Judicial Review and American Conservatism

The Christian Right of the 1980s forged its political identity largely in response to what it perceived as liberal “judicial activism.” Robert Daniel Rubin tells this story as it played out in Mobile, Alabama. There, a community conflict pitted a group of conservative evangelicals, a sympathetic federal judge, and a handful of conservative intellectuals against a religious agnostic opposed to prayer in schools, and a school system accused of promoting a religion called “secular humanism.” The twists in the Mobile conflict speak to the changes and continuities that marked the relationship of 1980s’ religious conservatism to democracy, the courts, and the Constitution.

By alternately focusing its gaze on the local conflict and related events in Washington, DC, this book weaves a captivating narrative. Historians, political scientists, and constitutional lawyers will find, in Rubin’s study, a challenging new perspective on the history of the Christian Right in the United States.

Robert Daniel Rubin is an independent scholar.
Cambridge Historical Studies in American Law and Society

Recognizing legal history’s growing importance and influence, the goal of this series is to chart legal history’s continuing development by publishing innovative scholarship across the discipline’s broadening range of perspectives and subjects. It encourages empirically creative works that take legal history into unexplored subject areas, or that fundamentally revise our thinking about familiar topics; it also encourages methodologically innovative works that bring new disciplinary perspectives and techniques to the historical analysis of legal subjects.

Series Editor
Christopher Tomlins, University of California, Berkeley

Previously Published in the Series:
Matthew Crow, Thomas Jefferson, Legal History, and the Art of Recollection
Anne Twitty, Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787–1857
Reuel Schiller, Forging Rivals: Race, Class, Law, and the Collapse of Postwar Liberalism
Ely Aaronson, From Slave Abuse to Hate Crime: The Criminalization of Racial Violence in American History
Stuart Chinn, Recalibrating Reform: The Limits of Political Change
Ajay K. Mehrotra, Making the Modern American Fiscal State
Yvonne Pitts, Family, Law, and Inheritance in America: A Social and Legal History of Nineteenth-Century Kentucky
David M. Rabban, Law’s History
Kunal M. Parker, Common Law, History, and Democracy in America, 1790–1900
Steven Will, Law’s Imagined Republic
James D. Schmidt, Industrial Violence and the Legal Origins of Child Labor
Rebecca M. McLennan, The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941
Tony A. Freyer, Antitrust and Global Capitalism, 1930–2004
Davison Douglas, Jim Crow Moves North
Andrew Wender Cohen, The Racketeer’s Progress
Michael Willrich, City of Courts, Socializing Justice in Progressive Era Chicago
Barbara Young Welke, Recasting American Liberty: Gender, Law and the Railroad Revolution, 1865–1920
Michael Vorenberg, Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment
Robert J. Steinfeld, Coercion, Contract, and Free Labor in Nineteenth Century America
David M. Rabban, Free Speech in Its Forgotten Years
Michael Grossberg, A Judgment for Solomon: The d’Hauteville Case and Legal Experience in the Antebellum South
Judicial Review and American Conservatism


ROBERT DANIEL RUBIN
This book is dedicated to my wife, Sarah, and my son, Jonathan. They are the lights of my life.
## Contents

**Acknowledgments**

<table>
<thead>
<tr>
<th>Acknowledgments</th>
<th>page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction: Conservatism and the Constitution</td>
<td>ix</td>
</tr>
<tr>
<td>1 Massive Resistance</td>
<td>1</td>
</tr>
<tr>
<td>2 The Moral Majority of Alabamians</td>
<td>30</td>
</tr>
<tr>
<td>3 Justice Made Political</td>
<td>72</td>
</tr>
<tr>
<td>4 Accommodation</td>
<td>122</td>
</tr>
<tr>
<td>5 Showdown</td>
<td>164</td>
</tr>
<tr>
<td>6 The Trouble with Secularism</td>
<td>201</td>
</tr>
<tr>
<td>7 Religion by Any Other Name</td>
<td>234</td>
</tr>
<tr>
<td>Conclusion: The Constitution and the People</td>
<td>275</td>
</tr>
</tbody>
</table>

**Index**

| Index | 339 |
Acknowledgments

I wish to thank my colleagues Michael Grossberg, Daniel Conkle, and Steven Stowe, as well as my editors, Christopher Tomlins and Deborah Gershenowitz. Thanks to Kirsti Sandy, Mark Long, and Katherine Hermes. Thanks also to Joseph Butwin and Joseph Newman for helping me carry out this project. I thank Susan Armeny, the finest critic of writing I have ever known. I am especially grateful to Julia Eulenberg and Michael Eulenberg for their boundless support, and to Barbara, Marvin, and Evan Rubin for their enduring love.

This book could never have been written without the generosity of Brevard Hand. Graciously, Judge Hand created space for us to disagree amicably. I will always appreciate his kindness.