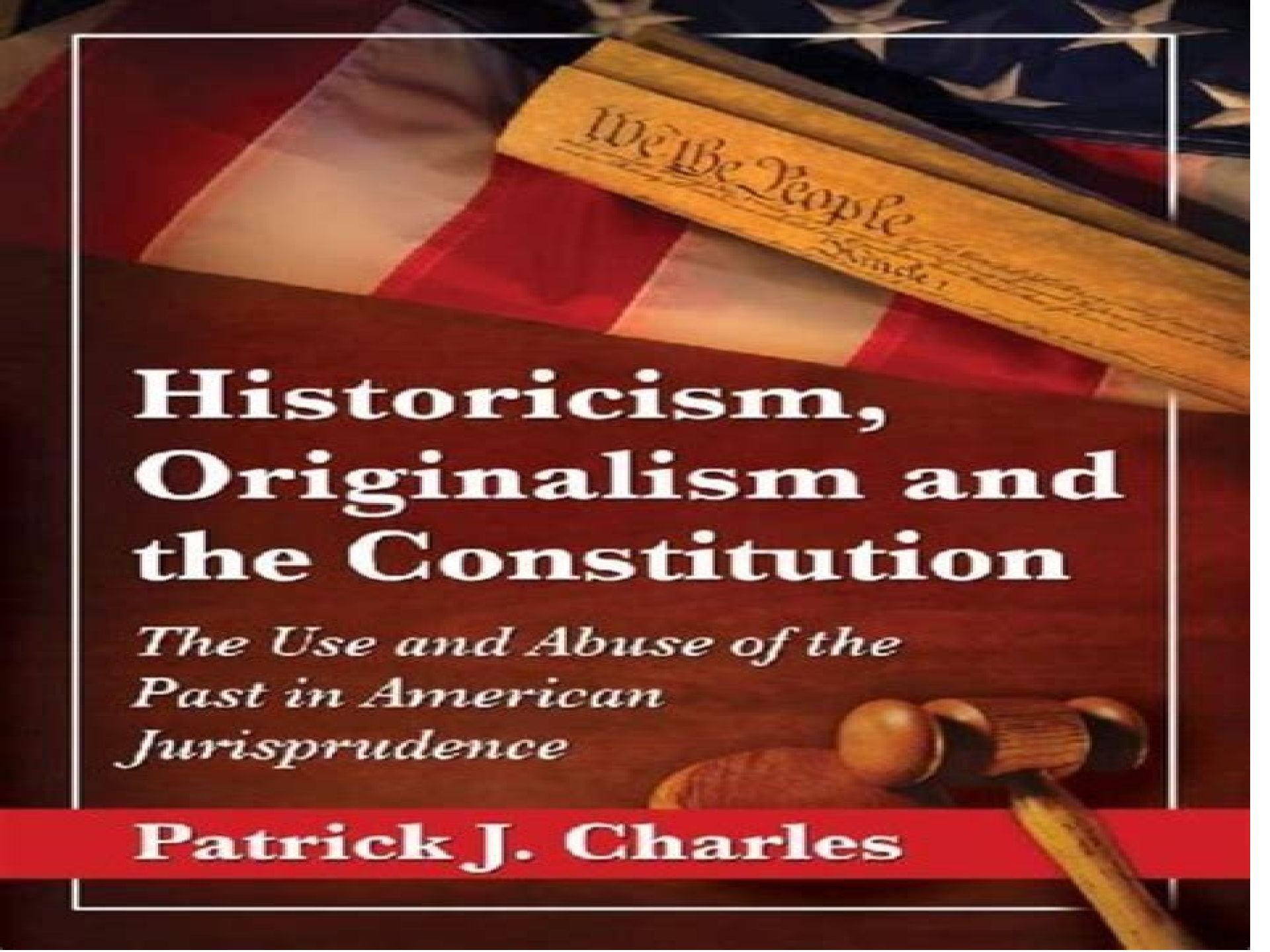




Historicism, Originalism and the Constitution

*The Use and Abuse of the
Past in American
Jurisprudence*

Patrick J. Charles

Historicism Progress And The Redemptive Constitution

**Austin Sarat, Matthew Daniel
Anderson, Cathrine O. Frank**



Historicism Progress And The Redemptive Constitution:

Populist Challenges to Constitutional Interpretation in Europe and Beyond Fruzsina Gárdos-Orosz, Zoltán Szente, 2021-05-03 This book explores the relationship between populism or populist regimes and constitutional interpretation used in those regimes The volume discusses the question of whether contemporary populist governments and movements have developed or encouraged new and specific constitutional theories doctrines and methods of interpretation or whether their constitutional and other high courts continue to use the old traditional interpretative tools in constitutional adjudication The book is divided into four parts Part I contains three chapters elaborating the theoretical basis for the discussion Part II examines the topic from a comparative perspective representing those European countries where populism is most prevalent including Austria Croatia the Czech Republic Greece Hungary Italy Poland Romania Spain and the United Kingdom Part III extends the focus to the United States reflecting how American jurisprudence and academia have produced the most important contributions to the theory of constitutional interpretation and how recent political developments in that country might challenge the traditional understanding of judicial review This section also includes a general overview on Latin America where there are also some populist governments and strong populist movements Finally the editors closing study analyses the outcomes of the comparative research summarizing the conclusions of the book Written by renowned national constitutional scholars the book will be essential reading for students academics and researchers working in Constitutional Law and Politics Chapter 1 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4.0 license Law and the Humanities Austin Sarat, Matthew Daniel Anderson, Cathrine O. Frank, 2010 A review and analysis of existing scholarship on the different national traditions and on the various modes and subjects of law and humanities *The Oxford Handbook of Legal History* Markus D. Dubber, Christopher Tomlins, 2018-08-02 Some of the most exciting and innovative legal scholarship has been driven by historical curiosity Legal history today comes in a fascinating array of shapes and sizes from microhistory to global intellectual history Legal history has expanded beyond traditional parochial boundaries to become increasingly international and comparative in scope and orientation Drawing on scholarship from around the world and representing a variety of methodological approaches areas of expertise and research agendas this timely compendium takes stock of legal history and methodology and reflects on the various modes of the historical analysis of law past present and future Part I explores the relationship between legal history and other disciplinary perspectives including economic philosophical comparative literary and rhetorical analysis of law Part II considers various approaches to legal history including legal history as doctrinal intellectual or social history Part III focuses on the interrelation between legal history and jurisprudence by investigating the role and conception of historical inquiry in various models schools and movements of legal thought Part IV traces the place and pursuit of historical analysis in various legal systems and traditions across time cultures

and space Finally Part V narrows the Handbooks focus to explore several examples of legal history in action including its use in various legal doctrinal contexts

Regime Interaction in International Law Margaret A. Young, 2012-01-12 Leading scholars advance the discussion of international law's fragmentation in new and provocative ways

Law's Infamy Austin Sarat, Lawrence Douglas, Martha M. Umphrey, 2021-12-21 This book takes up the question of whether and how to tell the story of the law's infamy It examines when and why the word infamy should be used to characterize legal decisions or actions taken in the name of the law It does so while acknowledging that law's infamy by no means a familiar locution More commonly the stories we tell of law's failures talk of injustices not infamy Labelling a legal decision infamous suggests a distinctive kind of injustice one which is particularly evil or wicked Doing so means that such a decision cannot be redeemed or reformed it can only be repudiated

The Slave Trade, Abolition and the Long History of International Criminal Law Emily Haslam, 2019-09-20 Modern international criminal law typically traces its origins to the twentieth century Nuremberg and Tokyo trials excluding the slave trade and abolition Yet as this book shows the slave trade and abolition resound in international criminal law in multiple ways Its central focus lies in a close examination of the often controversial litigation in the first part of the nineteenth century arising from British efforts to capture slave ships much of it before Mixed Commissions With archival based research into this litigation it explores the legal construction of so called recaptives slaves found on board captured slave ships The book argues that notwithstanding its promise of freedom the law actually constructed recaptives restrictively In particular it focused on questions of intervention rather than recaptives rights At the same time it shows how a critical reading of the archive reveals that recaptives contributed to litigation in important but hitherto largely unrecognized ways The book is however not simply a contribution to the history of international law Efforts to deliver justice through international criminal law continue to face considerable challenges and raise testing questions about the construction and alternative construction of victims By inscribing the recaptive in international criminal legal history the book offers an original contribution to these contentious issues and a reflection on critical international criminal legal history writing and its accompanying methodological and political choices

Curating Community Stacy Douglas, 2017-07-13 In Curating Community Museums Constitutionalism and the Taming of the Political Stacy Douglas challenges the centrality of sovereignty in our political and juridical imaginations Creatively bringing together constitutional political and aesthetic theory Douglas argues that museums and constitutions invite visitors to identify with a prescribed set of political constituencies based on national ethnic or anthropocentric premises In both cases these stable categories gloss over the radical messiness of the world and ask us to conflate representation with democracy Yet the museum when paired with the constitution can also serve as a resource in the production of alternative imaginations of community Consequently Douglas's key contribution is the articulation of a theory of counter monumental constitutionalism using the museum that seeks to move beyond individual and collective forms of sovereignty that have dominated postcolonial and postapartheid

theories of law and commemoration She insists on the need to reconsider deep questions about how we conceptualize the limits of ourselves as well as our political communities in order to attend to everyday questions of justice in the courtroom the museum and beyond *Curating Community* is a book for academics artists curators and constitutional designers interested in legacies of violence transitional justice and democracy *Living Originalism* Jack M. Balkin, 2014-09-01 Originalism and living constitutionalism often seen as opposing views are not in conflict So argues Jack Balkin a leading constitutional scholar in this long awaited book Step by step Balkin shows how both liberals and conservatives play important roles in constitutional construction and offers a way past the angry polemics of our era **Free Trade and Cultural Diversity in International Law** Jingxia Shi, 2013-04-30 This book attempts to reconcile the concept of free trade with a key non trade social value cultural diversity in an era of economic globalisation It first shows how we can look at culture in many different ways and explains why we should care about cultural diversity The book then examines the challenges that policymakers are faced with in formulating cultural measures in the new media environment and analyses UNESCO s theories and approaches to cultural diversity This is followed by a comprehensive examination of the treatment of culture in global and regional trade agreements including the framework of the GATT WTO system the WTO s judicial practice involving cultural products and the treatment of culture under the EC EU and NAFTA This identifies the challenges trade norms encounter in dealing with cultural products The author seeks to formulate a balanced view of the challenge of protecting and promoting cultural diversity while also recognising the important goal of trade liberalisation To this end Professor Shi proposes a dual method through which the norms found in WTO agreements and in UNESCO cultural instruments may be brought into alignment the first highlighting the compatibility of cultural policy measures with trade obligations on a domestic level the second suggesting potential linkages between the WTO rules and the UNESCO Convention from the perspectives of treaty interpretation *Remembrance of Things Past?* Michael J. Thate, 2013 In this book Michael J Thate offers an experiment in reception criticism in its consideration of the formation and reception of the historical Jesus discourse He also attempts to historicize *Leben Jesu Forschung* within debates and narratives of secularization These two foci guide the book through its two parts First Thate explicates Schweitzer s dominant archival function in *Leben Jesu Forschung* while aiming to make fragile the grand architect s receptive hegemony Then he combines critical memory theory and other theoretical readings of the material in an attempt to refocus the study of the historical Jesus as early Christian memory politics in the service of identity explication He attempts to problematize Schweitzer s legacy of a tidy systematic approach in which much of historical Jesus scholarship continues to operate **Mythic Frontiers** Daniel R. Maher, 2019-03-04 Maher explores the development of the Frontier Complex as he deconstructs the frontier myth in the context of manifest destiny American exceptionalism and white male privilege A very significant contribution to our understanding of how and why heritage sites reinforce privilege Frederick H Smith author of *The Archaeology of Alcohol and Drinking* Peels back the layer of dime

westerns and True Grit films to show how their mythologies are made material You ll never experience a heritage site the same way again Christine Bold author of *The Frontier Club Popular Westerns and Cultural Power 1880 1924* The history of the Wild West has long been fictionalized in novels films and television shows Catering to these popular representations towns across America have created tourist sites connecting such tales with historical monuments Yet these attractions stray from known histories in favor of the embellished past visitors expect to see and serve to craft a cultural memory that reinforces contemporary ideologies In *Mythic Frontiers* Daniel Maher illustrates how aggrandized versions of the past especially those of the American frontier have been used to turn a profit These imagined historical sites have effectively silenced the violent oppressive colonizing forces of manifest destiny and elevated principal architects of it to mythic heights Examining the frontier complex in Fort Smith Arkansas where visitors are greeted at a restored brothel and the reconstructed courtroom and gallows of Hanging Judge Isaac Parker feature prominently Maher warns that creating a popular tourist narrative and disconnecting cultural heritage tourism from history minimizes the devastating consequences of imperialism racism and sexism and relegitimizes the privilege bestowed upon white men *Index to Legal Periodicals & Books* ,2005

America's Constitution Akhil Reed Amar,2006-09-12 In America s Constitution one of this era s most accomplished constitutional law scholars Akhil Reed Amar gives the first comprehensive account of one of the world s great political texts Incisive entertaining and occasionally controversial this biography of America s framing document explains not only what the Constitution says but also why the Constitution says it We all know this much the Constitution is neither immutable nor perfect Amar shows us how the story of this one relatively compact document reflects the story of America more generally For example much of the Constitution including the glorious sounding We the People was lifted from existing American legal texts including early state constitutions In short the Constitution was as much a product of its environment as it was a product of its individual creators inspired genius Despite the Constitution s flaws its role in guiding our republic has been nothing short of amazing Skillfully placing the document in the context of late eighteenth century American politics America s Constitution explains for instance whether there is anything in the Constitution that is unamendable the reason America adopted an electoral college why a president must be at least thirty five years old and why for now at least only those citizens who were born under the American flag can become president From his unique perspective Amar also gives us unconventional wisdom about the Constitution and its significance throughout the nation s history For one thing we see that the Constitution has been far more democratic than is conventionally understood Even though the document was drafted by white landholders a remarkably large number of citizens by the standards of 1787 were allowed to vote up or down on it and the document s later amendments eventually extended the vote to virtually all Americans We also learn that the Founders Constitution was far more slavocratic than many would acknowledge the three fifths clause gave the South extra political clout for every slave it owned or acquired As a result slaveholding Virginians held the presidency all but four of the Republic

s first thirty six years and proslavery forces eventually came to dominate much of the federal government prior to Lincoln s election Ambitious even handed eminently accessible and often surprising America s Constitution is an indispensable work bound to become a standard reference for any student of history and all citizens of the United States *The Routledge Companion to the Christian Church* Gerard Mannion, Lewis S. Mudge, 2007-12-12 The nature and story of the Christian church is immensely important to theology students and scholars alike Written by an international team of distinguished scholars this comprehensive book introduces students to the fundamental historical systematic moral and ecclesiological aspects of the study of the church as well as serving as a resource for scholars engaging in ecclesiological debates on a wide variety of issues It divides into six parts the church in its historical context the different denominational traditions global perspectives methods and debates in ecclesiology key concepts and themes ecclesiology and other disciplines social sciences philosophy literature and film Authoritative accessible and easily navigable this book is indispensable for everyone interested in the nature and history of the Christian Church *Seated in the Heavenly Realms* Young Jae Song, 2022-08-04 This book explains key doctrines in theology from the perspective of biblical eschatology Eschatology first appears in Genesis rather than in Revelation for it is about the chief end of man and God s creation It is placed in the beginning rather than at the end of theology as the central and foundational motif The chief end of man in the Westminster Shorter Catechism for instance is an eschatological concept in nature as well as in redemption Eschatology precedes redemption but the eschatology of nature is fulfilled through the eschatology of redemption in Jesus Christ The Golden Chain of Ordo Salutis and the progress of redemptive history will be interpreted from the perspectives of covenant eschatology and Christology *The Oxford Handbook of Modern British Political History, 1800-2000* David Brown, Robert Crowcroft, Gordon Pentland, 2018-03-29 The two centuries after 1800 witnessed a series of sweeping changes in the way in which Britain was governed the duties of the state and its role in the wider world Powerful processes from the development of democracy the changing nature of the social contract war and economic dislocation have challenged and at times threatened to overwhelm both governors and governed Such shifts have also presented challenges to the historians who have researched and written about Britain s past politics This Handbook shows the ways in which political historians have responded to these challenges providing a snapshot of a field which has long been at the forefront of conceptual and methodological innovation within historical studies It comprises thirty three thematic essays by leading and emerging scholars in the field Collectively these essays assess and rethink the nature of modern British political history itself and suggest avenues and questions for future research The Oxford Handbook of Modern British Political History thus provides a unique resource for those who wish to understand Britain s political past and a thought provoking long view for those interested in current political challenges **Virtue and Irony in American Democracy** Daniel A. Morris, 2015-07-01 What virtues are necessary for democracy to succeed This book turns to John Dewey and Reinhold Niebuhr two of America s most influential theorists of democracy to answer this question Dewey

and Niebuhr both implied although for very different reasons that humility and mutuality are important virtues for the success of people rule Not only do these virtues allow people to participate well in their own governance they also equip us to meet challenges to democracy generated by free market economic policy and practices Ironically though Dewey and Niebuhr quarreled with each other for twenty years and missed the opportunity to achieve political consensus In their discourse with each other they failed to become one out of many a task that is distilled in the democratic rallying cry e pluribus unum This failure itself reflects a deficiency in democratic virtue Thus exploring the Dewey Niebuhr debate with attention to their discursive failures reveals the importance of a third virtue democratic tolerance If democracy is to succeed we must cultivate a deeper hospitality toward difference than Dewey and Niebuhr were able to extend to each other

Inaugural Vinson & Elkins LLP--Howard Law Journal Symposium ,2007 Constitutional Redemption J. M. Balkin,2011-05-09 Political constitutions are compromises with injustice What makes the U S Constitution legitimate is Americans faith that the constitutional system can be made a more perfect union Balkin argues that the American constitutional project is based in hope and a narrative of shared redemption and its destiny is still over the horizon The Politically Incorrect Guide to the Presidents Steven F. Hayward,2012-02-13 Argues that the United States presidents of the past hundred years have actively sought to undermine the Constitution and their constitutional responsibilities and analyzes each presidency based on their adherence to the Constitution

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