

The Supreme Court's
Retreat from
Reconstruction

A Distortion of Constitutional Jurisprudence

Frank J. Scaturro

Supreme Courts Retreat From Reconstruction

Thomas J. Brown



Supreme Courts Retreat From Reconstruction:

The Supreme Court's Retreat from Reconstruction Frank J. Scaturro, 2000-03-30 As the nation turned its back on Reconstruction the Supreme Court in turn narrowed Thirteenth Fourteenth and Fifteenth Amendment protections of former slaves thus straying from the understanding of the amendments framers Tracking a long line of cases that employed narrow constructions of these amendments and accompanying statutes this study compares the Court's propositions to the framers own interpretations The resulting portrait makes it clear that the Court contributed in a significant way to the nation's retreat from Reconstruction Before analyzing the relevant cases Scaturro provides a historical synopsis of the collapse of Reconstruction The final section demonstrates how the twentieth century Court handed down decisions that accommodated the demands of the Civil Rights Movement but did so with constitutional interpretations that preserved several misunderstandings about the Reconstruction Amendments especially the Fourteenth This study helps to resolve a contemporary dilemma regarding the consequences of the Court's narrowing of the Interstate Commerce Clause It also challenges long standing assumptions about the state action requirement of the Fourteenth and Fifteenth Amendments as well as the Fourteenth Amendment's Privileges and Immunities Clause Besides being valuable to Supreme Court historians the subject matter of this volume which covers both constitutional law and legal history will be of substantial interest to lawyers judges and political scientists particularly in view of recent developments on the high Court The lessons taught by this chapter of Supreme Court jurisprudence offer insight into constitutional interpretation in general and the conclusion develops this idea by looking at the problematic interaction between law and outside historical influences *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 *The Will of the People* Barry Friedman, 2025-09-23 In recent years the justices of the Supreme Court have ruled definitively on such issues as abortion school prayer and military tribunals in the war on terror They decided one of American history's most contested presidential elections Yet for all their power the justices never face election and hold their offices for life This combination of influence and apparent unaccountability has led many to complain that there is something illegitimate even undemocratic about judicial authority In *The Will of the People* Barry Friedman challenges that claim by showing that the Court has always

been subject to a higher power the American public Judicial positions have been abolished the justices jurisdiction has been stripped the Court has been packed and unpopular decisions have been defied For at least the past sixty years the justices have made sure that their decisions do not stray too far from public opinion Friedman s pathbreaking account of the relationship between popular opinion and the Supreme Court from the Declaration of Independence to the end of the Rehnquist court in 2005 details how the American people came to accept their most controversial institution and shaped the meaning of the Constitution *Reconstructions* Thomas J. Brown,2006-11-09 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

University of Chicago Law Review: Volume 78, Number 4 - Fall 2011 University of Chicago Law Review,2012-04-11 A leading law review now offers a quality eBook edition The fourth and final issue of 2011 Volume 78 features articles and essays from internationally recognized legal scholars and governmental leaders including Cass Sunstein on empirically informed regulation Jonathan Bressler on jury nullification and Reconstruction Daniel Schwarcz on standardized insurance policies and Bertral Ross II writing against constitutional mainstreaming in statutory interpretation In addition the issue includes a review essay on the book *The Master Switch* as well as student Comments on such subjects as same sex divorce religious practices by prisoners falsely claiming Medal of Honor status and enhancement in federal sentencing The issue is presented in modern eBook formatting and features active Tables of Contents linked footnotes and URLs and legible graphs and tables **The Madisonian Constitution** George Thomas,2008-08-01 Today we think of constitutional questions as being settled by the Supreme Court But that is not always the case nor is it what the framers intended in constructing the three branch federal government This volume examines four crucial moments in the United States political history the Civil

War and Reconstruction the Progressive Era Franklin Delano Roosevelt's presidency and the New Deal and the Reagan revolution to illustrate the Madisonian view that the present rise of judicial supremacy actually runs counter to the Constitution as established at the nation's founding George Thomas opens by discussing how the Constitution encourages an antagonistic approach to settling disputes thereby preserving itself as the nation's fundamental law rather than ceding that role to the president Congress or Supreme Court In considering the four historical case studies he focuses on judicial interpretations and the political branches' responses to them to demonstrate that competing conceptions of constitutional authority and meaning as well as intergovernmental disputes themselves rather than any specific outcome strengthen the nature of the nation's founding document as a political instrument Engagingly written and soundly argued this study clarifies and highlights the political origins of the nation's foundational document and argues that American constitutionalism is primarily about countervailing power not legal limits enforced by courts

The Dark Past William M. Wiecek, 2024 The Dark Past offers a historical overview and interpretive guide to all the major cases decided by US Supreme Court that have affected the freedom and rights of Black Americans since 1800 It lends coherence to what could otherwise be a disjointed chronicle of cases and connects the events of the past to the current era of racial inequality

Co-Whites Emeka Aniagolu, 2012-07-10 Co Whites discusses race and gender politics and traces the role of women in Western and non Western political systems Aniagolu examines the dynamics of race and gender in the United States starting from the colonial and antebellum periods leading up to the American Civil War and Reconstruction through the Civil Rights era of the 1960s to the present day The work explores how white American women in their search and struggle for gender equality in the United States related to three principal streams in America's socioeconomic and political history white supremacy women of color especially African American women and the freedom and civil rights struggle for racial equality The United States has irreversibly become a multiracial and multicultural democracy and white supremacy has become untenable however Aniagolu concludes that white American women collaborated with white American men as Co Whites or co partners in the management and maintenance of white supremacy in the United States Well researched and lucidly written the work makes intellectually and historically coherent a subject matter often muttered in small circles and that takes the form of scholarly civil wars inside Women's Studies between white American and African American women scholars and schools of thought The work grapples with a serious issue in light of the 2008 presidential elections in the United States offering insightful explanations certain to evoke lively debate in university classrooms amongst professorial colleagues and in the general public

The Million-Dollar Man Who Helped Kill a President Christopher McIlwain, 2018-07-19 George Washington Gayle is not a name known to history But it soon will be Forget what you thought you knew about why Abraham Lincoln was assassinated by John Wilkes Booth No it was not mere sectional hatred Booth's desire to become famous Lincoln's advocacy of black suffrage or a plot masterminded by Jefferson Davis to win the war by crippling the Federal government Christopher

Lyle McIlwain's *Untried and Unpunished: George Washington Gayle and the Assassination of Abraham Lincoln* exposes the fallacies regarding each of those theories and reveals both the mastermind behind the plot and its true motivation. The deadly scheme to kill Lincoln, Vice President Andrew Johnson, and Secretary of State William Seward was Gayle's brainchild. The assassins were motivated by money; Gayle raised lots of money—20,000,000 in today's value. Gayle, a prominent South Carolina-born Alabama lawyer, had been a Unionist and Jacksonian Democrat before walking the road of radicalization following the admission of California as a free state in 1850. Thereafter, he became Alabama's most earnest secessionist, though he would never hold any position within the Confederate government or serve in its military. After the slaying of the president, Gayle was arrested and taken to Washington, DC, in chains to be tried by a military tribunal for conspiracy in connection with the horrendous crimes. The Northern press was satisfied Gayle was behind the deed, especially when it was discovered he had placed an advertisement in a newspaper the previous December soliciting donations to pay the assassins. There is little doubt that if Gayle had been tried, he would have been convicted and executed. However, he not only avoided trial but ultimately escaped punishment of any kind for reasons that will surprise readers. Rather than rehashing what scores of books have already alleged, *Untried and Unpunished* offers a completely fresh premise, meticulous analysis, and stunning conclusions based upon years of firsthand research by an experienced attorney. This original, thought-provoking study will forever change the way you think of Lincoln's assassination.

Our Fragile Freedoms Eric Foner, 2025-09-02 From one of the most acclaimed and influential historians of the United States, an insightful guide to our history and why it matters. Eric Foner has done more to shape the public and professional understanding of American history than any other scholar. The preeminent historian of the Civil War era, Foner's keynote has been American freedom and the recurring battles over its meanings and boundaries. His award-winning works show that freedom has been a birthright for some and a struggle for others; that rights gained can also be lost and that they must always be tended with knowledge and vigilance. The present political moment makes the importance of these themes abundantly clear. This collection of Foner's recent reviews and commentaries demonstrates the range of his interests and expertise, running from slavery and antislavery through the disunion and remaking of the United States in the nineteenth century, Jim Crow and the civil rights movement, and into our current politics. Each piece shows a master at work, melding historical knowledge and balanced judgment with crystalline prose. Foner takes up towering figures from Washington to Lincoln, Douglass and Rosa Parks, pivotal events such as the Fugitive Slave Act and the Tulsa Race Massacre, and the fragility of constitutional guarantees to civil liberties, due process, and birthright citizenship, whether in times of war or peace. He also explores recent controversies over how to commemorate and how to teach our history.

A Rift in the Clouds Brent J. Aucoin, 2007-08-01 *A Rift in the Clouds* chronicles the efforts of three white southern federal judges to protect the civil rights of African Americans at the beginning of the twentieth century, when few in the American legal community were willing to do so. Jacob Treiber of Arkansas, Emory Speer of Georgia, and

Thomas Goode Jones of Alabama challenged the Supreme Court's reading of the Reconstruction amendments that were passed in an attempt to make disfranchised and exploited African Americans equal citizens of the United States. These unpopular white southerners, two of whom had served in the Confederate Army and had themselves helped to bring Reconstruction to an end in their states, asserted that the amendments not only established black equality but authorized the government to protect blacks. Although their rulings won few immediate gains for blacks and were overturned by the Supreme Court, their legal arguments would be resurrected and meet with greater success over half a century later during the civil rights movement.

Penitentiaries, Reformatories, and Chain Gangs M. Colvin, 1997-08-14 The very definition of punishment in America has been subject to a variety of changes and has served as the basis for much debate over the course of America's history. In *Penitentiaries, Reformatories, Chain Gangs*, Mark Colvin tackles the subject of penal change in America by examining three case studies which represent shifts in the interpretation of punishment specifically during the nineteenth century: the rise of penitentiaries in the Northeast, the changes in the treatment of women offenders in the North, and the transformation of punishment in the South after the Civil War. Colvin uses these case studies to apply four theoretical explanations of penal change, shedding light on both the history of penal authority and the current state of the system today. An engrossing and highly relevant volume, *Penitentiaries, Reformatories, Chain Gangs* is a comprehensive investigation of punishment and its meaning, past and present.

The Second Founding: How the Civil War and Reconstruction Remade the Constitution Eric Foner, 2019-09-17 Gripping and essential. Jesse Wegman, *New York Times*. An authoritative history by the preeminent scholar of the Civil War era, *The Second Founding* traces the arc of the three foundational Reconstruction amendments from their origins in antebellum activism and adoption amidst intense postwar politics to their virtual nullification by narrow Supreme Court decisions and Jim Crow state laws. Today these amendments remain strong tools for achieving the American ideal of equality if only we will take them up.

Black Trials Mark S. Weiner, 2007-12-18 From a brilliant young legal scholar comes this sweeping history of American ideas of belonging and citizenship told through the stories of fourteen legal cases that helped to shape our nation. Spanning three centuries, *Black Trials* details the legal challenges and struggles that helped define the ever-shifting identity of blacks in America. From the well-known cases of *Plessy v. Ferguson* and the Clarence Thomas confirmation hearings to the more obscure trial of Joseph Hanno, an eighteenth-century free black man accused of murdering his wife and bringing smallpox to Boston, Weiner recounts the essential dramas of American identity, illuminating where our conception of minority rights has come from and where it might go. Significant and enthralling, these are the cases that forced the courts and the country to reconsider what it means to be black in America, and Mark Weiner demonstrates their lasting importance for our society.

American Literary-Political Engagements William M. Etter, 2012-11-13 *American Literary-Political Engagements: From Poe to James* examines how authors in the nineteenth-century United States often engaged the politics of their times through literature as they conceptualized political

issues in literary terms Concerns over Jacksonian democracy social reform in a rapidly industrializing American economy African American familial cooperation in the post Civil War era changing conceptions of culpability with respect to the law and marginalized individuals involvement in political agitation near the close of the century were made the central subjects of diverse literary works which though not often characterized as overtly political nevertheless made these political concerns a matter of and for literary art Through examinations of Edgar Allan Poe s comedic tales *How to Write a Blackwood Article* and *A Predicament* Rebecca Harding Davis novel *Margret Howth* Mattie J Jackson s postbellum slave narrative William Dean Howells *A Modern Instance* and Henry James *The Princess Casamassima* this book considers how these texts enrich our understanding of nineteenth century America s conceptions of the possibilities and responsibilities of literature and of popular democracy industrialization African American women the law political agitation and disability *The Enduring Vision* Paul S. Boyer,1998

Equal: Women Reshape American Law Fred Strebeigh,2009-02-13 The dramatic untold story of how women battled blatant inequities in America s legal system As late as 1967 men outnumbered women twenty to one in American law schools With the loss of deferments from Vietnam reluctant law schools began admitting women to avoid plummeting enrollments As women entered the law resisted Judges would not hire women Law firms asserted a right to discriminate against women Judges permitted discrimination by employers against pregnant women Courts viewed sexual harassment as one judge said a game played by the male superiors Violence against women seemed to exist beyond the law s comprehension In this landmark book Fred Strebeigh shows how American law advanced far and fast He brings together legal evidence and personal histories to portray the work of concerned women and men to advance legal rights in America *Equal* combines interviews with litigators plaintiffs and judges including Ruth Bader Ginsburg and Catharine MacKinnon along with research from private archives of attorneys who took cases to the Supreme Court to narrate battles waged against high odds and pinnacles of legal power *Equal* in the words of Professor Suzanne A Kim of Rutgers Law School is a book for anyone interested in how each individual can improve our society through compassion drive and creativity

The Waite Court Donald Grier Stephenson,2003-11-12 An extensive exploration of the major decisions and personalities of the Supreme Court during the 14 year tenure of Chief Justice Morrison Remick Waite *The Waite Court* Justices Rulings and Legacy presents a fresh interpretation of the Supreme Court under the tenure of Chief Justice Morrison Remick Waite 1874 1888 An in depth analysis of key decisions demonstrates how the Waite Court confronted such profound issues as the post Civil War rights of African Americans and state regulations intended to cope with rampant industrialization Highlighting the Court s most famous decision *Munn v Illinois* which upheld legislation regulating railroad and grain elevator rates this careful analysis also reviews the Court s unique involvement in the 1876 presidential election electoral predicament Profiles of the 15 justices who served on the Waite Court include extensive descriptions of the five that rank among the most outstanding justices ever to serve on the Supreme Court

Patriot Fires Melinda Lawson,2002 The Civil War is often credited with

giving birth to the modern American state The demands of warfare led to the centralization of business and industry and to an unprecedented expansion of federal power But the Civil War did more than that as Melinda Lawson shows it brought about a change in American national identity redefining the relationship between the individual and the government Though much has been written about the Civil War and the making of the political and economic American nation this is the first comprehensive study of the role that the war played in the shaping of the cultural and ideological nation state In *Patriot Fires* Lawson explains how when threatened by the rebellious South the North came together as a nation and mobilized its populace for war With no formal government office to rally citizens the job of defining the war in patriotic terms fell largely to private individuals or associations each with their own motives and methods Lawson explores how these interpreters of the war helped instill in Americans a new understanding of loyalty to country Through efforts such as sanitary fairs to promote the welfare of soldiers the war bond drives of Jay Cooke and the establishment of Union Leagues Northerners cultivated a new sense of patriotism rooted not just in the subjective American idea but in existing religious political and cultural values Moreover Democrats and Republicans Abolitionists and Abraham Lincoln created their own understandings of American patriotism and national identity raising debates over the meaning of the American idea to new heights Examining speeches pamphlets pageants sermons and assemblies Lawson shows how citizens and organizations constructed a new kind of nationalism based on a nation of Americans rather than a union of states a European styled nationalism grounded in history and tradition and celebrating the preeminence of the nation state Original in its insights and innovative in its approach *Patriot Fires* is an impressive work of cultural and intellectual history As America engages in new conflicts around the globe Lawson shows us that issues addressed by nation builders of the nineteenth century are relevant once again as the meaning of patriotism continues to be explored

Justice Stephen Field's Cooperative Constitution of Liberty Adam M. Carrington, 2017-06-30 This book examines liberty's Constitutional meaning through the jurisprudence of Justice Stephen Field one of the late Nineteenth Century's most influential Supreme Court Justices A Lincoln appointee who served on the Court from 1863-1897 Field articulated a view of Constitutional liberty that speaks to contemporary disputes Today some see liberty as protection through government regulation against private oppression Others see liberty as protection from government through limits on governmental power Justice Field is often viewed as siding against government power to regulate acting as a pre cursor to the infamous *Lochner* Era of the Court This work explains how Field instead saw both these competing conceptions of liberty as legitimate In fact the two cooperated toward a common end In his opinions Field argued that protections through and from government worked in tandem to guard fundamental individual rights In describing this view of liberty Field addressed key Constitutional provisions that remain a source of debate including some of the earliest interpretations of the Due Process Clause its relationship to state police power and civil rights and some of the earliest assertions of a national police power through the Commerce Clause This work furthermore addresses the underpinnings of

Field's views namely that he grounded his reading of the Constitution in the context of the common law and the Declaration of Independence. In his principles as well as his approach this book argues Justice Field presents a helpful discussion in ongoing debates regarding the meaning of liberty and of the Constitution.

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