

HEART VERSUS HEAD

*Judge-Made Law in Nineteenth-Century America*

PETER KARSTEN



# Heart Versus Head Judge Made Laws In Nineteenth Century America

**Annelies Wilder-Smith**



## **Heart Versus Head Judge Made Laws In Nineteenth Century America:**

Heart versus Head Peter Karsten, 2000-11-09 Challenging traditional accounts of the development of American private law Peter Karsten offers an important new perspective on the making of the rules of common law and equity in nineteenth century courts The central story of that era he finds was a struggle between a jurisprudence of the head which adhered strongly to English precedent and a jurisprudence of the heart a humane concern for the rights of parties rendered weak by inequitable rules and a willingness to create exceptions or altogether new rules on their behalf Karsten first documents the tendency of jurists particularly those in the Northeast to resist arguments to alter rules of property contract and tort law He then contrasts this tendency with a number of judicial innovations among them the sanctioning of deep pocket jury awards and the creation of the attractive nuisance rule designed to protect society's weaker members In tracing the emergence of a pro plaintiff humanitarian jurisprudence of the heart Karsten necessarily addresses the shortcomings of the reigning economic oriented paradigm regarding judicial rulemaking in nineteenth century America Originally published in 1997 A UNC Press Enduring Edition UNC Press Enduring Editions use the latest in digital technology to make available again books from our distinguished backlist that were previously out of print These editions are published unaltered from the original and are presented in affordable paperback formats bringing readers both historical and cultural value *A Companion to*

*19th-Century America* William Barney, 2008-04-15 A Companion to 19th Century America is an authoritative overview of current historiographical developments and major themes in the history of nineteenth century America Twenty seven scholars all specialists in their own thematic areas examine the key debates and historiography A thematic and chronological organization brings together the major time periods politics the Civil War economy and social and cultural history of the nineteenth century Written with the general reader in mind each essay surveys the historical research the emerging concerns and assesses the future direction of scholarship Complete coverage of all the major themes and current debates in nineteenth century US history assessing the state of the scholarship and future concerns 24 original essays by leading experts in nineteenth century American history complete with up to date bibliographies Chronological and thematic organization covers both traditional and contemporary fields of research politics periods economy class formation ethnicity gender roles regions culture and ideas **The Routledge Research Companion to Law and Humanities in**

**Nineteenth-Century America** Nan Goodman, Simon Stern, 2017-05-12 Nineteenth century America witnessed some of the most important and fruitful areas of intersection between the law and humanities as people began to realize that the law formerly confined to courts and lawyers might also find expression in a variety of ostensibly non legal areas such as painting poetry fiction and sculpture Bringing together leading researchers from law schools and humanities departments this Companion touches on regulatory statutory and common law in nineteenth century America and encompasses judges lawyers legislators litigants and the institutions they inhabited courts firms prisons It will serve as a reference for specific information

on a variety of law and humanities related topics as well as a guide to understanding how the two disciplines developed in tandem in the long nineteenth century     *A History of Water Rights at Common Law* Joshua Getzler, 2004 This volume describes how the courts created rights for land owners and users competing to appropriate water for factories town supply drainage and transport It covers the period from early times to the late nineteenth century illustrating the changing common law of property and tort and throwing new light on the growth of the economy and the social and legal dimensions of technological innovation     *Lincoln's Resolute Unionist* Dennis K. Boman, 2006-08-01 As provisional governor of Missouri during the Civil War Hamilton Gamble 1798 1864 worked closely with the Lincoln administration to keep the state from seceding from the Union Without Gamble and other loyal Unionist governors the war in the West might have been lost Dennis Boman s full scale account of Gamble s life tells the little known story of a prominent frontier lawyer who became chief justice of the Missouri Supreme Court and boldly dissented in the infamous Dred Scott decision Revealing how Gamble one of the wealthiest and most renowned citizens of pre Civil War Missouri fought to end slavery and to protect the integrity of the Union Lincoln s Resolute Unionist corrects prevailing notions about solidarity among the South s antebellum elite on these issues The slaveholding border state of Missouri figured greatly in the sectional crisis from the time of its controversial admission to the Union up through the war itself when it was the site of internecine battles between Unionists and Confederates The complexities of the period and of the political alliances formed then emerge clearly in Boman s biography of Gamble A fundamental conservatism Gamble believed judges should interpret not make law led the southern slave owner to dissent from his colleagues proslavery decision in Scott v Emerson These same principles along with Gamble s Whig affiliation and Christian convictions made firm his antisecessionist stance despite his proslavery predilections Boman provides a groundbreaking analysis of Lincoln s involvement in Missouri s affairs including his assistance to Gamble in maintaining security and passing a state ordinance for gradual emancipation Lincoln s Resolute Unionist brings to light in a compelling fashion the meaning and the drama of the life of a key figure at a critical time in American history     **Law and the Modern Mind** Susanna L. Blumenthal, 2016-02-22 Headline grabbing murders are not the only cases in which sanity has been disputed in the American courtroom Susanna Blumenthal traces this litigation revealing how ideas of human consciousness agency and responsibility have shaped American jurisprudence as judges struggled to reconcile Enlightenment rationality with new sciences of the mind     *Prairie Justice* Roger L Severns, 2015-01-30 A concise legal history of Illinois *Prairie Justice* covers the French British early American and Illinois statehood periods to 1900 It illustrates the changes over time in the different judicial systems culminating in the establishment of a unique body of Illinois law     **The Jury in Lincoln's America** Stacy Pratt McDermott, 2012-01-23 In the antebellum Midwest Americans looked to the law and specifically to the jury to navigate the uncertain terrain of a rapidly changing society During this formative era of American law the jury served as the most visible connector between law and society Through an analysis of the composition of grand

and trial juries and an examination of their courtroom experiences Stacy Pratt McDermott demonstrates how central the law was for people who lived in Abraham Lincoln's America McDermott focuses on the status of the jury as a democratic institution as well as on the status of those who served as jurors According to the 1860 census the juries in Springfield and Sangamon County Illinois comprised an ethnically and racially diverse population of settlers from northern and southern states representing both urban and rural mid nineteenth century America It was in these counties that Lincoln developed his law practice handling more than 5 200 cases in a legal career that spanned nearly twenty five years Drawing from a rich collection of legal records docket books county histories and surviving newspapers McDermott reveals the enormous power jurors wielded over the litigants and the character of their communities

### **American Law in the Twentieth Century**

Lawrence M. Friedman, 2008-10-01 In this long awaited successor to his landmark work *A History of American Law* Lawrence M Friedman offers a monumental history of American law in the twentieth century The first general history of its kind *American Law in the Twentieth Century* describes the explosion of law over the past century into almost every aspect of American life Since 1900 the center of legal gravity in the United States has shifted from the state to the federal government with the creation of agencies and programs ranging from Social Security to the Securities Exchange Commission to the Food and Drug Administration Major demographic changes have spurred legal developments in such areas as family law and immigration law Dramatic advances in technology have placed new demands on the legal system in fields ranging from automobile regulation to intellectual property Throughout the book Friedman focuses on the social context of American law He explores the extent to which transformations in the legal order have resulted from the social upheavals of the twentieth century including two world wars the Great Depression the civil rights movement and the sexual revolution Friedman also discusses the international context of American law what has the American legal system drawn from other countries And in an age of global dominance what impact has the American legal system had abroad Written by one of our most eminent legal historians this engrossing book chronicles a century of revolutionary change within a legal system that has come to affect us all

*Unpublished Judicial Opinions* United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, the Internet, and Intellectual Property, 2002

### **Almost Citizens**

Sam Erman, 2019 Tells the tragic story of Puerto Ricans who sought the post Civil War regime of citizenship rights and statehood but instead received racist imperial governance

*American Law in the Twentieth Century* Lawrence Meir Friedman, 2004-01-01 American law in the twentieth century describes the explosion of law over the past century into almost every aspect of American life Since 1900 the center of legal gravity in the United States has shifted from the state to the federal government with the creation of agencies and programs ranging from Social Security to the Securities Exchange Commission to the Food and Drug Administration Major demographic changes have spurred legal developments in such areas as family law and immigration law Dramatic advances in technology have placed new demands on the legal system in fields ranging from automobile regulation to intellectual

property Throughout the book Friedman focuses on the social context of American law He explores the extent to which transformations in the legal order have resulted from the social upheavals of the twentieth century including two world wars the Great Depression the civil rights movement and the sexual revolution Friedman also discusses the international context of American law what has the American legal system drawn from other countries And in an age of global dominance what impact has the American legal system had abroad This engrossing book chronicles a century of revolutionary change within a legal system that has come to affect us all      **Litigation Nation** Peter Charles Hoffer, 2019-09-20 Americans have long been identified as a people of law and lawyers with an addiction to lawsuits In *Litigation Nation* Peter Charles Hoffer one of America's most preeminent legal historians charts the history of civil litigation from the seventeenth century to the present using key cases pursued by ordinary people to illustrate how the civil courts have been a battlefield to contest the boundaries of permissible personal conduct in times of social and political change Using representative case studies from each period from defamation suits in seventeenth century America to recent civil rights and gender discrimination lawsuits Hoffer's concise and accessible history shows how litigation reflects the lives and values of ordinary Americans

**American Legal History** Kermit L. Hall, Paul Finkelman, James W. Ely, 2017 When the first edition of *American Legal History: Cases and Materials* appeared over twenty five years ago American legal history was a nascent scholarly field Today the subject of legal history has flooded law history and political science departments across American universities Legal history appears in the scholarship of social economic political and diplomatic historians as well as becoming an integral part of gender immigration race slavery and labor studies More than ever before legal history has become a part of our collective legal culture as well as our scholarly world This text provides a comprehensive selection of the most important documents in American legal history from America's colonial origins to the present Devoting special attention to the interaction of social and legal change *American Legal History: Cases and Materials* shows how legal ideas developed in tandem with specific historical events while also revealing America's rich and unique legal culture The book also details the relationship between the evolution of American law and the development of American society politics and economy      *A History of the Tennessee Supreme Court*, 2002 In this first comprehensive history of the Tennessee Supreme Court seven leading scholars explore the role played by the Court in the social economic and political life of the state Charting the evolution and organization of the Court and its predecessor the Superior Court of Law and Equity the authors also assess the work of the Court within the larger context of the legal history of the South Arranged chronologically this volume covers the period from statehood in 1796 through the judicial election of 1998 and traces the range of contentious issues the Court has faced including slavery Reconstruction economic rights the regulation of business and race and gender relations The authors also outline the Court's relationship with the Supreme Court of the United States and chronicle the achievements of the Court in public and private law state constitutional law property law criminal justice and family law The central themes that emerge include the nature

of federalism the search for judicial independence and the practice of judicial review As the authors demonstrate the work of the Tennessee Supreme Court highlights the importance of state courts to the federal system and illuminates the interplay between regionalism and national norms in shaping a state's legal culture Indeed as mediator of conflicts between traditional southern values and national economic and social trends the Court has generally if sometimes belatedly adopted national legal standards Further while the Court has tended to defer to the state's legislative decision making process it has on occasion assumed a more activist role in order to assert individual rights for Tennessee's citizens Sponsored by the Tennessee Supreme Court Historical Society this book is written for anyone interested in Tennessee history in general or legal history in particular Appendixes include a comprehensive table of cases and biographical information about all the Court's judges The Editor James W Ely Jr is Milton R Underwood Professor of Law and professor of history at Vanderbilt University His books include *The Chief Justiceship of Melville W Fuller 1888 1910* and *The Guardian of Every Other Right A Constitutional History of Property Rights* He is also the series editor of the six volume *Property Rights in American History*

*Risk* Arwen P. Mohun, 2013-02-26 How have Americans confronted managed and even enjoyed the risks of daily life Winner of the Ralph Gomory Prize of the Business History Conference *Risk* is a capacious term used to describe the uncertainties that arise from physical financial political and social activities Practically everything we do carries some level of risk threats to our bodies property and animals How do we determine when the risk is too high In considering this question Arwen P Mohun offers a thought provoking study of danger and how people have managed it from pre industrial and industrial America up until today Mohun outlines a vernacular risk culture in early America one based on ordinary experience and common sense The rise of factories and machinery eventually led to shocking accidents which she explains risk management experts and the gospel of safety sought to counter Finally she examines the simultaneous blossoming of risk taking as fun and the aggressive regulations that follow from the consumer products safety movement *Risk and society* a rapidly growing area of historical research interests sociologists psychologists and other social scientists Americans have learned to tame risk in both the workplace and the home Yet many of us still like amusement park rides that scare the devil out of us they dare us to take risks *A Companion to American Legal History* Sally E. Hadden, Alfred L. Brophy, 2013-02-22 *A Companion to American Legal History* presents a compilation of the most recent writings from leading scholars on American legal history from the colonial era through the late twentieth century Presents up to date research describing the key debates in American legal history Reflects the current state of American legal history research and points readers in the direction of future research Represents an ideal companion for graduate and law students seeking an introduction to the field the key questions and future research ideas *Indian Reserved Water Rights* John Shurts, 2003-03-01 In its 1908 decision for *Winters v United States* the Supreme Court affirmed a lower court ruling that the United States and the Gros Ventre and Assiniboine Indians had reserved rights to water in the Milk River through an 1888 treaty which created the Fort Belknap

Indian Reservation in Montana Since 1908 the Winters decision or Indian reserved water rights doctrine has played an important and controversial role in the West Indian Reserved Water Rights is the first book length historical study of the Winters case and the early use of the reserved water doctrine In the book John Shurts explains how the litigation and its outcome fit well within the existing legal context and into ongoing efforts at water development in the Milk River Valley He also examines the life of the Winters Doctrine during its earliest years primarily through a study of water rights litigation on the Uintah Reservation in Utah     The Supreme Court of Nova Scotia, 1754-2004 Osgoode Society for Canadian Legal History,2004-01-01 Editors Philip Girard Jim Phillips and Barry Cahill have put together the first complete history of any Canadian provincial superior court All of the essays are original and many offer new interpretations of familiar themes in Canadian legal history     Law Books in Action Angela Fernandez,Markus Dubber,2012-04-02 Law Books in Action Essays on the Anglo American Legal Treatise explores the history of the legal treatise in the common law world Rather than looking at treatises as shortcuts from law in books to law in action the essays in this collection ask what treatises can tell us about what troubled legal professionals at a given time what motivated them to write what they did and what they hoped to achieve This book then is the first study of the legal treatise as a law book in action an active text produced by individuals with ideas about what they wanted the law to be not a mere stepping stone to codes and other forms of legal writing but a multifaceted genre of legal literature in its own right practical and fanciful dogmatic and ornamental in turn This book will be of interest to legal scholars lawyers and judges as well as to anyone else with a scholarly interest in law in general and legal history in particular



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