Very Short Introductions online

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**Introduction**

G. Edward White

The ‘Introduction’ explains that a review of American Legal History must confront the defining issues in the development of American civilization and culture. The law is connected to, has reacted to, and has helped to shape America’s geographic isolation, economic abundance, transatlantic settlement, the relations between European settlers and indigenous tribes, African American slavery, the importance of agricultural householding, the growth of industrial enterprise and urbanization, and the emergence of the United States as a world power. The focus of this VSI is on the topics and issues that are connected to central themes in American history.

1. The legal history of Indian tribes

G. Edward White

‘The legal history of Indian tribes’ considers the most fundamental theme of American legal history in the sixteenth and seventeenth centuries – the interaction of European settlers with the aboriginal tribes who inhabited the North American continent. The history of the legal treatment of American Indian tribes can be divided into distinct phases of settler-tribal accommodation. In all but the last phase, the interaction between tribes and settlers disadvantaged the tribes. The contact phase, postcontact phases, and the changing legal relationships between the settlers and the Amerindian tribes are described as well as the restoration of the rights and interests of the American Indian tribes in the twenty-first century.

**Epilogue**

The future Constitution

David J. Bodenhamer

The future Constitution discusses the role of the Supreme Court in shaping American law and its impact on various aspects of the nation's history. This chapter explores how the Court has responded to challenges such as slavery, civil rights, and the Vietnam War, and how it has evolved into a central institution in the American political landscape.
The United States does not operate today under the Constitution ratified in 1788 or the Constitution as completed by the Bill of Rights in 1791 or even the one revised by the Reconstruction amendments. Nor is it the same nation. The United States, then a plural noun and now a collective one, has grown from thirteen states hugging the Atlantic seaboard to fifty states spread across a continent and beyond. It has experienced a civil war that ended one social and political regime and ultimately ushered in another far different from anything most people could have imagined in 1776 or even in 1865. From its beginnings as a second-rate country with a tiny navy and army, it has grown to become a global economic and military superpower. It is a democratic republic in which democracy weighs far more heavily in its constitutional and societal calculus than the framers would have endorsed. Its citizens vest government with the responsibility for safeguarding their prosperity, health, safety, and welfare in ways alien to the experiences of the founding generation....

6. Conduct unbecoming and all that
Eugene R. Fidell

Much of the court-martial docket involves cases concerned with the same kinds of criminality seen in the civilian courts. ‘Conduct unbecoming and all that’ explains that the docket also includes very different offenses that at times raise thorny questions. Many military codes list, alongside specific offenses, a “general article” that prohibits conduct prejudicial to good order and service discipline and conduct of a nature that brings discredit on the service. This clause covers a multitude of sins and provides ample fodder for litigation. Two other offenses, unique to the military, and not applicable to enlisted personnel, are “conduct unbecoming an officer and a gentleman” and speaking contemptuously of the president and other high officials.

5. The Court at work (2)
Linda Greenhouse

The current building where the justices of the Supreme Court operate was completed in 1935. Acquiring a home had symbolic and practical importance for the Court, signalling its role as the head of a coequal branch of government. ‘The Court at work (2)’ takes a more visual look at how the Court operates, considering the layout of the Court buildings and the day to day running of the Court by looking at the ‘day call’ which is the calendar for the day's arguments. In recent years, the Internet has brought the Court closer to the public. Briefs filed in granted cases as well as a complete procedural history of each petition, whether granted or denied, are available online.
2. Colonial India: impoverishment
Craig Jeffrey

‘Colonial India: impoverishment’ considers why India is poor and divided. India has been wealthy historically and so the ubiquity of poverty in contemporary India needs to be explained with reference to colonial history rather than imagined as somehow an inevitable feature of the subcontinent. Three phases in the imperial dominance of the English (then British after 1707) in India are identified and the ruinous impact of British imperialism is described. Despite the ‘impoverishment’ of India there were some positive aspects to British rule, particularly in infrastructural and institutional development. The combination of economic and political disempowerment seeded Indian nationalism, with self-rule finally achieved in 1947.

6. Social revolution
Craig Jeffrey

Social revolution has provided people, elites in particular, with new economic and social aspirations. These have been brought about by a transformation in people’s access to communication technologies through mobile phones and the internet, as well as access to and enthusiasm for education. The educational revolution is in turn linked to a third key shift related to notions of citizenship and the state. ‘Social revolution’ also explains how cultural expression has been encouraged and civil society has increased. However, civil society and social production of hope are limited by three significant weaknesses in India’s political institutional infrastructure related to the law, policing, and the media.

5. Presidential elections: Nominating campaigns and general elections
L. Sandy Maisel

‘Presidential elections: Nominating campaigns and general elections’ explores the complexities of how candidates for president are chosen and how they are elected. The nominating campaign is to many Americans confusing and opaque. The lengthy timescale of primary and caucus elections means that some states have a disproportionate influence on the outcome. Two factors have even greater influence in the election process: the funding of campaigns, which can cost tens of millions of dollars, and the nature of the
Electoral College system, which means that much of the debate will be conducted in a few battleground states where a few votes can make a difference to the Electoral College.

Epilogue
Heather Andrea Williams

Despite the abolition of slavery with the Thirteenth Amendment to the Constitution, notions of black inferiority and white supremacy still persisted in both the North and the South. The ‘Epilogue’ outlines the profound struggles by African Americans to make their freedom meaningful. In 1868, the Fourteenth Amendment granted citizenship to African Americans and promised equal protection under the law and, in 1870, the Fifteenth Amendment gave black men the right to vote. The modern civil rights movement of the 1940s, 1950s, and 1960s began to impact on the discriminatory Jim Crow laws and practices, but for many African Americans, struggles for equality, justice, and fairness continue into the twenty-first century.

Craig Jeffrey

The emergence of India as an independent nation was associated with a new institutional drive, centred on the state, to cultivate hope. Yet the post-independence period also witnessed the successive failure of the state to address the problems of poverty and inequality that became so evident during British Rule. In some respects, successive political regimes have unwittingly exacerbated the scarcities and inequalities that affect many Indians. ‘Making India work? 1947–1989’ considers the first government under Prime Minister Nehru and the radical nature of the Constitution. It then discusses the poor economic climate at the time of Nehru’s death in 1964 and the governments of Indira Gandhi and her son, Rajiv.

1. The predicament: the discontents of the Gilded Age
Walter Nugent

‘The predicament: the discontents of the Gilded Age’ outlines the roots of progressivism. In the mid to late–1880s, harmony was the core value in the still highly agrarian American society. However, in the 1880s, society began to shift towards urbanization, and large
corporations began to grow into monopolies, causing the gap between rich and poor to grow. The American people's discontent caused the Federal government to pass regulatory legislation to control monopolization. However, big business eventually whittled away the government's power in this area. The demand for reform from a furious public grew up until the start of the twentieth century.

1. Origins
Linda Greenhouse

What does the Supreme Court do? How does that differ to the original intentions of the Framers in 1787? ‘Origins’ looks at the beginnings of the Supreme Court to see if this helps with understanding how it operates today. From the beginning, the Court has filled in the blanks contained in Article III by defining its own power. Article III announced a national court with the authority to decide cases ‘arising under’ the country's Constitution. This is quite vague. The role of the Supreme Court has been a matter of dispute ever since. How has the modern Court come to be able to exercise its great power?

2. The Court at work (1)
Linda Greenhouse

How do cases reach the Court? How do the justices proceed to select and decide them? ‘The Court at work (1)’ looks at how the Court operates, and the sorts of cases that get heard by the Court. There are no typical Supreme Court cases; there is a typical range of cases during a given term. One category consists of cases of constitutional interpretation, usually involving a claim that a federal or state statute of policy violates a provision of the Constitution. The second consists of cases requiring the justices to decide the meaning or application of a federal statute. A third category consists of suits between states.

4. The chief justice
Linda Greenhouse

The judicial article of the Constitution (Article III) does not mention a chief justice. However, the role is vital and the office has grown considerably over the years. That said, ‘The chief justice’ argues that the single most important power the chief justice exercises may still be to cast one of the nine votes that determine the outcome of a Supreme Court
case. Looking from a 21st-century perspective, it is more accurate to think of the chief justice as a chief executive of the Supreme Court and the entire judicial branch. It is a job that it is difficult to prepare for. Prior service on the Court is useful, but uncommon. The chief justice has a symbolic purpose as well as a practical one.

8. The Court and the world
Linda Greenhouse

American attitudes towards foreign law was initially ambivalent. The same can be said about foreign opinions towards American law. ‘The Court and the world’ looks at the extent the American experience with the operation of the Supreme Court has influenced other countries’ and supranational developing political and legal structures and vice versa. No other country has chosen to bestow life tenure on its judges. Another difference is that European courts, for example, tend to observe a norm of unanimity. What is clear, however, is that even though most people know little about the Supreme Court, it occupies a place in the public imagination.

The U.S. Supreme Court: A Very Short Introduction
Linda Greenhouse

The U.S. Supreme Court: A Very Short Introduction tells the Court's story by drawing on its history and its written and unwritten rules to show how it really works. The Supreme Court today, housed in a majestic building on Capitol Hill, bears little resemblance to the ill-defined institution the Constitution's Framers launched. Their expectation was that it would be the weakest of the three branches of government. The Court put the independence the Framers gave it to use, and in many ways has continued to define itself. How do cases get to the Supreme Court? What special role does the chief justice play? How does the Court relate to the other branches?

3. The justices
Linda Greenhouse

How does someone become a Supreme Court justice? Theoretically, anyone who can get nominated by the president and confirmed by a majority vote of the Senate can be a Supreme Court justice. ‘The justices’ examines the membership of the Court in history and
now. Initially, the Court's membership was entirely Protestant, white, and male. That has changed considerably over time. A justice's place of origin is generally viewed as irrelevant but for many years, presidents have tried to achieve a geographic balance on the Court. The modern court also lacks diversity of professional background. So how can substantial changes in outlook be explained among a group of mature, professionally experienced individuals?

6. The Court and the other branches
Linda Greenhouse

What does the phrase ‘separation of powers’ mean? Would the phrase ‘dynamic interaction’ be more accurate? ‘The Court and other branches’ examines the relationships between the president, Congress, and the Court. When relations appear peaceful, there is often tension beneath the surface, reflecting distinct institutional limits, perceptions, and responses to events. If relations deteriorate, disequilibrium can turn into a power struggle. Relations between the branches are governed as much by norms and customs as by formal structures. The result is a cycle of action and reaction, passing between the Court and the political branches.

7. The Court and the public
Linda Greenhouse

What is the relationship between the Supreme Court and the public? Justices rely on public trust to put force behind their decisions. ‘The Court and the public’ considers the role of the public in the decisions of the Supreme Court. To what extent are justices influenced by public opinion? A judge's awareness of public opinion is regarded as necessary. Scholars regard the relationship between the Supreme Court and public opinion as elusive. Does the relationship run both ways? While the public may influence the Court, can the Court influence the public? Over time, the Court and the public seem to maintain a certain equilibrium. The public seem to approve of the institutions in general, rather than of particular actions.

1. The context of American elections and political parties
L. Sandy Maisel
‘The context of American elections and political parties’ explains the framework under which elections are run in the United States. This is laid out in the Constitution, which outlines the basic tenets of democracy in America. The most important aspects of that framework are the separation of powers, with a single executive separate from and elected separately from the legislature, and the federal system with residual powers left to the states. The electoral college system, unique to the United States, is a result of the initial decisions made at the time of the framing of the Constitution.