

# OUR UNSETTLED CONSTITUTION

A New Defense of  
Constitutionalism  
and Judicial Review

LOUIS MICHAEL SEIDMAN

# Our Unsettled Constitution

**Sanford Levinson, Bartholomew  
Sparrow**



## **Our Unsettled Constitution:**

**Our Unsettled Constitution**, 2001      Our Unsettled Constitution Louis Michael Seidman, 2001 Ours is an age of growing doubt about constitutional theory and of outright hostility to any theory that defends judicial review Why should a tiny number of unelected judges be able to validate or invalidate laws on such politically controversial issues as abortion religion gender and sex or even determine how the president is elected In this provocative book a leading constitutional theorist offers an entirely original defense of judicial review Louis Michael Seidman argues that judicial review is defensible if we set aside common but erroneous assumptions that constitutional law should be independent from our political commitments and that the role of constitutional law is to settle political disagreement Seidman develops a theory of unsettlement A constitution that unsettles that destabilizes outcomes produced by the political process creates no permanent losers nursing deep seated grievances he says An unsettling constitution helps to build a community founded on consent by enticing losers into a continuing conversation The author applies this theory to an array of well known cases heard by the Supreme Court over the past several decades including the fall 2000 election decision      The Democratic Constitution, 2nd Edition Neal Devins, Louis Fisher, 2015-10-01 Constitutional law is clearly shaped by judicial actors But who else contributes Scholars in the past have recognized that the legislative branch plays a significant role in determining structural issues such as separation of powers and federalism but stopped there claiming that only courts had the independence and expertise to safeguard individual and minority rights In this readable and engaging narrative the authors identify the nuts and bolts of the national dialogue and relate succinct examples of how elected officials and the general public often dominate the Supreme Court in defining the Constitution s meaning Making use of case studies on race privacy federalism war powers speech and religion Devins and Fisher demonstrate how elected officials uphold individual rights in such areas as religious liberty and free speech as well as and often better than the courts This fascinating debunking of judicial supremacy argues that nonjudicial contributions to constitutional interpretation make the Constitution more stable more consistent with constitutional principles and more protective of individual and minority rights      The Democratic Constitution Neal Devins, Louis Fisher, 2015 Constitutional law is clearly shaped by judicial actors But who else contributes Scholars in the past have recognized that the legislative branch plays a significant role in determining structural issues such as separation of powers and federalism but stopped there claiming that only courts had the independence and expertise to safeguard individual and minority rights In this readable and engaging narrative the authors identify the nuts and bolts of the national dialogue and relate succinct examples of how elected officials and the general public often dominate the Supreme Court in defining the Constitution s meaning Making use of case studies on race privacy federalism war powers speech and religion Devins and Fisher demonstrate how elected officials uphold individual rights in such areas as religious liberty and free speech as well as and often better than the courts This fascinating debunking of judicial supremacy argues that nonjudicial

contributions to constitutional interpretation make the Constitution more stable more consistent with constitutional principles and more protective of individual and minority rights      **The ^AInvisible Constitution** Laurence H.

Tribe,2008-09-17 In *The Invisible Constitution* Tribe argues that there is an unseen constitution impalpable but powerful that accompanies the parchment version Through a variety of historical episodes and key constitutional cases Tribe brings to life this invisible constitution showing how it has evolved and how it works Detailing its invisible structures and principles Tribe compellingly demonstrates the invisible constitution s existence and operative power      *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 Louisiana Purchase and American Expansion, 1803-1898* Sanford Levinson,Bartholomew

Sparrow,2023-06-14 The 1803 purchase of the Louisiana Territory was a watershed event for the fledgling United States Adding some 829 000 square miles of territory the Louisiana Purchase set a striking precedent of Presidential power and brought to the surface profound legal and constitutional questions As the nation continued to expand westward and into the Pacific and Caribbean critical social political and constitutional questions arose that greatly tested American resolve and reshaped the nation s founding premises In this exciting collection Sanford Levinson and Bartholomew Sparrow bring together noted scholars in American history constitutional law and political science to examine role that the Louisiana Purchase played in shaping both the expansionist policies of the nineteenth century and critical interpretations of the Constitution *The Louisiana Purchase and American Expansion 1803 1898* provides a fascinating overview of how the U S Constitution and the American political system is inextricably tied to      **On Constitutional Disobedience** Louis Michael Seidman,2013-01-02 What would the Framers of the Constitution make of multinational corporations Nuclear weapons Gay marriage They led a preindustrial country much of it dependent on slave labor huddled on the Atlantic seaboard The

Founders saw society as essentially hierarchical led naturally by landed gentry like themselves Yet we still obey their commands two centuries and one civil war later According to Louis Michael Seidman it s time to stop In On Constitutional Disobedience Seidman argues that in order to bring our basic law up to date it needs benign neglect This is a highly controversial assertion The doctrine of original intent may be found on the far right but the entire political spectrum left and right shares a deep reverence for the Constitution And yet Seidman reminds us disobedience is the original intent of the Constitution The Philadelphia convention had gathered to amend the Articles of Confederation not toss them out and start afresh The living Constitution school tries to bridge the gap between the framers and ourselves by reinterpreting the text in light of modern society s demands But this attempt is doomed Seidman argues One might stretch due process of law to protect an act of same sex sodomy yet a loyal but contemporary reading cannot erase the fact that the Constitution allows a candidate who lost the popular election to be seated as president And that is only one of the gross violations of popular will enshrined in the document Seidman systematically addresses and refutes the arguments in favor of Constitutional fealty proposing instead that it be treated as inspiration not a set of commands The Constitution is at its best a piece of poetry to liberty and self government If we treat it as such the author argues we will make better progress in achieving both

The Journal of Electrical Workers and Operators ,1915      *The Electrical Worker* ,1913      **Report of the ... Convention** Western Arts Association (U.S.),1917      **Constitutional Commentary** ,2002      **Constitutional Theory** Michael J. Gerhardt,Stephen M. Griffin,Thomas D. Rowe,2007      The constitutional history of England, from the accession of Henry vii. to the death of George ii. (with the essay of lord Macaulay on Hallam's Constitutional history of England). 2 vols. [in 1]. Henry Hallam,1878      Commentaries on the Constitution of the United States Joseph Story,1891      *University of Pennsylvania Law Review and American Law Register* ,1876      **Industrial Arts Magazine** ,1917      *Debates of the Convention to Amend the Constitution of Pennsylvania* Pennsylvania. Constitutional Convention,1873      **A Treatise on the Constitution of Georgia** Walter McElreath,1912      **Symposium** ,2002

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