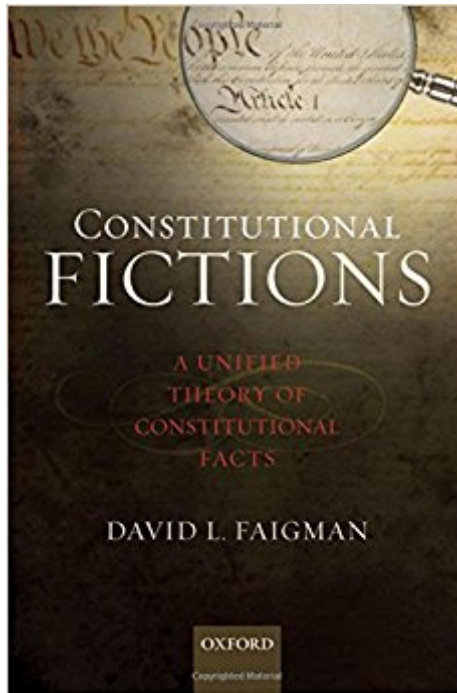




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Constitutional Fictions: A Unified Theory Of Constitutional Facts



Synopsis

David Faigman's *Constitutional Fictions* is the first book-length examination of the role of fact-finding in constitutional cases. Because the role of facts is central to the day-to-day realities of constitutional law, Faigman provides an extraordinarily important analysis of a subject that has been largely ignored by constitutional scholars. To show how contemporary facts play into constitutional analysis, Faigman examines some of the most controversial subjects of the late twentieth century, including physician-assisted suicide, abortion, sexual predators, free speech, and privacy. The Constitution is popularly thought of as a static document that embodies fundamental values and foundational principles of governance. However, the values and principles that the Constitution embodies must be applied to the circumstances and challenges of changing times. *Constitutional Fictions* explains how contemporary facts should be incorporated into constitutional decisions, thus allowing the Constitution to endure for the ages.

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"David Faigman offers an altogether convincing critique of the sloppiness of the United States Supreme Court's treatment of 'constitutional facts.' But his book also serves as a valuable wake-up call for law schools themselves and their need to do a far better job of preparing students--and future lawyers and judges--to be able to critically analyze the kinds of data that are increasingly at the heart of most legal disputes."-Sanford Levinson, University of Texas Law School

"In this superb book, David Faigman shows why facts are so important to constitutional adjudication and then throws down the gauntlet to those judges (i.e., most judges) who ignore, fail to understand, or don't

bother asking for empirical findings relevant to those facts. Faigman makes impassioned yet well-reasoned pleas for greater judicial honesty about when constitutional rights are based on testable assumptions, increased legal sophistication in analyzing the available data, and better integration of scientific information with normative decision making."-Christopher Slobogin, Vanderbilt University Law School"Constitutional Fictions is a sophisticated and analytical read on such an underwritten topic. David Faigman is one of the top legal academics writing about the use of social science in law, especially by judges. He understands that most legal academics believe fact and value are interconnected but stakes out a position, such as reviewable facts, where there is sunshine between the two."-William Eskridge, Jr., Yale Law School"David Faigman wants courts to take facts seriously, and to this end has developed a strikingly original and completely realistic theory of empirical jurisprudence. Constitutional Fictions is a rare and monumental accomplishment-a signal contribution to constitutional law scholarship that is at the same time completely accessible to the general reader."-John Monahan, University of Virginia School of Law"David L. Faigman is a thoughtful scholar and his prose is uniformly intelligible, readable, and often refreshing. His argument in Constitutional Fictions has gone beyond casual observation and makes a well-considered and serious argument about the role of facts, particularly facts generated by the sciences, in constitutional law."-Peter Tillers, Benjamin N. Cardozo School of Law"All too often, Supreme Court opinions are based on incomplete or even misleading understanding of the relevant facts. David Faigman seeks to address that situation. His book will be welcomed by all of those who would like to see the Court join the 'reality-based community,' to use a phrase derisively coined by the Bush Administration."-Dan Farber, University of California at Berkeley

David L. Faigman is the John F. Digardi Distinguished Professor of Law at the University of California, Hastings College of the Law. He obtained his M.A. in Psychology and J.D. degrees from the University of Virginia. After completing law school, Professor Faigman clerked for Judge Thomas Reavley, in the United States Court of Appeals for the Fifth Circuit in Austin, Texas.

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