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978-1-108-83923-5 — 'To Save the People from Themselves'
Robert J. Steinfeld
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“To Save the People from Themselves”

In this expansive history, Robert J. Steinfeld offers a thorough re-interpretation of the origins of American judicial review and the central role it quickly came to play in the American constitutional system. Beginning with Privy Council review of American colonial legislation, the book goes on to provide detailed descriptions of the character of the first American constitutions, showing that they drew heavily on traditional Anglo/American constitutional assumptions, which treated legislatures as the primary interpreters of constitutions. Steinfeld then expertly analyses the central role lawyers and judges played in transforming these assumptions, creating the practice and doctrine of American judicial review in a half dozen state cases during the 1780s. The book concludes by showing that the ideas formulated during those years shaped critical decisions taken by the Constitutional Convention of 1787, which turned the novel practice into a permanent, if still deeply controversial, feature of the American constitutional system.

Robert J. Steinfeld is Professor of Law Emeritus at the SUNY Buffalo School of Law. He has been a Visiting Scholar at the Charles Warren Center for Studies in American History at Harvard University, and at the Center for the Study of Law and Society at the University of California, Berkeley.

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The Emergence of American Judicial Review and the Transformation of Constitutions

ROBERT J. STEINFELD

State University of New York



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*For Jennifer and
Noah and Ezra*

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Acknowledgments

This book has been a long time in the making. I began it after the election of 2000 with a simple question. How had the United States Supreme Court managed to acquire the power to end a presidential election in favor of one of the candidates? That question continues to be of great importance today, twenty years later following the presidential election of 2020. I knew enough about American judicial review at the time to understand that its origins were a bit murky. For the most part, American constitutions had not expressly authorized the practice. I set about trying to figure out precisely how that astonishing power had come into existence. The subject of course had been addressed before many, many times. A huge library of work devoted to the “origins of judicial review” already existed. But somehow this enormous body of scholarship had not laid the question to rest. Historians kept returning to it, it seemed, because no account had proven entirely satisfactory. This book is my effort to provide a clearer answer to the questions of how precisely American judicial review had originally been brought into being, and how, within a short period of time, it had managed to become a defining feature of the American constitutional system.

I'd like to begin by giving especial thanks to Fred Konefsky for his indefatigable help and encouragement through many, many years of work. He has read and commented upon more drafts than I care to remember. The work would not be the same without his sharp-eyed commentary. When I first became interested in the subject, he and I put together materials for a constitutional history seminar devoted to judicial review, which we taught for many years at the SUNY Buffalo Law School, enriching immeasurably my (and hopefully our students') understanding

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