

**The
Supreme Court
and
the Decline of
Constitutional
Aspiration**

Gary J. Jacobsohn

Supreme Court And The Decline Of Constitutional Aspiration

Clifford Lane



Supreme Court And The Decline Of Constitutional Aspiration:

The Supreme Court and the Decline of Constitutional Aspiration Gary J. Jacobsohn, 1986 How should the U S Constitution be interpreted and upon what philosophical basis What were the intentions of its framers concerning judicial interpretation the doctrine of natural rights the finality of Supreme Court decisions To what extent are these intentions relevant to modern politics and jurisprudence These and other issues are given a balanced and fresh treatment in Professor Jacobsohn s timely study

The Supreme Court and the Idea of Constitutionalism Steven Kautz, Arthur Melzer, Jerry Weinberger, M. Richard Zinman, 2011-11-29 From *Brown v Board of Education* to *Roe v Wade* to *Bush v Gore* the Supreme Court has over the past fifty years assumed an increasingly controversial place in American national political life As the recurring struggles over nominations to the Court illustrate few questions today divide our political community more profoundly than those concerning the Court s proper role as protector of liberties and guardian of the Constitution If the nation is today in the midst of a culture war the contest over the Supreme Court is certainly one of its principal battlefields In this volume distinguished constitutional scholars aim to move debate beyond the sound bites that divide the opposing parties to more fundamental discussions about the nature of constitutionalism Toward this end the volume includes chapters on the philosophical and historical origins of the idea of constitutionalism on theories of constitutionalism in American history in particular on the practices of constitutionalism around the globe and on the parallel emergence of and the persistent tensions between constitutionalism and democracy throughout the modern world In democracies the primary point of having a constitution is to place some matters beyond politics and partisan contest And yet it seems equally clear that constitutionalism of this kind results in a struggle over the meaning or proper interpretation of the constitution a struggle that is itself deeply political Although the volume represents a variety of viewpoints and approaches this struggle which is the central paradox of constitutionalism is the ultimate theme of all the essays

Conservative Thought and American Constitutionalism since the New Deal Johnathan O'Neill, 2022-11-29 An intellectual history of American conservatism since the New Deal The New Deal fundamentally changed the institutions of American constitutional government and in turn the relationship of Americans to their government Johnathan O'Neill s *Conservative Thought and American Constitutionalism since the New Deal* examines how various types of conservative thinkers responded to this significant turning point in the second half of the twentieth century O'Neill identifies four fundamental transformations engendered by the New Deal the rise of the administrative state the erosion of federalism the ascendance of the modern presidency and the development of modern judicial review He then considers how various schools of conservative thought traditionalists neoconservatives libertarians Straussians responded to these major changes in American politics and culture Conservatives frequently argued among themselves and their responses to the New Deal ranged from adaptation to condemnation to political mobilization Ultimately the New Deal pulled American governance and society permanently leftward Although some of the New Deal s liberal gains have been eroded a true

conservative counterrevolution was never O'Neill argues a realistic possibility He concludes with a plea for conservative thinkers to seriously reconsider the role of Congress a body that is relatively ignored by conservative intellectuals in favor of the courts and the presidency in America's constitutional order *Conservative Thought and American Constitutionalism* since the New Deal explores the scope and significance of conservative constitutional analysis amid the broader field of American political thought *Natural Law and the Antislavery Constitutional Tradition* Justin Buckley Dyer, 2012-02-13 *Natural Law and the Antislavery Constitutional Tradition* is a succinct account of the development of American antislavery constitutionalism in the years preceding the Civil War In a series of case studies Dyer reconstructs the arguments of prominent antislavery thinkers such as John Quincy Adams John McLean Abraham Lincoln and Frederick Douglass What emerges is a convoluted understanding of American constitutional development that emphasizes the centrality of natural law to America's greatest constitutional crisis **Dred Scott and the Problem of Constitutional Evil** Mark A.

Graber, 2006-07-03 *Dred Scott and the Problem of Constitutional Evil* first published in 2006 concerns what is entailed by pledging allegiance to a constitutional text and tradition saturated with concessions to evil The Constitution of the United States was originally understood as an effort to mediate controversies between persons who disputed fundamental values and did not offer a vision of the good society In order to form a more perfect union with slaveholders late eighteenth century citizens fashioned a constitution that plainly compelled some injustices and was silent or ambiguous on other questions of fundamental right This constitutional relationship could survive only as long as a bisectional consensus was required to resolve all constitutional questions not settled in 1787 *Dred Scott* challenges persons committed to human freedom to determine whether antislavery northerners should have provided more accommodations for slavery than were constitutionally strictly necessary or risked the enormous destruction of life and property that preceded Lincoln's new birth of freedom **The Madisonian Constitution** George Thomas, 2008-06-18 Publisher Description **In Defense of the**

Text Leslie Friedman Goldstein, 1991 a must read for all students of constitutional law whatever their academic discipline this excellent book accomplishes the author's purpose it forces us to take textualism seriously **LEGAL STUDIES FORUM**

Dred Scott and the Dangers of a Political Court Ethan Greenberg, 2010-08-01 *Dred Scott* exemplifies neither originalism nor aspirationalism gone wrong as many modern critics now argue Rather the *Dred Scott* Court erred chiefly because the majority gave in to the still relevant temptation to subordinate honest legal reasoning to the pursuit of what the majority regarded as a noble and crucial political agenda_in this case to protect slavery and the political power of the slave holding South and thereby preserve the Union *Deciphering the Genome of Constitutionalism* Ran Hirschl, Yaniv Roznai, 2024-03-21 Offers an extensive theoretical comparative normative and empirical account of the concept of constitutional identity **The Supreme Court and Religion in American Life, Vol. 2** James Hitchcock, 2009-01-10 School vouchers The Pledge of Allegiance The ban on government grants for theology students The abundance of church and state

issues brought before the Supreme Court in recent years underscores an incontrovertible truth in the American legal system the relationship between the state and religion in this country is still fluid and changing This the second of two volumes by historian and legal scholar James Hitchcock offers a complete analysis and interpretation of the Court's historical understanding of religion explaining the revolutionary change that occurred in the 1940s In Volume I *The Odyssey of the Religion Clauses* Princeton Hitchcock provides the first comprehensive survey of the court cases involving the Religion Clauses including a number that scholars have ignored Here Hitchcock examines how in the early history of our country a strict separation of church and state was sustained through the opinions of Jefferson and Madison even though their views were those of the minority Despite the Founding Fathers' ideas the American polity evolved on the assumption that religion was necessary to a healthy society and cooperation between religion and government was assumed This view was seldom questioned until the 1940s notes Hitchcock Then with the beginning of the New Deal and the appointment of justices who believed they had the freedom to apply the Constitution in new ways the judicial climate changed Hitchcock reveals the personal histories of these justices and describes how the nucleus of the Court after World War II was composed of men who were alienated from their own faiths and who looked at religious belief as irrational divisive and potentially dangerous assumptions that became enshrined in the modern jurisprudence of the Religion Clauses He goes on to offer a fascinating look at how the modern Court continues to grapple with the question of whether traditional religious liberty is to be upheld

How to Read the Constitution Christopher Wolfe, 1996 Prominent constitutional scholar Christopher Wolfe challenges popular opinions by presenting an insightful and well supported defense of originalist interpretations of the Constitution He describes the traditional approach to constitutional interpretation and judicial review and then focuses his analysis on the due process clause which has become the source of most modern constitutional law Wolfe challenges the most influential defenders of judicial activism including Laurence Tribe Michael Dorf Harry Wellington and Mark Tushnet and he persuasively explains the dire political consequences of taking the Constitution out of constitutional law

The Limits of Constitutional Democracy Jeffrey K. Tulis, 2010-11-14 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations Uncovering the reasons for this ambivalence this book looks at the difficulties of constitutional democracy and reexamines fundamental questions What is constitutional democracy When does it succeed or fail Can constitutional democracies conduct war Can they preserve their values and institutions while addressing new forms of global interdependence The authors gathered here interrogate constitutional democracy's meaning in order to illuminate its future The book examines key themes the issues of constitutional failure the problem of emergency power and whether constitutions should be suspended when emergencies arise the dilemmas faced when constitutions provide and restrict executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation In addition to the editors the contributors are Sotirios

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Constitutional Change in the Contemporary Socialist World Ngoc Son Bui, 2020 Comparative constitutional law has a long and distinguished history in intellectual thought and in the construction of public law As political actors and the people who create or modify their constitutional orders they often wish to learn from the experience and learning of others This cross fertilization and mutual interaction has only accelerated with the onset of globalization which has transformed the world into an interconnected web that facilitates dialogue and linkages across international and regional structures Oxford Comparative Constitutionalism seeks to publish scholarship of the highest quality in constitutional law that deepens our knowledge of local national regional and global phenomena through the lens of comparative public law Book jacket **The Supreme Court In and Out of the Stream of History** Kermit L. Hall, 2018-12-07 Available as a single volume or part of the 10 volume set Supreme Court in American Society **Against the Imperial Judiciary** Matthew J. Franck, 1996 Franck's reexamination of the place of natural law in the early Supreme Court is fresh illuminating and long overdue His scholarship is incisive and profound and the exegeses of early Supreme Court opinions are often brilliant Robert L Clinton author of *Marbury v Madison* and *Judicial Review* *The Limits of Constitutional Democracy* Jeffrey K. Tulis, Stephen Macedo, 2010-10-18 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations Uncovering the reasons for this ambivalence this book looks at the difficulties of constitutional democracy and reexamines fundamental questions What is constitutional democracy When does it succeed or fail Can constitutional democracies conduct war Can they preserve their values and institutions while addressing new forms of global interdependence The authors gathered here interrogate constitutional democracy's meaning in order to illuminate its future The book examines key themes the issues of constitutional failure the problem of emergency power and whether constitutions should be suspended when emergencies arise the dilemmas faced when constitutions provide and restrict executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation In addition to the editors the contributors are Sotirios Barber Joseph Bessette Mark Brandon Daniel Deudney Christopher Eisgruber James Fleming William Harris II Ran Hirschl Gary Jacobsohn Benjamin Kleinerman Jan Werner Müller Kim Scheppele Rogers Smith Adrian Vermeule and Mariah Zeisberg From Words to Worlds Beau Breslin, 2009-01-26 In the 225 years since the United States Constitution was first drafted no single book has addressed the key questions of what constitutions are designed to do how they are structured and why they matter In *From Words to Worlds* constitutional scholar Beau Breslin corrects this glaring oversight singling out the essential functions that a modern written constitution must incorporate in order to serve as a nation's fundamental law Breslin lays out and explains the basic functions of a modern constitution including creating a new citizenry structuring the institutions of government

regulating conflict between layers and branches of government and limiting the power of the sovereign He also discusses the theoretical concepts behind the fundamentals of written constitutions and examines in depth some of the most important constitutional charters from around the world In assaying how states put structural ideas into practice Breslin asks probing questions about why and if constitutions matter Solidly argued and engagingly written this comparative study in constitutional thought demonstrates clearly the key components that a state s foundational document must address Breslin draws a critically important distinction between constitutional texts and constitutional practice American Constitutional Law Donald P. Kommers, John E. Finn, Gary J. Jacobsohn, 2010 American Constitutional Law Essays Cases and Comparative Notes is a unique casebook that encourages citizens and students of the Constitution to think critically about the fundamental principles and policies of the American constitutional order In addition to its distinguished authorship the book has two prominent features that set it apart from other books in the field an emphasis on the social political and moral theory that provides meaning to constitutional law and interpretation and a comparative perspective that situates the American experience within a world context that serves as an invaluable prism through which to illuminate the special features of our own constitutional order While the focus of the book is entirely on American constitutional law the book asks students to consider what if anything is unique in American constitutional life and what we share with other constitutional democracies Each chapter is preceded by an introductory essay that highlights these major themes and also situates the cases in their proper historical and political contexts This new edition offers updated and expanded treatment of a number of important and timely topics including the death penalty privacy affirmative action and school segregation Volume 2 of this text focuses on civil rights and basic freedoms and includes separate chapters on race and gender Universal Rights and the Constitution Stephen A. Simon, 2014-04-01 Innovative examination of the tensions between universal and more uniquely American definitions of cherished rights Are constitutional rights based exclusively in uniquely American considerations or are they based at least in part on principles that transcend the boundaries of any particular country such as the requirements of freedom or dignity By viewing constitutional law through the prism of this fundamental question Universal Rights and the Constitution exposes an overlooked difficulty with opinions rendered by the Supreme Court namely an inherent ambiguity about the kinds of arguments that count in constitutional interpretation which weakens the foundations of our most cherished rights Rejecting current debates over constitutional interpretation as flawed Stephen A Simon offers an innovative framework designed to provide clearer foundations for rights interpretations while preserving a meaningful but limited role for universal arguments He reveals the vital connections among contemporary debates over such matters as the right to privacy the constitutionality of the death penalty and the role of foreign law in constitutional interpretation *A Theory of Liberty* H. N. Hirsch, 2019-11-21 First published in 1992 A Theory of Liberty seeks to change the way we think about the American constitution The focus of the book is the legal status of minority groups in the United States a topic at the top of

the current political agenda Arguing that minority rights were vitally important to the founding fathers H N Hirsch presents an original and provocative look at issues such as affirmative action abortion and the rights of children lesbians and gay men mental patients and the physically disabled In an analysis which blends history philosophy law and social science Hirsch attacks both liberals who hide from history and conservatives who push for original intent He argues that we can remain faithful to the most basic intent of the founding fathers without losing our ability to reinterpret the Constitution against the backdrop of contemporary social facts Hirsch exposes the errors and hypocrisy of the current Supreme Court majority and argues that the Constitution s liberty can and should be interpreted to protect the rights of minority groups Timely and controversial this title offers a challenging look at some of America s most basic ideological commitments and will appeal to anyone concerned with the current state of American law or the treatment of minority groups

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