

The Supreme Court's  
Retreat from  
Reconstruction

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*A Distortion of Constitutional Jurisprudence*

Frank J. Scurro

# Supreme Courts Retreat From Reconstruction

**Mark Tushnet, Mark A. Graber, Sanford  
Levinson**



## **Supreme Courts Retreat From Reconstruction:**

**Reconstructions : New Perspectives on Postbellum America** Institute for Southern Studies and Associate Professor of History University of South Carolina Thomas J. Brown Associate Director, 2006-10-16 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     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 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 The Oxford Handbook of the U.S. Constitution Mark Tushnet, Mark A. Graber, Sanford Levinson, 2015-07-31 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 The historical essays included in this Handbook cover the Constitution from 1620 right through the Reagan Revolution to the present Essays on political science detail how contemporary citizens in the United States rely extensively on political parties interest groups and bureaucrats to operate a constitution designed to prevent the rise of parties interest group politics and an entrenched bureaucracy The essays on law explore how contemporary citizens appear to expect and accept the exertions of power by a Supreme Court whose members are increasingly disconnected from the world of practical politics Essays on rights discuss how contemporary citizens living in a diverse multi racial society seek guidance on the meaning of liberty and equality from a Constitution designed for a society in which all politically relevant persons shared the same race gender religion and ethnicity Lastly the essays on themes explain how in a globalized world people living in the United States can continue to be governed by a constitution originally meant for a society geographically separated from the rest of the civilized world 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 States' Rights and the Union Forrest McDonald, 2000 As McDonald shows that concept needs to be examined if we are to understand its implications for current and future debates BOOK JACKET **The Enduring Vision: From 1865** Paul S. Boyer, 1996 **The Enduring Vision** Paul S. Boyer, 1996-06 *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

**A People and a Nation** Mary Beth Norton, Mary Donlon Alger Professor of American History Mary Beth Norton, David M. Katzman, David W. Blight, Howard P. Chudacoff, 2006-03 Developed to meet the demand for a low cost high quality history book this text is an economically priced version of *A People and a Nation* 7 e c 2005 The Dolphin Edition offers readers the complete text while limiting the number of photos and maps All volumes feature a paperback two color format that appeals to those seeking a comprehensive trade sized history text Like its hardcover counterpart the Dolphin Edition preserves the text's basic approach to American history as the story of all Americans The text is known for its emphasis on social history well respected author team attention to race and racial identity and balanced and engaging narrative Significant revisions to the Seventh Edition of *A People and a Nation* are reflected in the Dolphin Edition

**A New Birth of Freedom** Nathan Newman, 2004 **Ulysses S. Grant** Marie Ellen Kelsey, 2005-09-30 In *Ulysses S Grant A Bibliography* Dr Kelsey has created an invaluable resource for Grant scholars The bibliography consists of twenty chapters covering Grant's early life his careers both as soldier and as president his associations with various individuals his post presidency activities the role alcohol played in his life his battle with throat cancer and ultimately his tragic death What makes this book truly special is that Kelsey cites not only the usual books and journals but also a wide variety of nontraditional materials ranging from manuscripts to musical scores Additionally she has created a list of cited journals with OCLC numbers making precise identification of old and obscure journals easy for researchers Kelsey's sources are varied and multidimensional she includes scholarly popular and ephemeral works to present the fullest possible picture of the legendary

president Kelsey also lists many obscure sources on not only Grant but also his associates including all his cabinet members The work includes citations about Julia Dent Grant other Grant family members Grant s cabinet members John Rawlins William Tecumseh Sherman Ely Parker Abraham Lincoln Libraries of all types could benefit from including this resource in the reference collection The text might get the most use in historical society libraries as well as in the libraries of colleges and universities Public libraries and private individuals interested in Grant and the Civil War would also appreciate the book s comprehensive nature

**Barry Law Review** ,1999 **The Four Faces of Affirmative Action** W. Robert Gray,2001-02-28 Analyzes the four possible grounds for justifying affirmative action by looking at philosophical and judicial writings

*The Fifth Amendment* Alfredo Garcia,2002-10-30 The Fifth Amendment is typically equated in both popular and legal discourse with the privilege against self incrimination This concept Garcia reminds us represents an incomplete view of the amendment Often forgotten are the other two criminal clauses embodied in the text of the amendment the right to a grand jury indictment for a serious crime and the freedom from double jeopardy for the same offense Garcia emphasizes the relationship among these criminal protections Historical developments suggest that these seemingly disparate provisions have common threads to provide constitutional protection for all trial related rights Underlying these constitutional provisions is the need to check the potential abuse of governmental power over the individual Indeed this theme permeated the historical backdrop to the Fifth Amendment Finally Garcia examples the practical ties of these clauses The right to a grand jury indictment the privilege against self incrimination and the protection against double jeopardy represent points in the continuum of the criminal justice process An important resource for scholars and students involved with American constitutional law criminal justice and criminology

Constitutional Structure and Purposes Michael Conant,2001 Legal uncertainty is particularly high in constitutional law where the Supreme Court may overrule earlier decisions as not conforming to the Constitution This critical study of constitutional decision making in the Supreme Court emphasizes the failures of the justices to consider constitutional structure and the original meaning of language in context Conant criticizes the Supreme Court s opinions supporting racial segregation and the perpetuation of a caste system until the final overruling in *Brown v Board of Education* the Court s antitrust exemption of professional baseball and the recent finding that physical desecration of the flag is protected under freedom of speech This study challenges the view of the liberal scholars who argue that the Supreme Court must redefine the Constitution to keep up with the changing times because this view gives approval for judicial usurpation of the amending power It also rejects the view of conservative scholars who contend that the Supreme Court must search for the intent of the framers of the Constitution on the grounds that subjective intent is impossible to research There was no verbatim reporter at the 1787 convention and no such notes were available to the ratifying conventions in the states that rendered the proposed constitution into law in 1789 Following the methodology of Justice Holmes Conant focuses this work on constitutional purposes and the meaning of language within its total social context at

the time of its adoption      **A People & a Nation: Since 1865** Mary Beth Norton,1990      University of Michigan Journal of Law Reform University of Michigan. Law School,2002      *Milestone Documents in African American History* Paul Finkelman,2010 A groundbreaking approach to primary source documents with in depth expert analysis of the court cases presidential and legislative initiatives and speeches that tell the story of African American history      **Symposium** ,2007

*Making a Nation* Jeanne Boydston,2003 Political economy framework Role of the individual Global approach Making a Nation Portfolio Edition Volume Two focuses on the relationships that shape and define human identity culture race gender class and sectional relations The text shows that politics and the economy do not simply shape but in turn are shaped by the lives and cultural values of ordinary men and women Automatically includes U S History Document CD ROM with 300 primary source documents Text format is 2 color smaller trim size and costs 60%less than comprehensive texts

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