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978-0-521-88771-7 - Rethinking the Judicial Settlement of Reconstruction

Pamela Brandwein

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Rethinking the Judicial Settlement of Reconstruction

American constitutional lawyers and legal historians routinely assert that the Supreme Court's state action doctrine halted Reconstruction in its tracks. But it didn't.

Rethinking the Judicial Settlement of Reconstruction demolishes the conventional wisdom – and puts a constructive alternative in its place. Pamela Brandwein unveils a lost jurisprudence of rights that provided expansive possibilities for protecting blacks' physical safety and electoral participation, even as it left public accommodation rights undefended. She shows that the Supreme Court supported a Republican coalition and left ample room for executive and legislative action. Blacks were abandoned, but by the president and Congress, not the Court. Brandwein unites close legal reading of judicial opinions (some hitherto unknown), sustained historical work, the study of political institutions, and the sociology of knowledge. This book explodes tired old debates and will provoke new ones.

Pamela Brandwein is professor of political science at the University of Michigan. She is the author of *Reconstructing Reconstruction: The Supreme Court and the Production of Historical Truth*.

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One final expression of thanks: In the months following the Supreme Court's ruling in *United States v. Morrison* (2000), I was startled by a brief passage in the dissenting opinion of Justice Stephen Breyer. Justice Breyer suggested that the canonical 1883 decision, the *Civil Rights Cases*, never considered the kind of claim advanced by the federal government in the *Morrison* case, namely, that Congress was authorized under the Fourteenth Amendment to remedy the failure of state actors to punish gender-motivated violence. My first thought was that Breyer must be wrong. I knew the *Civil Rights Cases*, and I was sure it blocked that kind of claim. After all, scholars widely condemn the decision for putting state failures to punish Klan violence outside the reach of the Fourteenth Amendment. But I reread the decision and was amazed to find that the text could support Breyer's reading. Such was the initiating event that led to this project and book. Justice Breyer, of course, bears no responsibility for the results.