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## 2018 James R. Browning Distinguished Lecture in Law

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*Judge, United States Court of Appeals for the Sixth Circuit*

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# LECTURE

## 2018 JAMES R. BROWNING DISTINGUISHED LECTURE IN LAW

**Jeffrey S. Sutton\***

Nothing inspires confidence in a speaker quite like a stopwatch. Let me start mine. I will speak for about 35 minutes, after which we will have plenty of time for questions.

Thank you, Judge Molloy, for that generous introduction. People occasionally ask me what I like most about being a federal judge. One privilege, perhaps the greatest privilege, is getting to know other federal judges, such as Judge Molloy. I am lucky to be his friend, and you are lucky that he is your judge in Missoula.

I am honored and grateful to be here. I have a brother who lives in Bozeman, so this is not my first visit to your state. Over the years, he and I have done quite a bit of fly fishing and hiking in Montana. I have considerable affection for the natural beauty of your state and the people in it. Last year, I attended a conference where I met Professor Johnstone, once the Montana Solicitor General and now a faculty member of the Law School, and Mark Mattioli, who still works in the AG's office in Helena. I let on that I enjoyed fly fishing, and before long Mark had offered to spend a day with me and my son on the Missouri River. Montanans like to say that some rivers are "technical" to fish, and that's what Mark said about the Missouri. Best I can tell, that is a polite way of saying that real Montanans can fish the river but not-so-real Montanans cannot. Sad to say, that was our experience. I managed to hook two fish but lost them both. My son, Nathaniel, did not hook anything. But he is my son, so you know where he learned to fish. What makes the story worse is an episode during the middle of the day

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\* Judge, United States Court of Appeals for the Sixth Circuit.

when fish were rising all around us. Nathaniel and I were struggling to present our flies in the right way. So Mark asked for my pole to offer a few suggestions. One cast later, we had our one and only fish of the day. Hence the tally for the day. Mark: One cast, one fish. Jeff and Nathaniel: Hundreds of casts, no fish. I begin my lecture with a deep reservoir of humility.

The Browning Lecture is named after a federal judge.<sup>1</sup> Another federal judge has provided a generous introduction. And I am a federal judge. Yet I plan to speak about state judges, state courts, and state constitutions. That dislocating reality deserves an explanation.

When I attended Ohio State, the law school offered a course on “Constitutional Law.” That class, like the classes offered at all law schools in the country at the time, taught half of the story. The class focused on the federal Constitution, and rarely mentioned state constitutions or for that matter state courts. Those constitutional law stories were easy to understand, almost cliché. The states inevitably were the villains in the stories and the federal government, usually the Supreme Court, was the hero. No doubt, there’s plenty of support for that narrative. Think Jim Crow and the many lawsuits it generated, including of course *Brown v. Board of Education*.<sup>2</sup> But it occurred to me that it might be helpful to supplement these accounts with stories in which the states and state officials played a positive role in developing American constitutional law.

My later experience as the State Solicitor of Ohio also affected my thinking. I worked with a lot of state lawyers, state employees, and state officials, and nothing about those interactions led me to think they were insensitive to civil rights or any other individual rights. I instead saw them addressing hard issues with finite resources and doing the best any reasonable person could do under the circumstances.

After my stint as the Ohio Solicitor, I went back to private practice and developed a practice representing states, including Alabama, Georgia, and Nevada, and at the same time wrote some amicus briefs on behalf of large groups of states. I had a similar experience and found myself admiring the work of all of these lawyers. When the states disagreed with each other, they had reasonable grounds for doing so.

My experience arguing cases in the Ohio Supreme Court added one last perspective. I lost a lot of those cases under the State Constitution. In fact, I tell my students at Ohio State and Harvard that I could teach a semester-long class on “State Constitutional Law” based exclusively on cases I lost in the Ohio Supreme Court under the Ohio Constitution. I found myself

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1. The Browning Symposium is named after Judge James R. Browning, formerly of the United States Court of Appeals for the Ninth Circuit.

2. 347 U.S. 483 (1954).

surprised that this important topic was not covered in most law schools and surprised that so few claimants invoked the state constitutions when challenging state or local laws.

That journey, combined with 15 years of service as a federal appellate judge, led me to write *51 Imperfect Solutions: States and the Making of American Constitutional Law*.<sup>3</sup> The book tells stories in which the states have set *positive* examples when it comes to the development of American constitutional law. The book has a chapter on school funding, a topic that should be familiar to Montanans. The Montana Supreme Court has an important case on the topic,<sup>4</sup> as does the Ohio Supreme Court, as I know from first-chair experience.<sup>5</sup> There's a chapter on compelled speech and free exercise of religion, which tells the story of compelled flag salutes during World War II and the discrimination against Jehovah's Witnesses that arose over the requirement.<sup>6</sup> There's a chapter on the exclusionary rule, which features a state-federal dialogue under our 51 constitutions that continues to this day. And there's a chapter on the eugenics movement, which I'll talk about in more detail in a moment. All of these stories illustrate the complexities about the way in which federal and state constitutional law develops in this country and the essential role of the federal and state courts in that development.

Let me lay some groundwork with a hypothetical premised on four implausible facts. The hypothetical concerns next year's final game of the NCAA basketball tournament. Implausible fact number one is that my alma mater, Ohio State, is in the finals. Implausible fact number two is that your school, the University of Montana, is in the finals. Implausible fact number three is that the score is tied with a few seconds left on the clock. Implausible fact number four involves this sequence: Just as the last seconds tick off the clock, Ohio State's star player drives the lane and is fouled in the act of shooting. He misses the first shot awarded after this two-shot foul and refuses to take the second one. Now if you think that is implausible, so do I. I doubt that has ever happened in any basketball gym in America, whether college, pro, high school, or even the most elementary of beginner basketball teams. But all of this leaves us with some explaining to do when we shift from American basketball to American law.

In American law, when someone is unhappy with a state or local enactment, there are usually two opportunities, not one, to invalidate that law, as the federal and state constitutions both independently constrain state and

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3. JEFFREY S. SUTTON, *51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW* (Oxford University Press 2018).

4. *Espinoza v. Mont. Dep't of Revenue*, No. DA 17-0492 (Mont. filed Aug. 17, 2017).

5. *DeRolph v. Ohio*, 780 N.E.2d 529 (Ohio 2002).

6. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

local governments. Yet, in my experience, many American lawyers take just one, rather than two, shots to strike the law. The preferred shot is usually under the U.S. Constitution, and if they take the second shot at all they tend to do most of their arguing under federal terms and federal doctrine.

What's going on? Are American basketball players smarter than American lawyers? The short answer is yes, at least in many cases. Nor is this just a question for lawyers. It's also a question for state court judges. State court judges have a duty to make sure they're honoring the second shot and treating it as a truly independent second opportunity, which of course it usually is under every state constitution in the country.

Why take the second shot? History is a good place to start. All of the federal individual rights provisions that we laud and applaud originated in the state constitutions. The greatest era of constitution writing in American history, indeed in world history, was between 1776 and the summer of 1787.<sup>7</sup> The drafters of the U.S. Constitution and the Bill of Rights borrowed their individual rights guarantees from the state constitutions. It's not just that these individual rights guarantees originated in the state constitutions; it's also relevant that at the founding the states and state courts were thought to be in the vanguard of individual rights protections. Somehow, over time, things have flipped. That's not how we think about it anymore. We think about the federal Constitution as the vanguard and the states as the occasional backup, if indeed we take the states seriously as rights protectors at all.

By the way, in other areas of law, we still think of the state courts as the vanguard legal innovators. Consider property, contracts, and torts. The state courts and state legislatures are the initial experimenters—"the laboratories of experimentation" in Justice Brandeis's words<sup>8</sup>—that first address new legal challenges and new policy dilemmas. That has been true since the founding, and it remains true today. What has been healthy for the development of law in these areas could be just as healthy for American constitutional law.

The second shot, the state constitutional shot, often is the easier one to sink, making it doubly bizarre that lawyers refuse to take it. Why might a state court grant relief with respect to an individual rights guarantee, say free speech, that the U.S. Supreme Court has refused to recognize under the First Amendment? One explanation is a difference in language. Many state

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7. The Constitutional Convention took place in Philadelphia, Pennsylvania, May 25, 1787, through September 17, 1787.

8. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").

guarantees use different language in protecting rights, sometimes very different language. These differences in language, appropriately enough, can lead to differences in meaning.

History offers another potential explanation for a different interpretation. A state might have unique sensitivities with respect to a given issue—take campaign finance speech in Montana—and wish to chart its own path, whether above or below the federal benchmark. Sometimes even identically written general terms can have a different meaning. Nothing is wrong with that. When the Montana Supreme Court addressed the constitutionality of a campaign finance restriction, for example, in 2011, it might have pointed out the permissibility of the restriction under the free speech guarantee of the Montana Constitution.<sup>9</sup>

Sometimes local history and culture work together to point to a different approach to a guarantee. Is it not possible that some individual rights resonate more strongly with judges in a largely rural state than in a state with many significant urban population centers? Gun rights and property rights both come to mind. There's nothing wrong with an American legal system that accounts for those differences by allowing states to mark different paths rather than having one, and only one, answer to difficult questions of constitutional law and policy.

Sometimes state courts (and state legislatures) need to fill gaps left by the U.S. Supreme Court. When the U.S. Supreme Court is asked to nullify a state or local law, it is being asked to nullify the lawmaking powers of 51 sovereigns affecting 320 million people. The scope of the Court's jurisdiction may lead it from time to time to apply a "federalism discount"<sup>10</sup> to certain rights. No state court faces a similar pressure, as it is dealing with one jurisdiction and a much smaller population—and usually a more homogenous population at that.

A state court also might take a different road based on reasonable grounds for doctrinal disagreement. A U.S. Supreme Court decision might turn on an originalist method of interpretation while a state court might have a majority of justices who prefer living constitutionalism or pragmatism. The same is true in the other direction. Even aside from different methods of interpretation, there might be disagreement over the meaning of an "unreasonable" search and seizure. I visited Professor Johnstone's class today, and I could have readily identified some search and seizure hypotheticals that would have divided his thoughtful group of students—and reasonably so. Does anyone seriously maintain that there is one, and only one,

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9. See *W. Tradition P'ship v. Att'y Gen. of State of Mont.*, 271 P.3d 1 (Mont. 2001) *rev'd sub nom Am. Tradition P'ship v. Bullock*, 567 U.S. 516 (2012) (per curiam).

10. See generally Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez and Its Aftermath*, 94 Va. L. Rev. 1963, 1974–76 (2008).

way to think about “unreasonable searches and seizures” for all 51 jurisdictions and all modern applications of that rule? That is a hefty lift.

The last explanation why a state court might chart its own path may be the most powerful. Some terms in our constitutions are phrased in sufficiently general terms that they enable a variety of approaches, not a uniform approach, as new problems confront government. Consider equal protection,<sup>11</sup> due process,<sup>12</sup> or free speech.<sup>13</sup> It takes a confident advocate, perhaps an arrogant advocate, to claim a corner on the market on what those words mean in all modern fact disputes, especially ones with no historical analogy. Yet many state courts presume that, whatever the U.S. Supreme Court says those words mean, they must mean the same thing for another sovereign’s constitution. Some courts even lock-step their interpretations with U.S. Supreme Court decisions known today *and* unknown in the future. Who takes a trek without knowing the destination?

Let me shift from explanations why state courts might chart different paths to reasons why engaged and independent state constitutionalism could benefit our legal system. As with federalism itself, this is a neutral principle. In his last majority opinion for the Court, *Kansas v. Carr*<sup>14</sup> Justice Scalia said: “The state courts may experiment all they want with their own constitutions, and often do in the wake of this Court’s decisions.”<sup>15</sup> Justice Brennan famously supported state constitutionalism in a landmark 1977 article in the *Harvard Law Review*.<sup>16</sup> Justice Brennan, like Justice Scalia, embraced the independent role of state courts in construing their own constitutions before and after decisions of the U.S. Supreme Court construing similar guarantees.<sup>17</sup> When Justice Scalia and Justice Brennan embrace the same point, it’s worth our attention.

A renewed interest in state constitutionalism also would be healthy for *federal* constitutional law. If state courts and state lawyers take seriously their duty to interpret these independent documents, that potentially helps *every* methodology for construing the U.S. Constitution. Start with originalists. They look to the publicly understood meaning of a guarantee at the time the people ratified it. State court judges are an excellent source of information, sometimes the best source of information, about what these guarantees meant, because the federal guarantees all originated in state constitutions and appear in many of them. Read Justice Scalia’s decision in

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11. U.S. CONST. amend. XIV, § 1.

12. *Id.*

13. *Id.* amend. I.

14. 136 S. Ct. 633 (2016).

15. *Id.* at 641.

16. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

17. *Id.* at 499.

*Heller* if you doubt me.<sup>18</sup> That's an originalist decision, and a salient ground for his decision is the 18th and 19th century state supreme court decisions that treat the right to bear arms as an individual right.<sup>19</sup>

What about pragmatists? The pragmatist judge seeks to construe generally worded guarantees in a way that works in modern times. Here, too, state court decisions offer a useful source of data about how one approach or another has worked in a given state.

The same is also true of living constitutionalists. It's a caricature of living constitutionalists to say they wake up in the morning, look in the mirror, and see their version of the U.S. Constitution staring back at them. As to some general terms, they say it is appropriate to allow the meaning of a constitutional guarantee to change over time to account for new circumstances and new norms. But if an interpretation does not have the support of the people in 1789 or 1868, it must have the support of the people in 2018. As to that inquiry, state court decisions (and state legislative developments) may supply ample evidence of shifting norms to which the living constitutionalist can point. All three methodologies for interpreting the U.S. Constitution would benefit from a renewed interest in state constitutionalism.

The eugenics story, one of the chapters in *51 Imperfect Solutions*,<sup>20</sup> captures why I care deeply about this subject and why I have written often about it. There is one part of the story that you know (or at least dimly remember), and there is another part of the story that you may not know. Here is the part of the story you know. In 1927, the U.S. Supreme Court decided *Buck v. Bell*.<sup>21</sup> Justice Holmes wrote the decision for the Court, and Chief Justice Taft and Justice Brandeis and five others joined it. Only Justice Butler dissented. Regrettably, for his sake and for ours, Justice Butler did not explain his reasoning through a written dissent.<sup>22</sup> At issue was a law from Virginia that permitted the State to sterilize "feeble-minded" men and women who lived in state homes—euphemistically called "colonies."<sup>23</sup> The term feeble-mindedness applied broadly to people with mental disabilities, prostitutes, criminals, epileptics, the poor, and others. The idea behind eugenics was that controlled breeding could eliminate some of the ills in society by urging some in society to breed and discouraging others, indeed preventing others, from doing so. The movement was not for the faint of heart, as this quotation from a eugenics proponent reveals:

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18. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

19. *Id.* at 584–87.

20. SUTTON, *supra* note 3, at 84.

21. 274 U.S. 200 (1927).

22. *Id.* at 208.

23. *Id.* at 205–06.



Nearly all of the happiness, and nearly all of the misery of the world are due not to environment, but to heredity. That the differences among men are in the main due to differences in the germ cells in which they are born. That social classes therefore which you seek to abolish by law are ordained by nature. That it is in the large statistical run of things not the slums which make slum-people, but slum-people who make the slums. That if you want artists, poets, philosophers, skilled workmen, and great statesmen, you will also have to give nature a chance to breed them.<sup>24</sup>

Before you question what these people were thinking, it's well to remember who was doing the thinking. These were the elite of American society: the Roosevelts, the Harrimans, the Rockefellers, and many other establishment figures who led our universities, our philanthropic organizations, and our governments.<sup>25</sup> And it was the same establishment from which Justice Holmes came, which may explain why he praised eugenics so enthusiastically in his opinion, including this line that has not worn well: "Three generations of imbeciles are enough."<sup>26</sup> *Buck v. Bell* was not perceived as a radical decision in 1927 or even as an unusual decision in leading intellectual circles. To this day, it has not been overruled. That's the part of the eugenics story you know.

Here's the part of the story you may not know. The eugenics movement started in England and gained traction in this country in the early 1900s.<sup>27</sup> By the early 1920s, 15 states had enacted eugenics laws that allowed for involuntary sterilizations of the feebleminded and certain criminals.<sup>28</sup> Before 1927, there were eight challenges to these laws.<sup>29</sup> Six of them arose in the state courts, and two in the federal courts.<sup>30</sup> Of the eight decisions, seven of the eight get it right from the verdict of history.<sup>31</sup> Only one decision is consistent with *Buck v. Bell*, a decision by the Washington Supreme Court in a criminal case.<sup>32</sup> Yet within a year of that decision, the Washington legislature repealed the law.<sup>33</sup>

Of the other seven cases that come out the right way from today's perspective, the best one concerns the attempted sterilization of Alice Smith and comes from the New Jersey Supreme Court.<sup>34</sup> The New Jersey Su-

24. A. E. WIGGAM, *THE NEW DECALOGUE OF SCIENCE* 5 (1923).

25. SUTTON, *supra* note 3, at 87.

26. *Buck*, 274 U.S. at 207.

27. SUTTON, *supra* note 3, at 84.

28. PAULA A. LOMBARDO, *A CENTURY OF EUGENICS IN AMERICA: FROM THE INDIANA EXPERIMENT TO THE HUMAN GENOME ERA* ix (2011).

29. SUTTON, *supra* note 3, at 92.

30. *Id.*

31. Philip R. Reilly, *Involuntary Sterilization in the United States: A Surgical Solution*, 68 Q. REV. BIOLOGY, no. 2, 1987, at 153, 158.

32. *State v. Feilen*, 126 P. 75, 76 (Wash. 1912).

33. SUTTON, *supra* note 3, at 93.

34. *Smith v. Bd. of Exam'rs of Feeble-Minded*, 88 A. 963 (N.J. 1913).

preme Court has a thoughtful opinion that few people know anything about. It knocks down every argument Justice Holmes makes in *Buck v. Bell* and points out that the eugenics laws did not make sense even on their own terms.<sup>35</sup> The stark objective of eugenics was that, through controlled breeding, a society could rid itself of the ills caused by the feeble-minded in society. But the eugenics laws did not allow the police or some other government agency to round up the feeble-minded living freely in society and involuntarily sterilize them. The laws applied only to people who customarily could not breed—people confined in colonies or prisons. As the New Jersey Supreme Court pointed out, the laws had a serious means-ends problem, one that might be called irrational today.<sup>36</sup> Back then, “rational basis” review did not exist. Courts instead invalidated such laws on “class legislation” grounds, which is precisely what the New Jersey Supreme Court did. It is a well-reasoned decision.

One explanation for writing the book was to bring to light excellent decisions by our state court judges, decisions that I fear have been neglected and have not received the praise they deserve. This also happens to be an instance in which the heroes of the story are state courts and state court judges. History does not run in just one direction or with one script. Oddly enough, *Buck v. Bell* does not mention any of the state court decisions that predated it, some of which even turned on federal law.

One other feature of the eugenics story deserves mention, the aftermath of *Buck v. Bell*. Even though all but one of the state court decisions before 1927 handle the issue correctly by the verdict of history, the state court litigation shut down after 1927. Yes, the Supreme Court had spoken, and had spoken through Justice Holmes. But the opinion did not prohibit state courts from filling the gap in rights protection left by the decision. Instead, twelve more states enacted eugenics laws soon after 1927.<sup>37</sup> To be sure, after 1927, no state court could provide relief to a claimant under the federal Constitution. But the same was not true under the state constitutions, as many pre-1927 decisions had shown. This was the quintessential second shot not taken.

All of this suggests that we have a problem in American legal culture (and legal education) that goes back at least to 1927. Even then, state courts (and state court litigants) seemed unwilling to disagree with U.S. Supreme Court decisions in construing their own constitutional guarantees. As a result, the eugenics movement ended not through state court cases under state constitutions but through legislation, namely through state and federal laws that prohibit discrimination against those with disabilities.

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35. *Id.* at 967.

36. *Id.*

37. LOMBARDO, *supra* note 27, at ix.

Some of you may be wondering what happened in Montana during the eugenics movement. Montana did pass a eugenics law in 1923,<sup>38</sup> and it led to 250 sterilizations.<sup>39</sup> But there is no Montana Supreme Court decision about the issue. Why, you might ask? My best guess is no one challenged the validity of the law because Montanans implemented it in a more compassionate way. The law required consent, meaning that the state colonies required a guardian or parent to consent to a sterilization before it occurred.<sup>40</sup>

One lesson of the eugenics story is that we should not jump to the conclusion that state judges, even elected state judges, cannot be trusted. Just ask Alice Smith and Carrie Buck which set of judges, state or federal, they would have preferred to trust.

One coda to the story: It could have been worse. The American eugenics movement lasted about 75 years and led to roughly 60,000 involuntary sterilizations.<sup>41</sup> That, of course, is 60,000 too many. But when Germany caught the eugenics bug in the 1930s, the ending was even worse. In just 11 years, Nazi Germany sterilized 400,000 citizens.<sup>42</sup> That country, unlike this country, did not have separation of powers to slow things down. If the national government wanted to have a national eugenics law for all of Germany, it could do it. Notably, in 1924 in this country, eugenicists proposed a national eugenics law in Congress. Happily, the law did not pass, perhaps because Congress realized it did not have such power. The national legislature may regulate only commerce between the states, and I'd like to think that we can all agree that, whatever else we might say about the eugenics movement, its target was not a commercial activity. The next time you worry that the Constitution contains too many blocking mechanisms to get anything done, just remember the eugenics movement.

Separation of powers at the state level limited the eugenics movement as well. Governors vetoed eugenics laws in several states. Superintendents of state colonies refused to implement the laws in other states. And, of course, state courts invalidated several of the laws.

Even so, one cannot ignore the reality that, after 1927, the state courts did not play a meaningful role in slowing the eugenics movement. That is particularly surprising in view of the potent role they played before *Buck v.*

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38. Women's History Matters, *The Right to Procreate: The Montana State Board of Eugenics and Body Politics*, MONTANAWOMENSHISTORY.ORG (Oct. 9, 2014), <https://perma.cc/VBR9-X5LY>.

39. *Id.*

40. *Id.*

41. Alexandra Minna Stern, *That Time the United States Sterilized 60,000 of Its Citizens: An Era When Health Officials Controlled with Impunity the Reproductive Bodies of People Committed to Institutions*, HUFFINGTONPOST.COM (Jan. 7, 2016), <https://perma.cc/M55C-KGJR>.

42. *The Biological State: Nazi Racial Hygiene, 1933-1939*, USHMM.ORG, <https://perma.cc/8MMG-U2BX>.

*Bell*. The culprit seems to be lock-stepping—the tendency of many state courts to presume that they should follow U.S. Supreme Court decisions when construing similar language in their own constitutions.

A historical analogy reveals an oddity of lock-stepping. Before Montana elected state supreme court justices, it had territorial justices and judges appointed by the president.<sup>43</sup> Montana was a territory between 1864 and 1889, and during that 25-year period it was governed from Washington, D.C., not by locally accountable officials.<sup>44</sup> President Lincoln appointed the first territorial justice in 1864. As a federal judge, the appointee was required to follow federal law, and most territorial justices and judges, owing their appointments to the national government, did not come from Montana and often were thought of as carpetbaggers by locals. After 1889, by contrast, the President of the United States didn't have any authority over who was on the Montana Supreme Court.

Reconsider lock-stepping from this historical vantage point. It amounts to a state court judge acting like a territorial judge, taking his or her marching orders from Washington, D.C. rather than Helena, Montana. Why else would a state court judge assume that what is good for the federal Constitution must be good for the Montana Constitution? Of course, Montana lawyers should be careful about voicing this criticism too quickly. As my experience has shown, many state lawyers act like territorial lawyers, relying heavily (if not completely) on federal precedents in making arguments under the state's constitution. Lawyers who invoke the Montana Constitution to invalidate a state or local law must examine the local text, history, and precedent if they wish the state courts to take seriously their argument. In the last analysis, only a committed partnership between the Montana bench and bar can eliminate the resilient pull of the territorial era on Montana Constitutional Law.

Thank you.

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43. *Territorial Courts*, FJC.GOV, <https://perma.cc/V8JN-NANZ>.

44. *Brief History of Montana*, MONTANA.GOV, <https://perma.cc/2C9L-8KVS>.

