

THE CONSTITUTION BESIEGED

THE RISE AND DEMISE OF LOCHNER
ERA POLICE POWERS JURISPRUDENCE



BY HOWARD GILLMAN

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Zachariah Frederick Smith



Constitution Besieged:

The Constitution Besieged Howard Gillman, 1993 *The Constitution Besieged* offers a compelling reinterpretation of one of the most notorious periods in American constitutional history. In the decades following the Civil War, federal and state judges struck down as unconstitutional a great deal of innovative social and economic legislation. Scholars have traditionally viewed this as the work of a conservative judiciary more interested in promoting laissez faire economics than in interpreting the Constitution. Howard Gillman challenges this scholarly orthodoxy by showing how these judges were in fact observing a long standing constitutional prohibition against class legislation. By reviewing unfamiliar state cases and legal commentary and by providing fresh interpretations of familiar Supreme Court cases, Gillman uncovers a fascinating and long forgotten legal tradition. In this richly textured historical narrative, we see how American judges once worked to insure that legislative power be used only to promote the public good and not to benefit certain classes or burden their market competitors. Beyond shedding new light on this jurisprudence, Gillman also links it to larger debates in the political system, debates traced to concerns about factional politics expressed by the country's founders and to the Jacksonian assault on special privileges. This tradition came under siege with the intensification of class conflict at the turn of the century, and Gillman carefully documents its demise. He details how industrialization undermined assumptions about the fairness of capitalist social relations and how this led increasing numbers of people to question the requirement that the state remain neutral in matters of class conflict, thus leaving it to a stalwart judiciary to protect a Constitution besieged. A major contribution to an understanding of this important period in the history of the Supreme Court, Gillman's work stands as a landmark in revisionist accounts of the Lochner era. Gillman's study represents the kind of paradigm shift that will undoubtedly affect a wide range of scholarly activity for some time to come. The broad scope of this work makes it essential reading for those interested in American political thought, the development of the American state, the relationship between law and social change, and contemporary debates about the original intent of the framers of the Constitution and the proper role of the judiciary in American politics. *The Evangelical Origins of the Living Constitution* John W. Compton, 2014-03-17 John Compton shows how evangelicals, not New Deal reformers, paved the way for the most important constitutional developments of the twentieth century. Their early 1800s crusade to destroy property that made immorality possible challenged founding era legal protections of slavery, lotteries, and liquor sales, and opened the door to progressivism. **Democracy Against Domination** K. Sabeel Rahman, 2017 How do we realize democratic values in a complex, deeply unequal modern economy and in the face of unresponsive governmental institutions? Drawing on Progressive Era thought and sparked by the real policy challenges of financial regulation, *Democracy Against Domination* offers a novel theory of democracy to answer these pressing questions. *The Constitution Besieged* Howard Aaron Gillman, 1988 **Public Pensions** Susan M. Sterett, 2018-05-31 In *Public Pensions*, Susan M. Sterett traces the legal and constitutional structures underlying early social

welfare programs in the United States Sterett explains the status of state and local government payments for public servants and the poor from the mid nineteenth century until the Great Depression The most visible public payments for service in the United States were directed to soldiers who risked death for the nation However firemen not soldiers first captured local governments attention social welfare programs for soldiers were modeled on firemen s pensions The dangerous work of firefighting and of combat provided the fundamental legal analogy for courts as governments expanded pensions in the late nineteenth and early twentieth centuries Nothing about the state court doctrine approving payments for dangerous local service would allow pensions for indigent mothers and for the elderly which states began to consider after 1910 Counties and railroads that objected to the new taxes could fight programs based on the old doctrine established for firefighters soldiers and finally civil servants State litigation provided one of the many grounds for contesting expanded welfare states in the early twentieth century United States Sterett demonstrates that state courts maintained a gendered division between the service that marked citizenship and the dependence that marked indigence even during the promising ferment of the early twentieth century *The Constitution Besieged* Howard Gillman,1988 **Public Pensions** Susan Marie Sterett,2003 In Public Pensions Susan M Sterett traces the legal and constitutional structures underlying early social welfare programs in the United States Sterett explains the status of state and local government payments for public servants and the poor from the mid nineteenth century until the Great Depression The most visible public payments for service in the United States were directed to soldiers who risked death for the nation However firemen not soldiers first captured local governments attention social welfare programs for soldiers were modeled on firemen s pensions The dangerous work of firefighting and of combat provided the fundamental legal analogy for courts as governments expanded pensions in the late nineteenth and early twentieth centuries Nothing about the state court doctrine approving payments for dangerous local service would allow pensions for indigent mothers and for the elderly which states began to consider after 1910 Counties and railroads that objected to the new taxes could fight programs based on the old doctrine established for firefighters soldiers and finally civil servants State litigation provided one of the many grounds for contesting expanded welfare states in the early twentieth century United States Sterett demonstrates that state courts maintained a gendered division between the service that marked citizenship and the dependence that marked indigence even during the promising ferment of the early twentieth century **The Supreme Court and Constitutional Theory, 1953-1993** Ronald Kahn,1994 Combining theoretical sophistication with a fundamental comprehension of the political institutions of the USA this study aims to demystify the workings of the United States Supreme Court and its place in democracy *Constitutional Interpretation* Keith E. Whittington,1999 With its detailed and wide ranging explorations in history philosophy and law this book is essential reading for anyone interested in how the Constitution ought to be interpreted and what it means to live under a constitutional government BOOK JACKET **Regulatory Rights** Larry Yackle,2008-09-15 We often hear with particular frequency during

recent Supreme Court nomination hearings that justices should not create constitutional rights but should instead enforce the rights that the Constitution enshrines In *Regulatory Rights* Larry Yackle sets out to convince readers that such arguments fundamentally misconceive both the work that justices do and the character of the American Constitution in whose name they do it It matters who sits on the Supreme Court he argues precisely because justices do create individual constitutional rights Traversing a wide range of Supreme Court decisions that established crucial precedents about racial discrimination the death penalty and sexual freedom Yackle contends that the rights we enjoy are neither more nor less than what the justices choose to make of them *Regulatory Rights* is a bracing read that will be heatedly debated by all those interested in constitutional law and the judiciary

A More Perfect Constitution Larry Sabato, 2007-10-02 Calls for revisions to the Constitution to restore equity for ordinary citizens and offers proposals to reinvigorate the document to incorporate changes to the structure of Congress the Electoral College the Supreme Court and a mandatory national service

A History of the Mental Growth of Mankind in Ancient Times John Shertzer Hittell, 1893

Lochner V. New York Paul Kens, 1998 On the case of Joseph Lochner a baker in Utica N Y charged in 1901 with violating the New York Bakeshop Act of 1895 by requiring an employee to work more than 60 hours in one week

The Supreme Court in American Politics Howard Gillman, Cornell W. Clayton, 1999 For decades political scientists studying the Court have adopted behavioral approaches and focused on the relatively narrow question of how the justices policy preferences influence their voting behavior This emphasis has illuminated important aspects of Supreme Court politics but it has also left unaddressed many other important questions about this unique and fascinating institution Drawing on the new institutionalism in the social sciences the distinguished contributors to this volume attempt to fill this gap by exploring a variety of topics including the Court s institutional development and its relationship to broader political contexts such as party regimes electoral systems social movements social change legal precedents political identities and historically evolving economic structures The book s initial chapters examine the nature of the Court s distinctive norms as well as the development of its institutional powers and practice A second section relates the development of Supreme Court politics to the historical development of other political institutions and social movements Concluding chapters explore how its decision making in particular areas of law or periods of time is influenced by and influences its socio political milieu These contributions offer provocative insights regarding the Court s role in maintaining or disrupting political and economic structures as well as social structures and identities tied to ideology class race gender and sexual orientation *The Supreme Court in American Politics* shows how we can develop an enriched understanding of this institution and open up exciting new areas of research by placing it in the broader context of politics in the United States

Freedom and the Court Henry Julian Abraham, Barbara Ann Perry, 2003 Previous edition 6th published in 1994

God and Man in the Law Robert Lowry Clinton, 1997 In a wide ranging study based on legal history political theory and philosophical ideas going all the way back to Plato and Roman law Robert Clinton challenges current faith in an

activist judiciary Claiming that a human centered Constitution leads to government by reductive moral theory and illegitimate judicial review he advocates a return to traditional jurisprudence and a God centered Constitution grounded in English common law and its precedents **The History of Kentucky** Zachariah Frederick Smith,1895

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