

Chapter 1 : the age of strict construction | Download eBook PDF/EPUB

The Age Of Strict Construction explores the growth of the federal government's power and influence between and , and the varying reactions of Americans to that growth. The book focuses on the dispute over the spending power of Congress, the.

Additional Information In lieu of an abstract, here is a brief excerpt of the content: Conclusion For seventy-two years the American experiment in constitutional government enjoyed enormous success. A handful of communities along the seaboard burgeoned into an industrial and agricultural colossus, well on its way to first place among nations. The Constitution and the government it established played a critical role in this process by ensuring the sanctity of contracts , clearing the stage of restrictions on trade, and encouraging innovation and entrepreneurship with patents, copyrights, trade routes, and the protection of capital. Americans moved beyond their original agreement in purchasing foreign territory and then found that they could not agree how to govern it. Fractures appeared when one side in this dispute refused to accept the prospect of losing the contest. The Supreme Court played a critical role in turning a disagreement over governance into cause for dissolving the Union. Knopf, , Johnson, History of the American People, " Debate over the causes of the Civil War has lasted, at the time of this writing, almost a century and a half. Even at the beginning of the twentyfirst century, Americans subscribed to competing explanations for secession; a dwindling group continues to cite the growth of federal power as the cause, while others point to friction over slavery. The age of the dispute has done little to aid the claims of the former, which were dismissed almost as soon as they were offered. The future of slavery was the primary cause of the trepidation that led southerners to leave the Union. The secession resolutions of the states, comments of southern newspapers, and transcripts of congressional debates are replete with the conviction that a Republican-controlled national government would threaten the institution in the South itself. Despite its longevity, this disagreement rests upon a fallacy. Secession was a product of both centralization and friction over slavery. The two worked together in bringing about the fracture of the Union. Slavery was the end to be protected, and maintenance of the limits on federal power was the means. A half-century of fractious disputes over the growing powers of the federal government ignited a small but stubborn fire of mistrust and contempt. The dispute over slavery turned what had been a smoldering coal into a conflagration. Southerners seceded out of fear for the future of slavery under a Republican-controlled federal government because of the increased potency of that government. The patronage available within the executive branch alone made the notion of risking the future under a Republican administration intolerable for many. Centralization also worsened sectional strife by raising the specter in southern minds of a Republican Party maintaining in perpetuity its hold on national power through the embrace of programs that appealed to the pecuniary interests of voters, i. That secession ultimately proved a mistake even from the perspective of radical southerners"it resulted in a war that laid waste to their region, the destruction of the Confederacy, and the abolition of slavery "cannot alter the fact that it was based upon a sincere calculation about the future of slavery under a northern-controlled national government. Neither the folly of secession nor the tragedy of the Civil War and its six hundred You are not currently authenticated. View freely available titles:

Chapter 2 : Peter Zavodnyik (Author of The Age of Strict Construction)

The Age of Strict Construction explores the growth of the federal government's power and influence between and , and the varying reactions of Americans to that growth. The book focuses on the dispute over the spending power of Congress, the Supreme Court's expansion of the Contract Clause, and the centralizing effects of the Jacksonian.

Gutzman *The Age of Strict Construction*: Catholic University of America Press, While the standard account has the federal government as highly limited in the days before Fort Sumter, Zavodnyik takes a different tack: Southerners feared that the North might, if mobilized, exploit them through the federal government, and when that contingency materialized with the election of Abraham Lincoln to the presidency, they led their states out of the Union in defense of slavery. His intention is to explain how this happened. The presidency exploited its control of federal patronage to establish a "court" party in each state, every little hamlet where there was a postoffice of the United States, which gave it an influence in American politics unimagined by even the most executive-minded founders. The Supreme Court, finally, used what we might call "aggressive interpretation techniques" to make itself a sort of American Privy Council, an institution much like the royal board charged with exercising the Crown prerogative of vetoing any and all colonial statutes. Zavodnyik seems unaware that in regard to colonial Virginia, at least, the requirement of a suspending clause meant that the Privy Council exercised not merely an absolute veto power, but the presumption of a pocket veto unless the Council took the affirmative step of allowing the legislation to take effect. In some regards, unelected federal officials today exercise this kind of power over state legislation. His account of what occurred at Philadelphia in the summer of is essentially correct: Yet, although he shows some delegates simply departing from Philadelphia instead of helping to create so centralizing a document as Alexander Hamilton, James Wilson, James Madison, and their nationalist friends wanted, our author does not draw the right conclusion, which is that the nationalists actually lost the debate in Philadelphia. This truth cannot be restated too often. This is to be expected, in light of the fact that he is a practicing attorney and not a scholar of the subject. Still, again, he is to be commended for the very unusual achievement of casting the ratification campaign in precisely the right way. The next chapter of *The Age of Strict Construction* is concerned with the constitution in the formative Federalist years, "At the beginning of that time, the people continued to insist on amendments. They immediately undertook a concerted effort to remake the federal government they had promised in the ratification debate into the national one they had tried to create in the Philadelphia Convention. Here we see the acute centripetal pressure on the system. In general, this is a standard account of the Federalist era, with the addition of an emphasis on the original understanding of the limits of federal power. Again, this is exactly as matters ought to be understood: The legitimate position, that is, was the reigning one. This latter is a theme that runs through the rest of the book. Another repeated issue is the willingness of federal judges to invalidate state laws merely because they judged them undesirable. The account of the Republican Dynasty here is similar to that offered by Henry Adams in the late nineteenth century. Zavodnyik sounds much like William W. Calhoun²⁰ in thinking that the spoils system almost necessarily would bring the end of republican government in its train. Among other results were the disastrous successes of the Buchanan Administration in getting its way in regard to slavery in Kansas Territory. If Zavodnyik is to be believed, little in state-level politics of the s and s passed without some direction from Washington. Constantine Gutzman, "Review of Mark E. Brandon, *Free in the World*: For an account along similar lines that brings the story down to the present, see Kevin R. Lexington Books, , particularly chapters 3 on ratification in Virginia, 4 on , and 6 on the Virginian Republicans and the Marshall Court. Constantine Gutzman, "Review of Colleen A. Sheehan and Gary L. Writings of the "Other" Federalists, " in *Modern Age* 41 , "7. Though not so close as our author would have it. University Press of Virginia, For full development of this argument, see Thomas E. Gutzman, *Who Killed the Constitution? From Dominion to Republic*, " chapter 4, which is an amended version of K[evin] R. Calhoun, " *Journal of American History* 52 July

Chapter 3 : Strict vs. Loose Interpretation - HISThomas Jefferson

The Age of Strict Construction explores the growth of the federal government's power and influence between and , and the varying reactions of Americans to that growth.

Construction and Infrastructure Update, August And everything was changing. Under the doctrine a buyer was expected to protect him or herself against both obvious and hidden defects in a product. But implied warranties were premised on their being a contract between the manufacturer and the user of a defective product, and by the mid 20th Century it was increasingly uncommon for consumers to purchase products directly from a manufacturer. Then, in , the California Supreme Court decided *Greenman v. Yuba Power Products, Inc.* Less than a year later, in *Vandermark v. Ford Motor Company* 61 Cal. By strict products liability was applied to food manufacturers, car manufacturers, and manufacturers of other consumer items such as soap, hair dye and clothing, but it had yet to be applied to construction. But then, in *Kriegler v. That is until now.* Peck was hired as the general contractor, and it in turn subcontracted with E. The specifications called for asbestos-free fireproofing and insulation, but contained no analogous requirement for drywall material and taping mud. The drywall installed by E. Brady, however, both the drywall manufactured by Kaiser and the taping mud manufactured by Hamilton contained asbestos. Joel Hernandezcueva worked at the Fluor complex from or to He worked as a janitor. During that time, certain areas of the complex were remodeled, and certain walls within the complex were continuously under repair. While performing those duties he inhaled dust. In or about , he was diagnosed with mesothelioma which his medical experts attributed to his exposure to asbestos-containing products installed by E. Brady was not negligent regarding that exposure. Thus, a large portion of E. For those same reasons, E. In response to E. Thus, explained the Court, other courts have held that a party that buys a defective product and leases it to others, or offers its use for payment, may be subject to strict liability. The Court of Appeals also rejected E. Conclusion The Hernandezcueva decision marks a new age for both subcontractors and generals alike. Not only is the decision broad in its application and, to my mind, gray in its reasonings â€” for example, while the Court of Appeals held that E.

Chapter 4 : Is it the Dawning of the Age of Strict Products Liability for California Contractors?

Book Description: The Age of Strict Construction explores the growth of the federal government's power and influence between and , and the varying reactions of Americans to that growth.

This book teaches what most other books on this subject fail to teach. A strict construction understanding of the Constitution is eye-opening. It is not common knowledge, but should be. This approach uses only original source documents in order to get the most authoritative meanings in the Constitution as the founders intended. For more than twenty years Michael F. Holt has been considered one of the leading specialists in the political history of the United States. *Political Parties and American Political Development from the Age of Jackson to the Age of Lincoln* is a collection of some of his more important shorter studies on the politics of nineteenth-century America. The collection focuses on the mass political parties that emerged in the s and their role in broader political developments from that decade to Almost all essays touch on the broad question of the role of partisan politics in explaining the outbreak of the war. Individual essays address the following questions as well: What explains the birth and death of powerful third parties? What was the relationship among economic conditions, party performance in office especially legislative performance , and the mobilization of an unprecedented number of voters between and ? Why did the Whigs find it necessary to nominate military hero Zachary Taylor as their presidential candidate in ? What explains the death of the Whig party? What role did ethnoreligious issues and the Know Nothing party play in the realignment of the s and the ultimate triumph of the Republican party? In what ways did the continuation of two-party competition after help the North win the Civil War? Most of the essays have been published previously over a twenty-year span, but there are also two new pieces. This essay contrasts the fate of the Whig party with the fates of the Republican party in the s and s and the British Conservative party in the s and s - parties that survived similar, indeed graver, challenges than those to which the Whigs succumbed. In addition, Holt has written an excellent introduction in which he explains how he came to write the essays and reflects upon them in light of the current state of political history as a discipline. *Political Parties and American Political Development from the Age of Jackson to the Age of Lincoln* offers provocative insights into both the history of nineteenth-century politics and the way it is studied. Cambridge University Press Format Available: McDowell refutes this new understanding, recovering the theoretical grounds of the original Constitution as understood by those who framed and ratified it. It was, he argues, the intention of the Founders that the judiciary must be bound by the original meaning of the Constitution when interpreting it.

Chapter 5 : Project MUSE - The Age of Strict Construction

Strict Construction. A close or narrow reading and interpretation of a statute or written document. Judges are often called upon to make a construction, or interpretation, of an unclear term in cases that involve a dispute over the term's legal significance.

Once the court has a clear meaning of the text, no further investigation is required. Judges "in this view" should avoid drawing inferences from a statute or constitution and focus only on the text itself. However, "strict construction" is not a synonym for textualism or originalism. Antonin Scalia, a major proponent of textualism, said that "no one ought to be" a strict constructionist, although to be a strict constructionist was preferred to being a "nontextualist". Common use [edit] "Strict constructionism" is also used in American political discourse as an umbrella term for conservative legal philosophies such as originalism and textualism, which emphasize judicial restraint and fidelity to the original meaning of constitutions and laws. It is frequently used even more loosely to describe any conservative judge or legal analyst. For example, on the campaign trail in , when speaking on his choices for new Supreme Court Justices, George W. Bush promised to appoint "strict constructionists in the mold of Justices Rehnquist, Scalia, and Thomas", though Thomas considers himself an originalist, and Scalia outright rejected strict construction, calling it "a degraded form of textualism", his modus operandi. The term was used regularly by members of the Democratic-Republican Party and Democrats during the antebellum period when they argued that powers of the federal government listed in Article I should be strictly construed. They embraced this approach in the hope that it would ensure that the bulk of governmental power would remain with the states and not be usurped by the federal government via novel interpretations of its powers. Because the vagueness of Article I inevitably lent itself to broad interpretations as well as narrow ones, strict constructionists turned to the somewhat restrained descriptions of the powers of Congress that were offered by advocates of the Constitution during ratification. Thus, politicians who identified themselves as strict constructionists embraced an approach to constitutional interpretation that resembles what we today call originalism. He was said to have been inspired to this view by Horatio Bunce, a constituent in his district and by accounts given, a strict constructionist. He appointed four justices that seemed to be of that philosophy. One of them, however, shifted leftward, while another became a moderate. The other two were in the mold of what most think of in terms of strict constructionists. Gerald Ford, when running to serve a full term of his own distanced himself from this issue. Ronald Reagan, however, also promised "Strict Constructionists". All three of his US Supreme Court nominees loosely fell into this category. Still one was more of an originalist while the other two were fairly conservative. Every major Republican nominee since Reagan has promised to nominate only strict constructionists for the US Supreme Court and mostly such judges for other federal courts. Criticisms [edit] The term has been criticized [7] as being a misleading or meaningless term. Antonin Scalia, the justice most identified with the term, once wrote: Scalia summarized his textualist approach as follows: The difference between textualism and strict constructionism can be seen in a statutory case my Court decided last term. The statute at issue provided for an increased jail term if, "during and in relation to The Court held, I regret to say, that the defendant was subject to the increased penalty, because he had "used a firearm during and in relation to a drug trafficking crime. Now I cannot say whether my colleagues in the majority voted the way they did because they are strict-construction textualists, or because they are not textualists at all. But a proper textualist, which is to say my kind of textualist, would surely have voted with me. The phrase "uses a gun" fairly connoted use of a gun for what guns are normally used for, that is, as a weapon. When you ask someone "Do you use a cane? The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of a felony, does not extend to a prisoner who breaks out when the prison is on fire "for he is not to be hanged because he would not stay to be burnt".

Chapter 6 : Strict constructionism - Wikipedia

Strict sense of the term. Strict construction requires a judge to apply the text only as it is written. Once the court has a clear meaning of the text, no further investigation is required.

Catholic University of America Press, While the standard account has the federal government as highly limited in the days before Fort Sumter, Zavodnyik takes a different tack: Southerners feared that the North might, if mobilized, exploit them through the federal government, and when that contingency materialized with the election of Abraham Lincoln to the presidency, they led their states out of the Union in defense of slavery. His intention is to explain how this happened. The presidency exploited its control of federal patronage to establish a "court" party in each state, every little hamlet where there was a post office of the United States, which gave it an influence in American politics unimagined by even the most executive-minded founders. The Supreme Court, finally, used what we might call "aggressive interpretation techniques" to make itself a sort of American Privy Council, an institution much like the royal board charged with exercising the Crown prerogative of vetoing any and all colonial statutes. Zavodnyik seems unaware that in regard to colonial Virginia, at least, the requirement of a suspending clause meant that the Privy Council exercised not merely an absolute veto power, but the presumption of a pocket veto unless the Council took the affirmative step of allowing the legislation to take effect. In some regards, unelected federal officials today exercise this kind of power over state legislation. His account of what occurred at Philadelphia in the summer of is essentially correct: Yet, although he shows some delegates simply departing from Philadelphia instead of helping to create so centralizing a document as Alexander Hamilton, James Wilson, James Madison, and their nationalist friends wanted, our author does not draw the right conclusion, which is that the nationalists actually lost the debate in Philadelphia. This truth cannot be restated too often. This is to be expected, in light of the fact that he is a practicing attorney and not a scholar of the subject. Still, again, he is to be commended for the very unusual achievement of casting the ratification campaign in precisely the right way. The next chapter of *The Age of Strict Construction* is concerned with the constitution in the formative Federalist years, "At the beginning of that time, the people continued to insist on amendments. They immediately undertook a concerted effort to remake the federal government they had promised in the ratification debate into the national one they had tried to create in the Philadelphia Convention. Here we see the acute centripetal pressure on the system. In general, this is a standard account of the Federalist era, with the addition of an emphasis on the original understanding of the limits of federal power. Again, this is exactly as matters ought to be understood: The legitimate position, that is, was the reigning one. This latter is a theme that runs through the rest of the book. Another repeated issue is the willingness of federal judges to invalidate state laws merely because they judged them undesirable. Madison did not say. The account of the Republican Dynasty here is similar to that offered by Henry Adams in the late nineteenth century. Zavodnyik sounds much like William W. Calhoun²⁰ in thinking that the spoils system almost necessarily would bring the end of republican government in its train. Among other results were the disastrous successes of the Buchanan Administration in getting its way in regard to slavery in Kansas Territory. If Zavodnyik is to be believed, little in state-level politics of the s and s passed without some direction from Washington. Constantine Gutzman, "Review of Mark E. Brandon, *Free in the World: For an account along similar lines that brings the story down to the present, see Kevin R. Lexington Books, , particularly chapters 3 on ratification in Virginia , 4 on , and 6 on the Virginian Republicans and the Marshall Court. Constantine Gutzman, "Review of Colleen A. Sheehan and Gary L. Writings of the "Other" Federalists, " in *Modern Age* 41 , "7. Though not so close as our author would have it. Stuart Leibiger, *Founding Friendship: University Press of Virginia, For full development of this argument, see Thomas E. Gutzman, *Who Killed the Constitution? From Dominion to Republic, " , chapter 4, which is an amended version of K[evin] R. Calhoun,*" *Journal of American History* 52 July**