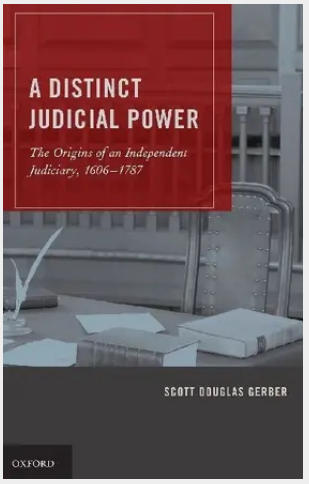
Gerber

Distinct Judicial Power

The Origins of an Independent Judiciary, 1606-1787



Provides the first comprehensive exegesis of the origins of judicial independence in the United States Brings together a wealth of information (charters, instructions, statutes, etc.) about the judicial power between 1606 and 1787, and sometimes beyond, which allows the reader to more easily understand the concepts Discusses pre-Marbury v. Madison precedents for judicial review, including several previously unknown precedents Articulates a new theory about the origins of judicial review: one that emphasizes the connection between judicial review and the rise of judicial independence Provides a devastating critique of popular constitutionalism, an influential theory of constitutional interpretation that argues that judicial review should be drastically limited or eliminated altogether A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606-1787, by Scott Douglas Gerber, provides the first comprehensive critical analysis of the origins of judicial independence in the United States. Part I examines the political theory of an independent judiciary. Gerber begins chapter 1 by tracing the intellectual origins of a distinct judicial power from Aristotle's theory of a mixed constitution to John Adams's modifications of Montesquieu. Chapter 2 describes the debates during the framing and ratification of the federal Constitution regarding the independence of the federal judiciary. Part II, the bulk of the book, chronicles how each of the original thirteen states and their colonial antecedents treated their respective judiciaries. This portion, presented in thirteen separate chapters, brings together a wealth of information (charters, instructions, statutes, etc.) about the judicial power between 1606 and 1787, and sometimes beyond. Part III, the concluding segment, explores the influence the colonial and early state experiences had on the federal model that followed and on the nature of the regime itself. It explains how the political theory of an independent judiciary examined in Part I, and the various experiences of the original thirteen states and their colonial antecedents chronicled in Part II, culminated in Article III of the U.S. Constitution. It also explains how the principle of judicial independence embodied by Article III made the doctrine of judicial review possible, and committed that doctrine to the protection of individual rights.

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