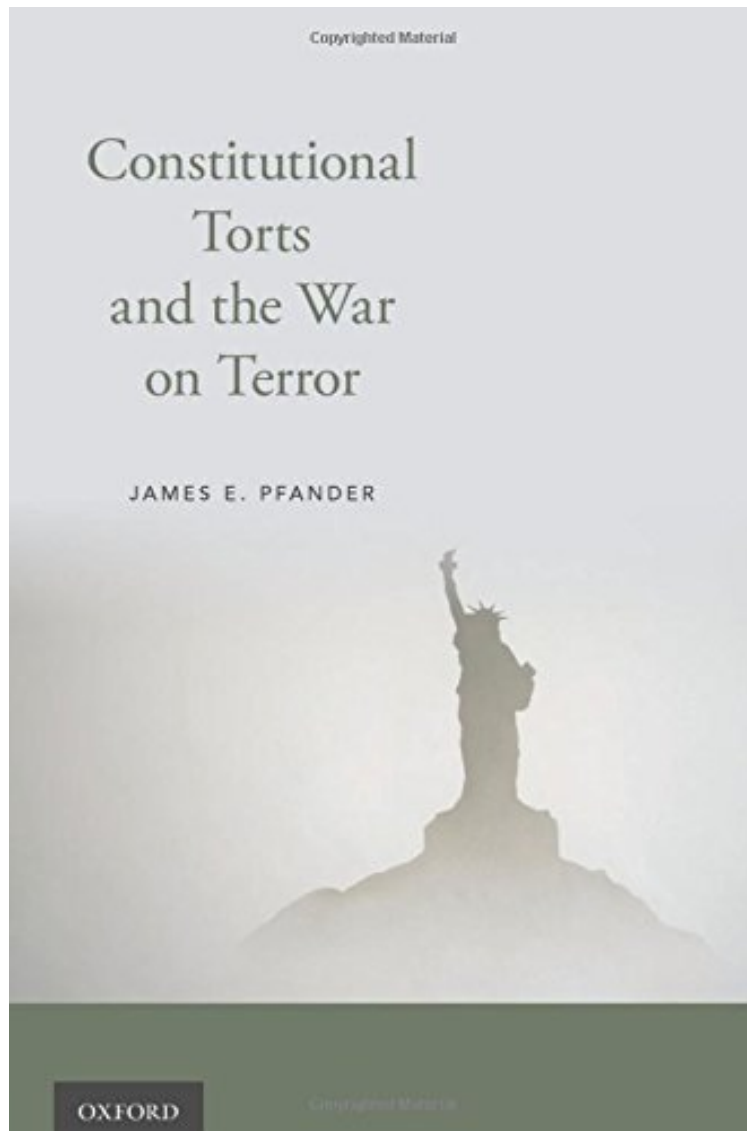


(Mobile book) Constitutional Torts and the War on Terror

Constitutional Torts and the War on Terror

James E. Pfander

*ebooks | Download PDF | *ePub | DOC | audiobook*



 Download

 Read Online

#950421 in Books 2017-01-18 Original language: English 6.40 x 1.00 x 9.10l, #File Name: 0190495286280 pages | File size: 61.Mb

James E. Pfander : Constitutional Torts and the War on Terror before purchasing it in order to gage whether or not it would be worth my time, and all praised Constitutional Torts and the War on Terror:

Constitutional Torts and the War on Terror examines the judicial response to human rights claims arising from the Bush Administration's war on terror. Despite widespread agreement that the Administration's program of extraordinary

rendition, prolonged detention, and "enhanced" interrogation was torture by another name, not a single federal appellate court has confirmed an award of damages to the program's victims. The silence of the federal courts leaves victims without redress and the constitutional limits on government action undefined. Many of the suits seeking redress have been based on the landmark 1971 Supreme Court decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*. This book traces the history of common law accountability, the rise of *Bivens* claims, and the post-*Bivens* history of constitutional tort litigation. After evaluating the failure of *Bivens* litigation arising from the war on terror, the book considers and rejects the arguments that have been put forward to explain and justify judicial silence. The book provides the Supreme Court with the tools needed to rethink its *Bivens* jurisprudence. Rather than treating the overseas national security context as disabling, modern federal courts should take a page from the nineteenth century, presume the viability of tort litigation, and proceed to the merits. Only by doing so can the federal courts ensure redress for victims and prevent future Administrations from using torture as an instrument of official policy.

"From William Blackstone to William Brennan, from John Marshall to the younger John Marshall Harlan, many of our greatest jurists have championed the remedial imperative—the need for robust judicial remedies to vindicate basic legal rights. In this wise and careful book, one of the best legal minds of the current generation, James Pfander, reinvigorates this grand legal tradition, explaining how ancient legal principles must be refreshed to meet modern challenges." Akhil Reed Amar, Sterling Professor of Law and Political Science, Yale University "Not a single U.S. official who participated in torture in the wake of 9/11 has been held accountable for his actions; many victims have sued, but not a single one has received compensation. James Pfander offers a bracing account of judicial abdication in the face of brutal illegality, and a cogent and persuasive argument for the resurrection of the judiciary's role in holding government wrongdoers accountable for unconstitutional national security initiatives in the future." David Cole, Professor, Georgetown University Law Center "James Pfander is the nation's leading authority on constitutional torts. In this outstanding new book, he examines why U.S. courts have failed to provide redress for governmental abuses in the wars that began on 9/11, and argues for a reinvigoration for the *Bivens* doctrine that allows individuals to recover damages from government for constitutional wrongs. By drawing on both a forgotten nineteenth century jurisprudence and a number of imaginative practical mechanisms, Pfander makes a powerful case that courts can adjudicate constitutional wrongs in ways that clarify constitutional norms and compensate victims of government wrongdoing while at the same time not unduly deterring official action." - Jack Goldsmith, Henry L. Shattuck, Professor of Law, Harvard University Law School "Pfander's book . . . provides a simply stunning historical, doctrinal, and normative account of why damages remedies for unconstitutional federal conduct are so important—especially, as the book's title suggests, in the context of post-September 11 counterterrorism policies in general, and detainee mistreatment in particular. But perhaps the most important feature of Pfander's work is its overclaimed modesty. Although the monograph points to the torture of post-September 11 detainees as the constitutional violation most in need of judicial accountability via *Bivens*, the sobering reality is that it has become increasingly difficult for plaintiffs to invoke *Bivens* across the board, including in contexts increasingly removed both geographically and substantively from contemporary counterterrorism policy." - Steve Vladeck, Lawfare "But the juxtaposition of Jim Pfander's erudite and magisterial new monograph, *Constitutional Torts and the War on Terror*, and the Supreme Court's June 19 decision in *Ziglar v. Abbasi*, suggests a different (and more alarming) possibility: The problem is not that law professors are failing to produce scholarship of utility to contemporary judges; the problem is that the scholarship that is out there just is not getting read. How else to explain both the result and the reasoning in *Abbasi*—a decision deeply hostile to judge-made damages remedies for constitutional violations by federal officers, and one that is shamelessly indifferent and stunningly oblivious to the rich history and tradition of such remedies that has been well- and long-documented in the academic literature, most powerfully in Pfander's book." - Steve Vladeck, JOTWELL

About the Author James E. Pfander, the Owen L. Coon Professor of Law at the Northwestern Pritzker School of Law, teaches civil procedure, conflicts of law, federal jurisdiction, and constitutional law. A member of the American Law Institute, Pfander has served as chair of the procedure and jurisdiction sections of the Association of American Law Schools. His books and monographs include textbooks in procedure and jurisdiction, a forthcoming third edition of the book, *Principles of Federal Jurisdiction* (2017), and a book on the structure of the federal judiciary: *One Supreme Court: Supremacy, Inferiority and the Judicial Power of the United States* (Oxford 2009). He has published dozens of scholarly articles and essays in such journals as the *Harvard Law Journal*, the *Yale Law Journal*, and the *Columbia Law Journal*.