes that historically it has advanced the cause of justice

**Broken Trusts** Jonathan W. Singer, 2002 Nineteenth century editorial cartoons often pictured government and industry hand in hand Yet as early as 1889 Texas had enacted an antitrust law to curb the power of monopolies and in the first years of the industry that would bring untold riches to the state the attorney general used that law against oil trusts to a surprising extent Ironically for most of the first twenty five years following the enactment of the Sherman Antitrust Act federal enforcement efforts were extremely limited leaving the field to the states Texas was one of several states that had strong antitrust laws and whose attorneys general prosecuted antitrust violations with vigor Political ambition was a factor in the decisions to investigate and prosecute cases against a highly visible target the petroleum industry but there was also a genuine belief in the goals of antitrust policy and in the efficacy of enforcement of the laws In *Broken Trusts* Jonathan Singer offers the definitive study of the formative period of antitrust enforcement in Texas His analysis of the state attorney general's use of antitrust law against the oil industry in this time of transition from agricultural to industrial society provides insights into the litigation process the gap between the rhetoric of trust busting and the reality of antitrust enforcement and also the changing roles of state government in the late nineteenth and early twentieth centuries The experience of Texas undermines the view that federal action has always dominated antitrust enforcement efforts and that antitrust litigation against Standard Oil was ineffectual Rather the results of the Texas attorney general's litigations suggest that some states took their role in the dual enforcement scheme seriously and that the measure of success of antitrust enforcement goes beyond the amount of monetary penalties collected and the number of companies permanently ousted from a state This volume will be valuable to those interested in the effects of the Sherman Antitrust Act as well as those concerned with the evolution of the Texas attorney general's office

*Sacred Debts* Kyle S. Sinisi, 2003 In this analysis of the dynamics of state federal relations during one of the nation's most turbulent periods Sinisi sheds new light on the sources of modern political systems in America

**BOOK JACKET**

Losing Twice Emily M. Calhoun, 2011-03-21 Constitutional losers represent a thorny and longstanding problem in American constitutional law Given our adversarial system the way that rights cases are decided means that regardless of whether a losing side has committed any actions that cause harm to others they typically suffer unnecessary harm as a consequence of decisions In areas such as affirmative action and gay rights the losers are essentially punished for losing despite neither intending nor causing injury In *Losing Twice* Emily Calhoun draws upon conflict resolution theory political theory and Habermasian discourse theory to argue that in such cases the Court must work harder to avoid inflicting unnecessary harm on Constitutional losers But for this to happen Calhoun contends the role of judges needs to be reconceptualized She contends that the Court should not perceive itself simply as an adversarial forum but also as a transactional one where losers are not simply losers but participants in a process capable of addressing and ameliorating the effects that come with loss

Filled with lucid discussions of well known cases *Losing Twice* offers an intellectually powerful argument for transforming the decision making process in Constitutional rights disputes      *Roscoe Pound and Karl Llewellyn* N. E. H. Hull,1997

American legal history is traditionally viewed as a succession of discrete schools of thought or landmark court decisions not as the work of individuals Such an approach however hardly does justice to the lives of two of the foremost teachers and theorists of American jurisprudence In *Roscoe Pound and Karl Llewellyn Searching for an American Jurisprudence* N E H Hull reconstructs the historical cultural and intellectual context of the work of Pound and Llewellyn bringing to light their private and public relationship as well as the diverse sources from psychology to plant ecology to Icelandic sagas they separately drew upon in making their contributions to the American legal tradition      **Republic of Debtors** Bruce H.

Mann,2009-04-15 Debt was a fact of life in early America At the beginning of the 18th century its sinfulness was preached by ministers and the right to imprison debtors was unquestioned By 1800 imprisonment for debt was under attack and insolvency was no longer seen as a moral failure Mann illuminates this crucial transformation in early American society

*The U.S. Justice System* Steven Harmon Wilson,2011-12-06 A comprehensive three volume set that provides detailed background essays short topical entries and primary document excerpts to explain the organization history and functioning of the U S justice system *The U S Justice System An Encyclopedia* is a one stop resource uniquely structured to include both introductory information as well as more in depth and detailed resources It explains not only how the American civil and criminal justice system affects the parties to a particular case or other legal action but also how the rights benefits and legal protections of our country impact virtually all people in America The set comprises three volumes The first volume provides chapter length essays explaining the organization and functioning of federal state and local government as well as the working of federal and state judiciaries regulatory bodies and penal systems The second volume contains shorter alphabetically arranged entries on hundreds of law related topics including case descriptions and biographies of major figures federal and state court organizational charts legal statistics and other background information The third volume contains original documents statutes and texts of important cases relevant to the functioning of the American justice system Readers will understand the structures concepts and vocabulary of American law and legal institutions and grasp how the U S legal system has evolved to meet the complex changing needs of the nation      **Trust and Distrust** Mark

Knights,2021-12-02 *Trust and Distrust* offers the first overview of Britain s history of corruption in office in the pre modern era 1600 1850 and as such will appeal not only to historians but also to political and social scientists Mark Knights paints a picture of the interaction of the domestic and imperial stories of corruption in office showing how these stories were intertwined and related Linking corruption in office to the domestic and imperial state has not been attempted before and Knights does this by drawing on extensive interdisciplinary sources relating to the East India Company as well as other colonial officials in the Atlantic World and elsewhere in Britain s emerging empire Both corruption and office were concepts



that were in evolution during the period 1600 1850 and underwent very significant but protracted change which this study charts and seeks to explain The book makes innovative use of the concept of trust which helped to shape office in ways that underlined principles of selflessness disinterestedness integrity and accountability in officials Law in the Western United States Gordon Morris Bakken,2000 In this volume Gordon Morris Bakken traces the distinctive development of western legal history The contributors essays provide succinct descriptions of major cases legislation and individual western states constitutional provisions that are unique in the American legal system To assist the reader the volume is organized by subject including natural resources municipal authority business regulation American Indian sovereignty and water rights women and Mormons Contributors are Roy H Andes Dana Blakemore Richard Griswold del Castillo Susan Badger Doyle James W Ely Jr Brenda Gail Farrington Dale D Goble Neil Greenwood Vanessa Gunther Louise A Halper Claudia Hess Kenneth Hough Paul Kens Shenandoah Grant Lynd Thomas C Mackey Nicholas George Malavis Timothy Miller Danelle Moon Andrew P Morriss Keith Pacholl Laurie Caroline Pintar Michael A Powell Ion Puschilla Emily Rader Peter L Reich John Phillip Reid Lucy E Salyer Susan Sanchez Janet Schmelzer Howard Shorr Paul Reed Spitzzeri John Joseph Stanley Donald L Stelluto Jr Timothy A Strand Imre Sutton Nancy J Taniguchi and Lonnie Wilson *The Clamor of Lawyers* Peter Charles Hoffer,Williamjames Hull Hoffer,2018-10-15 The Clamor of Lawyers explores a series of extended public pronouncements that British North American colonial lawyers crafted between 1761 and 1776 Most though not all were composed outside of the courtroom and detached from on going litigation While they have been studied as political theory these writings and speeches are rarely viewed as the work of active lawyers despite the fact that key protagonists in the story of American independence were members of the bar with extensive practices The American Revolution was in fact a lawyers revolution Peter Charles Hoffer and Williamjames Hull Hoffer broaden our understanding of the role that lawyers played in framing and resolving the British imperial crisis The revolutionary lawyers including John Adams s idol James Otis Jr Pennsylvania s John Dickinson and Virginians Thomas Jefferson and Patrick Henry along with Adams and others deployed the skills of their profession to further the public welfare in challenging times They were the framers of the American Revolution and the governments that followed Loyalist lawyers and lawyers for the crown also participated in this public discourse but because they lost out in the end their arguments are often slighted or ignored in popular accounts This division within the colonial legal profession is central to understanding the American Republic that resulted from the Revolution

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