



Constructing Civil Liberties

**Discontinuities in the Development
of American Constitutional Law**

KEN I. KERSCH

CAMBRIDGE

Constructing Civil Liberties Discontinuities In The Development Of American Constitutional Law

Ken I. Kersch



Constructing Civil Liberties Discontinuities In The Development Of American Constitutional Law:

Constructing Civil Liberties Ken I. Kersch, 2004-08-02 This book provides a revisionist account of the genealogy of contemporary constitutional law and morals **Constructing Civil Liberties** Ken I. Kersch, 2004 This book is a revisionist account of the development of the Supreme Court's modern civil liberties and civil rights jurisprudence It explains that jurisprudence is the outgrowth of a sequence of highly particular progressive reformist ideological currents that formed the modern American state **The Supreme Court and American Political Development** Ronald Kahn, Ken I.

Kersch, 2006-05-15 This innovative volume explores the evolution of constitutional doctrine as elaborated by the Supreme Court Moving beyond the traditional law versus politics perspective the authors draw extensively on recent studies in American Political Development APD to present a much more complex and sophisticated view of the Court as both a legal and political entity The contributors including Pam Brandwein Howard Gillman Mark Graber Ronald Kahn Tom Keck Ken Kersch Wayne Moore Carol Nackenoff Julie Novkov and Mark Tushnet share an appreciation that the process of constitutional development involves a complex interplay between factors internal and external to the Court They underscore the developmental nature of the Court revealing how its decision making and legal authority evolve in response to a variety of influences not only laws and legal precedents but also social and political movements election returns and regime changes advocacy group litigation and the interpretive community of scholars journalists and lawyers Initial chapters reexamine standard approaches to the question of causation in judicial decision making and the relationship between the Court and the ambient political order Next a selection of historical case studies exemplifies how the Court constructs its own authority as it defines individual rights and the powers of government They show how interpretations of the Reconstruction amendments inform our understanding of racial discrimination explain the undermining of affirmative action after *Bakke* and consider why *Roe v Wade* has yet to be overturned They also tell how the Court has collaborated with political coalitions to produce the New Deal Great Society and Reagan Revolution and why Native Americans have different citizenship rights than other Americans These contributions encourage further debate about the nature and processes of constitutional change and invite APD scholars to think about law and the Court in more sophisticated ways **Conservatives and the Constitution** Ken I.

Kersch, 2019-03-28 Recovers a contested evolving tradition of conservative constitutional argument that shaped the past and is bidding to make the future *No Day in Court* Sarah L. Staszak, 2015 While the majority of the landmark laws and legal precedents expanding access to justice in the United States remain intact less than 2 percent of civil cases are decided by a trial today What explains this phenomenon and why it is so difficult to get one's day in court This book examines the sustained efforts of political and legal actors to scale back access to the courts in the decades since it was expanded largely in the service of the rights revolution of the 1950s and 60s *The Oxford Handbook of American Political Development* Richard M. Valelly, Suzanne Mettler, Robert C. Lieberman, 2016 Scholars working in or sympathetic to American political

development APD share a commitment to accurately understanding the history of American politics and thus they question stylized facts about America's political evolution Like other approaches to American politics APD prizes analytical rigor data collection the development and testing of theory and the generation of provocative hypotheses Much APD scholarship indeed overlaps with the American politics subfield and its many well developed literatures on specific institutions or processes for example Congress judicial politics or party competition specific policy domains welfare policy immigration the foundations of equality in American politics the distribution of wealth and income race ethnicity gender class and sexual and gender orientation public law and governance and representation What distinguishes APD is careful systematic thought about the ways that political processes civic ideals the political construction of social divisions patterns of identity formation the making and implementation of public policies contestation over and via the Constitution and other formal and informal institutions and processes evolve over time and whether and how they alter compromise or sustain the American liberal democratic regime APD scholars identify in short the histories that constitute American politics They ask what familiar or unfamiliar elements of the American past illuminate the present Are contemporary phenomena that appear new or surprising prefigured in ways that an APD approach can bring to the fore If a contemporary phenomenon is unprecedented then how might an accurate understanding of the evolution of American politics unlock its significance Featuring contributions from leading academics in the field The Oxford Handbook of American Political Development provides an authoritative and accessible analysis of the study of American political development

Encyclopedia of the Supreme Court, Second Edition David Schultz, 2021-09-01 Praise for the previous edition concise well written entries Schultz's accessible work will be of use to both undergraduates and the general public recommended for all academic and public libraries Library Journal achieves the goal of presenting a serious overview of the Supreme Court Booklist At its reasonable price this title should be found in every American library public as well as academic It should also be purchased by every high school library no matter how small the school body may be American Reference Books Annual From the structure of the Supreme Court to its proceedings this comprehensive encyclopedia presents the cornerstone of the American justice system Featuring more than 600 A to Z entries written by leading academics and lawyers Encyclopedia of the Supreme Court Second Edition offers a thorough review of critical cases issues biographies and topics important to understanding the Supreme Court Entries include Abortion Capital punishment Citizens United v Federal Election Commission Double jeopardy employment discrimination Federalism Masterpiece Cakeshop v Colorado Civil Rights Commission Obergefell v Hodges police use of force public health and the U S Constitution Thurgood Marshall Title IX and schools United States v Nixon Earl Warren Wiretapping

Ourselfs and Our Posterity Bradley C. S. Watson, 2009-06-16 Arguments over constitutional interpretation increasingly highlight the full range of political moral and cultural fault lines in American society Yet all the contending parties claim fealty to the Constitution This volume brings together some of America's leading scholars of constitutional

originalism to reflect on the nature and significance of various approaches to constitutional interpretation and controversies Throughout the book the contributors highlight the moral and political dimensions of constitutional interpretation In doing so they bring constitutional interpretation and its attendant disputes down from the clouds showing their relationship to the concerns of the citizen In addition to matters of interpretation the book deals with the proper role of the judiciary in a free society the relationship of law to politics and the relationship of constitutional originalism to the deepest concerns of political thought and philosophy

Partisan Supremacy Terri Jennings Peretti, 2020-11-20 I have no agenda US Supreme Court Chief Justice John Roberts proclaimed at his Senate confirmation hearing My job is to call balls and strikes and not to pitch or bat This declaration was in keeping with the avowed independence of the judiciary It also when viewed through the lens of Roberts's election law decisions appears to be false With a scrupulous reading of judicial decisions and a careful assessment of partisan causes and consequences Terri Jennings Peretti tells the story of the GOP's largely successful campaign to enlist judicial aid for its self-interested election reform agenda Partisan Supremacy explores four contemporary election law issues voter identification gerrymandering campaign finance and the preclearance regime of the Voting Rights Act to uncover whether Republican politicians and Republican judges have collaborated to tilt America's election rules in the GOP's favor Considering cases from *Shelby County v Holder* which enfeebled the Voting Rights Act to *Crawford v Marion County Election Board* which upheld restrictive voter identification laws to *Citizens United* and *McCutcheon* which loosened campaign finance restrictions Peretti lays bare the reality of friendly judicial review and partisan supremacy when it comes to election law She nonetheless finds a mixed verdict in the redistricting area that reveals the limits of partisan control over judicial decisions Peretti's book helpfully places the current GOP's voter suppression campaign in historical context by acknowledging similar efforts by the post-Civil War Democratic Party While the modern Democratic Party seeks electoral advantage by expanding voting by America's minorities and youth arguably hewing closer to democratic principles neither party is immune to the powerful incentive to bend election rules in its favor In view of the evidence that Partisan Supremacy brings to light we are left with a critical and pressing question Can democracy survive in the face of partisan collaboration across the branches of government on critical election issues

Looking for Rights in All the Wrong Places Emily Zackin, 2013-04-21 Unlike many national constitutions which contain explicit positive rights to such things as education a living wage and a healthful environment the U S Bill of Rights appears to contain only a long list of prohibitions on government American constitutional rights we are often told protect people only from an overbearing government but give no explicit guarantees of governmental help Looking for Rights in All the Wrong Places argues that we have fundamentally misunderstood the American rights tradition The United States actually has a long history of enshrining positive rights in its constitutional law but these rights have been overlooked simply because they are not in the federal Constitution Emily Zackin shows how they instead have been included in America's state constitutions in large part because state governments not the

federal government have long been primarily responsible for crafting American social policy Although state constitutions seemingly mired in trivial detail can look like pale imitations of their federal counterpart they have been sites of serious debate reflect national concerns and enshrine choices about fundamental values Zackin looks in depth at the history of education labor and environmental reform explaining why America s activists targeted state constitutions in their struggles for government protection from the hazards of life under capitalism Shedding much needed light on the variety of reasons that activists pursued the creation of new state level rights *Looking for Rights in All the Wrong Places* challenges us to rethink our most basic assumptions about the American constitutional tradition

The Ubiquity of Positive Measures for Addressing Systemic Discrimination and Inequality David Oppenheimer,2019-08-26 Positive measures to prevent and remedy discrimination have been adopted in many parts of the world By comparing the scope and form of such measures in different legal systems we can gain a better perspective on our own system and appreciate possible new approaches This book compares positive anti discrimination measures in the United States India Brazil South Africa Canada the United Kingdom and the European Union

Church, State, and Original Intent Donald L. Drakeman,2010 This provocative book shows how the justices of the United States Supreme Court have used constitutional history portraying the Framers actions in a light favoring their own views about how church and state should be separated Drakeman examines church state constitutional controversies from the Founding Era to the present arguing that the Framers originally intended the establishment clause only as a prohibition against a single national church

A Democracy That Works Stephen Amberg,2022-11-25 *A Democracy That Works* argues that rather than corporate donations Republican gerrymandering and media manipulation the conservative ascendancy reflects the reconstruction of the rules that govern work that has disempowered workers Using six historical case studies from the emergence of the New Deal and its later overtaking by the conservative neoliberal agenda to today s intersectional social justice movements Stephen Amberg deploys situated institutional analysis to show how real actors created the rules that empowered liberal democracy for 50 years and then how Democrats and Republicans undermined democracy by changing those rules thereby organizing working class people out of American politics He draws on multidisciplinary studies to argue that when employees are organized to participate at work they are also organized to participate in politics to press for accountable government In doing so the book opens up analytical space to understand the unprecedented threat to liberal democracy in the U S A *A Democracy That Works* is a fresh account of the crisis of democracy that illuminates how historical choices about the role of workers in the polity shaped America s liberal democracy during the 20th century It will appeal to scholars of American politics and American political development labor and social movements democracy and comparative politics

Rehabilitating Lochner David E. Bernstein,2011-05-15 In this timely reevaluation of an infamous Supreme Court decision David E Bernstein provides a compelling survey of the history and background of *Lochner v New York* This 1905 decision invalidated state laws limiting

work hours and became the leading case contending that novel economic regulations were unconstitutional. Sure to be controversial, *Lochner* argues that the decision was well grounded in precedent and that modern constitutional jurisprudence owes at least as much to the limited government ideas of *Lochner* proponents as to the more expansive vision of its Progressive opponents. Tracing the influence of this decision through subsequent battles over segregation laws, sex discrimination, civil liberties, and more, *Lochner* argues not only that the court acted reasonably in *Lochner* but that *Lochner* and like-minded cases have been widely misunderstood and unfairly maligned ever since.

The Oxford Handbook of the U.S. Constitution Mark V. Tushnet, Mark A. Graber, Sanford Levinson, 2015 The Oxford Handbook of the U.S. Constitution offers a comprehensive overview and introduction to the U.S. Constitution from the perspectives of history, political science, law, rights, and constitutional themes while focusing on its development, structures, rights, and role in the U.S. political system and culture. This Handbook enables readers within and beyond the U.S. to develop a critical comprehension of the literature on the Constitution along with accessible and up-to-date analysis. Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U.S. constitutionalism today.

A New Introduction to American Constitutionalism Mark A. Graber, 2015 *A New Introduction to American Constitutionalism* is the first truly interdisciplinary study of the American constitutional regime. Mark A. Graber explores the fundamental elements of the American constitutional order with particular emphasis on how constitutionalism in the United States is a form of politics and not a means of subordinating politics to law.

The Founders and the Idea of a National University George Thomas, 2015 *Constituting the American Mind* is about early efforts to establish a national university and what those efforts say about the nature and logic of American Constitutionalism. This book offers the first in-depth study of the efforts to establish a national university from a constitutional perspective. While mostly noted in passing, the national university was put forward by every president from Washington to John Quincy Adams as a necessary supplement to the formal institutions of government; it would help constitute the American mind in a manner that carried forward the ideas the constitution rested on, including for example the separation of the civic from the theological.

The Oxford Handbook of U.S. Judicial Behavior Lee Epstein, Stefanie A. Lindquist, 2017 The Oxford Handbook of U.S. Judicial Behavior offers readers a comprehensive introduction and analysis of research regarding decision making by judges serving on federal and state courts in the U.S. Featuring contributions from leading scholars in the field, the Handbook describes and explains how the courts' political and social context, formal institutional structures, and informal norms affect judicial decision making. The Handbook also explores the impact of judges' personal attributes and preferences as well as prevailing legal doctrine influence and shape case outcomes in state and federal courts. The volume also proposes avenues for future research in the various topics addressed throughout the book.

Consultant Editor for The Oxford Handbooks of American Politics George C. Edwards III

Black and Blue Paul Frymer, 2011-06-27 In the 1930s, fewer than one in one

hundred U S labor union members were African American By 1980 the figure was more than one in five Black and Blue explores the politics and history that led to this dramatic integration of organized labor In the process the book tells a broader story about how the Democratic Party unintentionally sowed the seeds of labor s decline The labor and civil rights movements are the cornerstones of the Democratic Party but for much of the twentieth century these movements worked independently of one another Paul Frymer argues that as Democrats passed separate legislation to promote labor rights and racial equality they split the issues of class and race into two sets of institutions neither of which had enough authority to integrate the labor movement From this division the courts became the leading enforcers of workplace civil rights threatening unions with bankruptcy if they resisted integration The courts previously unappreciated power however was also a problem in diversifying unions judges and lawyers enfeebled them financially thus democratizing through destruction Sharply delineating the double edged sword of state and legal power Black and Blue chronicles an achievement that was as problematic as it was remarkable and that demonstrates the deficiencies of race and class based understandings of labor equality and power in America Public Vs. Private Robert N. Gross,2018 Americans choose from a dizzying array of schools loosely categorized as public and private How did these distinctions emerge and what do they tell us about the relationship in the United States between public authority and private enterprise Challenged by the rise of Catholic and other parochial schools in the nineteenth century states sought to protect the public school monopoly through regulation Ultimately however Robert N Gross shows how the public policies that resulted produced a stable educational marketplace where choice flourished

Delve into the emotional tapestry woven by Emotional Journey with in **Constructing Civil Liberties Discontinuities In The Development Of American Constitutional Law** . This ebook, available for download in a PDF format (PDF Size: *), is more than just words on a page; it is a journey of connection and profound emotion. Immerse yourself in narratives that tug at your heartstrings. Download now to experience the pulse of each page and let your emotions run wild.

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