A Constitution Of Many Minds Why The Founding Document Doesnt Mean What It Meant Before By Sunstein Cass R 2009 Hardcover

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Many Thoughts of Many Minds Mohr Siebeck

Uniquely blending anthropological and exchange theory, Professor Garvey offers a new interpretation of American constitutional development. His thesis: judicial reliance on a limited stock of received forms has inhibited the development of new concepts that could adequately reflect fundamental changes in society. Professor Garvey reviews the history of the Supreme Court in light of the "bricolage" theory. The Court, by interpreting the Constitution to effect laissez-faire and Social Darwinism, helped bring about a society ostensibly patterned on the buyer-seller model, marked by free exchange and "liberty of contract." New departures by the Court in the areas of free speech and criminal justice, according to the author, evidence a recognition of present inequities and a determination to change them; but to the extent the Court remains loyal to a buyer-seller model, it practices an unrealistic jurisprudence. Originally published in 1971. The Princeton Legacy Library uses the latest print-on-demand technology to again make available previously out-of-print books from the distinguished backlist of Princeton University Press. These editions preserve the original texts of these important books while presenting them in durable paperback and hardcover editions. The goal of the Princeton Legacy Library is to vastly increase access to the rich scholarly heritage found in the thousands of books published by Princeton University Press since its founding in 1905.

Legal Reasoning and Political Conflict A Constitution of Many MindsThe future of the U.S. Supreme Court hangs in the balance like never before. Will conservatives or liberals succeed in remaking the court in their own image? In A Constitution of Many Minds, acclaimed law scholar Cass Sunstein proposes a bold new way of interpreting the Constitution, one that respects the Constitution's text and history but also refuses to view the document as frozen in time. Exploring hot-button issues ranging from presidential power to same-sex relations to gun rights, Sunstein shows how the meaning of the Constitution is reestablished in every generation as new social commitments and ideas compel us to reassess our fundamental beliefs. He focuses on three approaches to the Constitution--traditionalism, which grounds the document's meaning in long-standing social practices, not necessarily in the views of the founding generation; populism, which insists that judges should respect contemporary public opinion; and cosmopolitanism, which looks at how foreign courts address constitutional questions, and which suggests that the meaning of the Constitution turns on what other nations do. Sunstein demonstrates that in all three contexts a "many minds" argument is at work--put simply, better decisions result when many points of view are considered. He makes sense of the intense debates surrounding these approaches, revealing their strengths and weaknesses, and sketches the contexts in which each provides a legitimate basis for interpreting the Constitution today. This book illuminates the underpinnings of constitutionalism itself, and shows that ours is indeed a Constitution, not of any particular generation, but of many minds.A Constitution of Many Minds

Language is our key to imagining the world, others, and ourselves. Yet sometimes our ways of talking dehumanize others and trivialize human experience. In war other people are imagined as enemies to be killed. The language of race objectifies those it touches, and propaganda disables democracy. Advertising reduces us to consumers, and clichés destroy the life of the imagination. How are we to assert our humanity and that of others against the forces in the culture and in our own minds that would deny it? What kind of speech should the First Amendment protect? How should judges and justices themselves speak? These questions animate James Boyd White's Living Speech, a profound examination of the ethics of human expression--in the law and in the rest of life. Drawing on examples from an unusual range of sources--judicial opinions, children's essays, literature, politics, and the speech-out-of-silence of Quaker worship--White offers a fascinating analysis of the force of our languages. Reminding us that every moment of speech is an occasion for gaining control of what we say and who we are, he shows us that we must practice the art of resisting the forces of inhumanity built into our habits of speech and thought if we are to become more capable of love and justice--in both law and life.

Constitutional Bricolage Princeton University Press

In his 1996 State of the Union Address, President Bill Clinton announced that the "age of big government is over." Some Republicans accused him of cynically appropriating their themes, while many Democrats thought he was betraying the principles of the New Deal and the Great Society. Mark Tushnet argues that Clinton was stating an observed fact: the emergence of a new constitutional order in which the aspiration to achieve justice directly through law has been substantially chastened. Tushnet argues that the constitutional arrangements that prevailed in the United States from the 1930s to the 1990s have ended. We are now in a new constitutional order--one characterized by divided government, ideologically organized parties, and subdued constitutional ambition. Contrary to arguments that describe a threatened return to a pre-New Deal constitutional order, however, this book presents evidence that our current regime's animating principle is not the old belief that government cannot solve any problems but rather that government cannot solve any more problems. Tushnet examines the institutional arrangements that support the new constitutional order as well as Supreme Court decisions that reflect it. He also considers recent developments in constitutional scholarship, focusing on the idea of minimalism as appropriate to a regime with chastened ambitions. Tushnet discusses what we know so far about the impact of globalization on domestic constitutional law, particularly in the areas of international human rights and federalism. He concludes with predictions about the type of regulation we can expect from the new order. This is a major new analysis of the constitutional arrangements in the United States. Though it will not be received without controversy, it offers real explanatory and predictive power and provides important insights to both legal theorists and political scientists.

On Constitutional Ground Encounter Books

From Amherst College, Hadley Arkes seeks to restore, for a new generation, the jurisprudence of the late Justice of the Supreme Court George Sutherlandone anchored in the understanding of natural rights. Arkes argues that if both liberals

and conservatives would study the writings of George Sutherland, with unclouded eyes, both groups would set aside their differences and return to the moral ground of their jurisprudence.

The Next Justice Springer

In a fascinating blend of biography and history, Joseph Tartakovsky tells the epic and unexpected story of our Constitution through the eyes of ten extraordinary individuals—some renowned, like Alexander Hamilton and Woodrow Wilson, and some forgotten, like James Wilson and Ida B. Wells-Barnett. Tartakovsky brings to life their struggles over our supreme law from its origins in revolutionary America to the era of Obama and Trump. Sweeping from settings as diverse as Gold Rush California to the halls of Congress, and crowded with a vivid Dickensian cast, Tartakovsky shows how America ' s unique constitutional culture grapples with questions like democracy, racial and sexual equality, free speech, economic liberty, and the role of government. Joining the ranks of other great American storytellers, Tartakovsky chronicles how Daniel Webster sought to avert the Civil War; how Alexis de Tocqueville misunderstood America; how Robert Jackson balanced liberty and order in the battle against Nazism and Communism; and how Antonin Scalia died warning Americans about the ever-growing reach of the Supreme Court. From the 1787 Philadelphia Convention to the clash over gay marriage, this is a grand tour through two centuries of constitutional history as never told before, and an education in the principles that sustain America in the most astonishing experiment in government ever undertaken.

Constitutional Politics American Bar Association

The Constitution may guarantee it. But religious freedom in America is, in fact, impossible. So argues this timely and iconoclastic work by law and religion scholar Winnifred Sullivan. Sullivan uses as the backdrop for the book the trial of Warner vs. Boca Raton, a recent case concerning the laws that protect the free exercise of religion in America. The trial, for which the author served as an expert witness, concerned regulations banning certain memorials from a multiconfessional nondenominational cemetery in Boca Raton, Florida. The book portrays the unsuccessful struggle of Catholic, Protestant, and Jewish families in Boca Raton to preserve the practice of placing such religious artifacts as crosses and stars of David on the graves of the city-owned burial ground. Sullivan demonstrates how, during the course of the proceeding, citizens from all walks of life and religious backgrounds were harassed to define just what their religion is. She argues that their plight points up a shocking truth: religion cannot be coherently defined for the purposes of American law, because everyone has different definitions of what religion is. Indeed, while religious freedom as a political idea was arguably once a force for tolerance, it has now become a force for intolerance, she maintains. A clear-eyed look at the laws created to protect religious freedom, this vigorously argued book offers a new take on a right deemed by many to be necessary for a free democratic society. It will have broad appeal not only for religion scholars, but also for anyone interested in law and the Constitution. Featuring a new preface by the author, The Impossibility of Religious Freedom offers a new take on a right deemed by many to be necessary for a free democratic society.

The Schoolhouse Gate Oxford University Press

The bestseller that challenges conventional thinking about morality, politics, and religion in a way that speaks to conservatives and liberals alike—a " landmark contribution to humanity ' s understanding of itself " (The New York Times Book Review). Drawing on his twenty-five years of groundbreaking research on moral psychology, social psychologist Jonathan Haidt shows how moral judgments arise not from reason but from gut feelings. He shows why liberals, conservatives, and libertarians have such different intuitions about right and wrong, and he shows why each side is actually right about many of its central concerns. In this subtle yet accessible book, Haidt gives you the key to understanding the miracle of human cooperation, as well as the curse of our eternal divisions and conflicts. If you ' re ready to trade in anger for understanding, read The Righteous Mind.

Many Thoughts of Many Minds Princeton University Press

The future of the U.S. Supreme Court hangs in the balance like never before. Will conservatives or liberals succeed in remaking the court in their own image? In A Constitution of Many Minds, acclaimed law scholar Cass Sunstein proposes a bold new way of interpreting the Constitution, one that respects the Constitution's text and history but also refuses to view the document as frozen in time. Exploring hot-button issues ranging from presidential power to same-sex relations to gun rights, Sunstein shows how the meaning of the Constitution is reestablished in every generation as new social commitments and ideas compel us to reassess our fundamental beliefs. He focuses on three approaches to the Constitution--traditionalism, which grounds the document's meaning in long-standing social practices, not necessarily in the views of the founding generation; populism, which insists that judges should respect contemporary public opinion; and cosmopolitanism, which looks at how foreign courts address constitutional questions, and which suggests that the meaning of the Constitution turns on what other nations do. Sunstein demonstrates that in all three contexts a "many minds" argument is at work--put simply, better decisions result when many points of view are considered. He makes sense of the intense debates surrounding these approaches, revealing their strengths and weaknesses, and sketches the contexts in which each provides a legitimate basis for interpreting the Constitution today. This book illuminates the underpinnings of constitutionalism itself, and shows that ours is indeed a Constitution, not of any particular generation, but of many minds.

Religion and the Constitution Princeton University Press

The Politics of Precedent on the U.S. Supreme Court offers an insightful and provocative analysis of the Supreme Court's most important task--shaping the law. Thomas Hansford and James Spriggs analyze a key aspect of legal change: the Court's interpretation or treatment of the precedents it has set in the past. Court decisions do not just resolve immediate disputes; they also set broader precedent. The meaning and scope of a precedent, however, can change significantly as the Court revisits it in future cases. The authors contend that these interpretations are driven by an interaction between policy goals and variations in the legal authoritativeness of precedent. From this premise, they build an explanation of the legal interpretation of precedent that yields novel predictions about the nature and timing of legal change. Hansford and Spriggs test their hypotheses by examining how the Court has interpreted the precedents it set between 1946 and 1999. This analysis provides compelling support for their argument, and demonstrates that the justices' ideological goals and the role of precedent are inextricably linked. The two prevailing, yet contradictory, views of precedent--that it acts either solely as a constraint, or as a "cloak" that never actually influences the Court--are incorrect. This book shows that while precedent can operate as a constraint on the justices' decisions, it also represents an opportunity to foster preferred societal outcomes.

The Intelligent Mind Oxford University Press

Constitutional pluralism has become immensely popular among scholars who study European integration and issues of global governance. Some of them believe that constitutionalism, traditionally thought to be bound to a nation state, can emerge beyond state borders - most importantly in the process of European integration, but also beyond that, for example, in international regulatory regimes such as the WTO, or international systems of fundamental rights protection, such as the European Convention. At the same time, the idea of constitutional pluralism has not gone unchallenged. Some have questioned its compatibility with the very nature of law and the values which law brings to constitutionalism. The critiques have come from both sides: from those who believe in the 'traditional' European constitutionalism based on a hierarchically superior authority of the European Union as well as from scholars focusing on constitutions of particular states. The book collects contributions taking opposing perspectives on constitutional pluralism - some defending and promoting the concept of constitutional pluralism, some criticising and opposing it. While some authors can be called 'the founding fathers of constitutional pluralism', others are young academics who have recently entered the field. Together they offer fresh perspectives on both

theoretical and practical aspects of constitutional pluralism, enriching our existing understanding of the concept in current scholarship.

Many Minds, One Heart Oxford University Press

"The United States is the only nation in the world in which political leaders, judges and soldiers all swear allegiance not to a king or a people but to a document, the Constitution. The Constitution today, however, is much revered but little read. . Readers of AMERICAN EPIC will never think of the Constitution in quite the same way again. Garrett Epps, a legal scholar who is also a journalist and writer of prize-winning fiction, takes readers on a literary tour of the Constitution, finding in it much that is interesting, puzzling, praiseworthy, and sometimes hilarious. Reading the Constitution like a literary work yields a host of meanings that shed new light on what it means to be an American"--

Choosing Not to Choose Princeton University Press

In Legal Reasoning and Political Conflict, Cass R. Sunstein, one of America's best known commentators on our legal system, offers a bold, new thesis about how the law should work in America, arguing that the courts best enable people to live together, despite their diversity, by resolving particular cases without taking sides in broader, more abstract conflicts. Professor Sunstein closely analyzes the way the law can mediate disputes in a diverse society, examining how the law works in practical terms, and showing that, to arrive at workable, practical solutions, judges must avoid broad, abstract reasoning. He states that judges purposely limit the scope of their decisions to avoid reopening large-scale controversies, calling such actions incompletely theorized agreements. In identifying them as the core feature of legal reasoning, he takes issue with advocates of comprehensive theories and systemization, from Robert Bork to Jeremy Bentham, and Ronald Dworkin. Equally important, Sunstein goes on to argue that it is the living practice of the nation's citizens that truly makes law. Legal reasoning can seem impenetrable, mysterious, baroque. Legal Reasoning and Political Conflict helps dissolve the mystery. Whether discussing abortion, homosexuality, or free speech, the meaning of the Constitution, or the spell cast by the Warren Court, Cass Sunstein writes with grace and power, offering a striking and original vision of the role of the law in a diverse society. In his flexible, practical approach to legal reasoning, he moves the debate over fundamental values and principles out of the courts and back to its rightful place in a democratic state: to the legislatures elected by the people. In this Second Edition, the author updates the previous edition bringing the book into the current mainstream of twenty-first century legal reasoning and judicial decision-making focusing on the many relevant contemporary issues and developments that occurred since its initial 1996 publication.

The Politics of Precedent on the U.S. Supreme Court The New Press

Cass R. Sunstein is at the forefront of developing public policy to encourage people to make better decisions. In Choosing Not to Choose he presents his most complete argument for how we should understand the value of choice, and when and how we should enable people to choose not to choose.

American Epic PublicAffairs

We are all familiar with the image of the immensely clever judge who discerns the best rule of common law for the case at hand. According to U.S. Supreme Court Justice Antonin Scalia, a judge like this can maneuver through earlier cases to achieve the desired aim—"distinguishing one prior case on his left, straight-arming another one on his right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal—good law." But is this common-law mindset, which is appropriate in its place, suitable also in statutory and constitutional interpretation? In a witty and trenchant essay, Justice Scalia answers this question with a resounding negative. In exploring the neglected art of statutory interpretation, Scalia urges that judges resist the temptation to use legislative intention and legislative history. In his view, it is incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the lawgivers meant rather than by what the legislature actually promulgated. Eschewing the judicial lawmaking that is the essence of common law, judges should interpret statutes and regulations by focusing on the text itself. Scalia then extends this principle to constitutional law. He proposes that we abandon the notion of an everchanging Constitution and pay attention to the Constitution's original meaning. Although not subscribing to the “ strict constructionism ” that would prevent applying the Constitution to modern circumstances, Scalia emphatically rejects the idea that judges can properly “ smuggle ” in new rights or deny old rights by using the Due Process Clause, for instance. In fact, such judicial discretion might lead to the destruction of the Bill of Rights if a majority of the judges ever wished to reach that most undesirable of goals. This essay is followed by four commentaries by Professors Gordon Wood, Laurence Tribe, Mary Ann Glendon, and Ronald Dworkin, who engage Justice Scalia ’ s ideas about judicial interpretation from varying standpoints. In the spirit of debate, Justice Scalia responds to these critics. Featuring a new foreword that discusses Scalia ’ s impact, jurisprudence, and legacy, this witty and trenchant exchange illuminates the brilliance of one of the most influential legal minds of our time.

Republic.com Vintage

What sort of methods are best suited to understanding constitutional doctrines and practices? Should we look to lawyers and legal methods alone, or should we draw upon other disciplines such as history, sociology, political theory, and moral philosophy? Should we study constitutions in isolation or in a comparative context? To what extent must constitutional methods be sensitive to empirical data about the functioning of legal practice? Can ideal theory aid our understanding of real constitutions? This volume brings together constitutional experts from around the world to address these types of questions through topical events and challenges such as Brexit, administrative law reforms, and the increasing polarisations in law, politics, and constitutional scholarship. Importantly, it investigates the ways in which we can ensure that constitutional scholars do not talk past each other despite their persistent - and often fierce - disagreements. In so doing, it aims systematically to re-examine the methodology of constitutional theory.

A Constitution of Many Minds Princeton University Press

What does it mean to have a constitution? Scholars and students associated with Walter Murphy at Princeton University have long asked this question in their exploration of constitutional politics and judicial behavior. These scholars, concerned with the making, maintenance, and deliberate change of the Constitution, have made unique and significant contributions to our understanding of American constitutional law by going against the norm of court-centered and litigation-minded research. Beginning in the late 1970s, this new wave of academics explored questions ranging from the nature of creating the U.S. Constitution to the philosophy behind amending it. In this collection, Sotirios A. Barber and Robert P. George bring together fourteen essays by members of this Princeton group--some of the most distinguished scholars in the field. These works consider the meaning of having a constitution, the implications of particular choices in the design of constitutions, and the meaning of judicial supremacy in the interpretation of the Constitution. The overarching ambition of this collection is to awaken a constitutionalist consciousness in its readers--to view themselves as potential makers and changers of constitutions, as opposed to mere subjects of existing arrangements. In addition to the editors, the contributors are Walter F. Murphy, John E. Finn, Christopher L. Eisgruber, James E. Fleming, Jeffrey K. Tulis, Suzette Hemberger, Stephen Macedo, Sanford Levinson, H. N. Hirsch, Wayne D. Moore, Keith E. Whittington, and Mark E. Brandon.

The Judge in a Democracy Princeton University Press

Author Jessica Korn challenges the notion that the 18th-century principles underlying the American separation of powers system are incompatible with the demands of 20th-century governance by questioning the dominant scholarship on the legislative veto. Korn's analysis shows that commentators have exaggerated the legislative veto's significance as a result of their incorrect assumption that the separation of powers was designed solely to check governmental authority.

The Constitution in Jeopardy Princeton University Press

The future of the U.S. Supreme Court hangs in the balance like never before. Will conservatives or liberals succeed in remaking the court in their own image? In A Constitution of Many Minds, acclaimed law scholar Cass Sunstein proposes a bold new way of interpreting the Constitution, one that respects the Constitution's text and history but also refuses to view the document as frozen in time. Exploring hot-button issues ranging from presidential power to same-sex relations to gun rights, Sunstein shows how the meaning of the Constitution is reestablished in every generation as new social commitments and ideas compel us to reassess our fundamental beliefs. He focuses on three approaches to the Constitution--traditionalism, which grounds the document's meaning in long-standing social practices, not necessarily in the

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UNC Press Books

Inter- and supranational courts derive their legitimacy partly from an institutional comparison: judges' legal expertise and the quality of judicial procedures justify a court's claim to authority towards other branches of government and other courts with overlapping jurisdiction. To provide a benchmark for assessing judicial outcomes that is compatible with democratic commitments, Johann Laux suggests a new normative category, Public Epistemic Authority (PEA). It builds on the mechanisms behind theories of collective intelligence and empirical research on judicial decision-making. PEA tracks judges' collective ability to reliably identify breaches of law. It focuses on cognitive tasks in adjudication. The author applies PEA to the Court of Justice of the European Union and offers suggestions for improving its institutional design.

The Constitution of Knowledge Princeton University Press

American constitutionalism rests on premises of popular sovereignty, but serious questions remain about how the "people" and their rights and powers fit into the constitutional design. In a book that will radically reorient thinking about the Constitution and its place in the polity, Wayne Moore moves away from an exclusive focus on courts and judges and considers the following queries: Who is included among the people? How are the people politically configured? How may the people act? And how do the people relate to government and other representative structures? Going beyond though not excluding relevant discussions of specific constitutional texts (such as the preamble, articles V and VII, and the ninth, tenth, and fourteenth amendments), Moore examines historical material from the antebellum period, such as the opinions of U.S. Supreme Court justices in the notorious Dred Scott case and significantly different perspectives from the writings and speeches of Frederick Douglass. He also looks at influential thinking from the founding period and examines precedents set during prominent controversies involving the establishment of a national bank, regulations of the economy, and efforts to limit sexual and reproductive choices. The penultimate chapter explores issues raised by claims of state interpretive autonomy, and the conclusion models various dimensions of the constitutional order as a whole. The book offers fresh insights into central problems of constitutional history, theory, and law. Originally published in 1996. The Princeton Legacy Library uses the latest print-on-demand technology to again make available previously out-of-print books from the distinguished backlist of Princeton University Press. These editions preserve the original texts of these important books while presenting them in durable paperback and hardcover editions. The goal of the Princeton Legacy Library is to vastly increase access to the rich scholarly heritage found in the thousands of books published by Princeton University Press since its founding in 1905.