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The New Civil War

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FOREWORD:
THE NEW CIVIL WAR

ANDERS WALKER*

2015 marks the 150th anniversary of Lee’s surrender at Appomattox, a moment that has since gone down in American history as the ultimate triumph of federal power over state defiance. Yet, even as the federal government rests assured in its supremacy, state defiance lives on. As the articles in this volume demonstrate, state rebellions against federal authority continue to bedevil America’s constitutional landscape. Professor Gerald N. Rosenberg demonstrates, for example, in “The Surprising Resilience of State Opposition to Abortion: The Supreme Court, Federalism, and the Role of Intense Minorities in the U.S. Politics System” that legislative opposition continues to mount against the Supreme Court’s landmark 1973 case, Roe v. Wade, guaranteeing the right to abortion, in part due to the rise of “intense minorities.” Lisa Sewell DeMoss documents similar opposition by states against the federal government’s health care initiative in “Health Care Reform and States’ Rights: Did We Learn Anything from the Civil War?” Trevor Gardner demonstrates in “The Promise and Peril of the Anti-Commandeering Rule in the Homeland Security Era: Immigrant Sanctuary as an Illustrative Case” how states have struggled against federal efforts to commandeer state and local police forces in the immigration context. Meanwhile, Mark Strasser explains in “Old Wine, Old Bottles, and Not Very New Corks: On State RFRA’s and Free Exercise Jurisprudence” the complicated manner in which states and the Supreme Court have wrestled over the authority to define religious freedom pursuant to Religious Freedom Restoration Acts. Joshua Sellers captures a nuanced aspect of state defiance in “Shelby County as a Sanction for States’ Rights in Elections,” showing how the Supreme Court sided with states like Alabama in Shelby County v. Holder, weakening Congress’s oversight over local elections. Finally, Neal Allen reminds us in “Judicialization of Political Conflict: Evidence of Brown v. Board of Education’s Effect in Newspaper Opinion” of the profound way in which Brown v. Board of Education stirred political debate over constitutional questions like nullification in the South in the 1950s.

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