

matters of

principle

LEGITIMATE LEGAL
ARGUMENT AND
CONSTITUTIONAL
INTERPRETATION

Richard S. Markovits

Matters Of Principle Legal Argument And Constitutional Interpretation

Tom Allen



Matters Of Principle Legal Argument And Constitutional Interpretation:

Matters of Principle Richard S. Markovits, 1998-07-01 The United States is generally believed to be a liberal rights based culture In such a society according to Richard S Markovits arguments of moral principle dominate legal discourse Markovits analyzes various rights related to our society s basic duties of showing appropriate equal respect for all creatures capable of moral integrity and appropriate equal concern for their actualizing this potential By taking moral and legal rights arguments seriously the book counters the tendencies of legal academics to substitute non right focused policy analysis for rights analysis and of judges to indulge their own political preferences under the guide of executing arcane morally disconnected legal analysis Ranging widely and covering in depth such flashpoint issues as educational rights minimum real income rights privacy rights abortion parenting sexual liberties and the right to die *Matters of Principle* is a deeply engaged and thoughtful work certain to be controversial and much debated Legal Canons Jack M. Balkin, Sanford V.

Levinson, 2000-08 Every discipline has its canon the set of standard texts approaches examples and stories by which it is recognized and which its members repeatedly invoke and employ Although the last twenty five years have seen the influence of interdisciplinary approaches to legal studies expand there has been little recent consideration of what is and what ought to be canonical in the study of law today *Legal Canons* brings together fifteen essays which seek to map out the legal canon and the way in which law is taught today In order to understand how the twin ideas of canons and canonicity operate in law each essay focuses on a particular aspect from contracts and constitutional law to questions of race and gender The ascendance of law and economics feminism critical race theory and gay legal studies as well as the increasing influence of both rational actor methodology and postmodernism are all scrutinized by the leading scholars in the field A timely and comprehensive volume *Legal Canons* articulates the need for and means to opening the debate on canonicity in legal studies Table of Contents *Economics and the Interpretation and Application of U.S. and E.U. Antitrust Law* Richard S.

Markovits, 2014-05-22 This volume 1 defines the specific anticompetitive intent lessening competition distorting competition and exploitative abuse tests of illegality promulgated by U S and or E U antitrust law 2 compares the efficiency defenses promulgated by U S and E U antitrust law 3 compares the conduct coverage of the various U S and E U antitrust laws 4 defines price competition and quality or variety increasing investment QV investment competition and explains why they should be analyzed separately 5 defines the components of individualized pricing and across the board pricing sellers price minus marginal cost gaps and analyses each s determinants 6 defines the determinants of the intensity of QV investment competition and explains how they determine that intensity 7 demonstrates that definitions of both classical and antitrust markets are inevitably arbitrary not just at their periphery but comprehensively 8 criticizes the various protocols for market definition recommended used by scholars the U S antitrust agencies the European Commission and U S and E U courts 9 explains that a firm s economic market power or dominance depends on its power over both price and QV investment and

demonstrates that even if markets could be defined non arbitrarily a firm s economic power could not be predicted from its market share 10 articulates a definition of oligopolistic conduct that some economists have implicitly used conduct whose perpetrator perceived ex ante profitability depended critically on the perpetrator s belief that its rivals responses would be affected by their belief that it could react to their responses distinguishes two types of such conduct contrived and natural by whether it entails anticompetitive threats and or offers explains why this distinction is critical under U S but not E U antitrust law analyzes the profitability of each kind of oligopolistic conduct examines these analyses implications for each s antitrust legality and criticizes related U S and E U case law and doctrine and scholarly positions e g on the evidence that establishes the illegal oligopolistic character of pricing and 11 executes parallel analyses of predatory conduct e g criticizes various arguments for the inevitable unprofitability of predatory pricing the various tests that economists U S courts advocate using use to determine whether pricing is predatory and two analyses by economists of the conditions under which QV investment and systems rivalry are predatory and examines the conditions under which production process research plant modernization and long term full requirements contracts are predatory

Building the Constitution James Fowkes,2016-12-15 This revisionary perspective on South Africa s celebrated Constitutional Court draws on historical and empirical sources alongside conventional legal analysis to show how support from the African National Congress ANC government and other political actors has underpinned the Court s landmark cases which are often applauded too narrowly as merely judicial achievements Standard accounts see the Court as overseer of a negotiated constitutional compromise and as the looked to guardian of that constitution against the rising threat of the ANC However in reality South African successes have been built on broader and more admirable constitutional politics to a degree no previous account has described or acknowledged The Court has responded to this context with a substantially consistent but widely misunderstood pattern of deference and intervention Although a work in progress this institutional self understanding represents a powerful effort by an emerging court as one constitutionally serious actor among others to build a constitution

On Interpretation Andrew D. Weiner,Leonard V. Kaplan,2002 This title looks at past post structuralist theory to re examine methods of textual interpretation developed in past millennia to understand sacred philosophical cultural legal literary and artistic texts

Select Essays on Governance and Accountability Issues in Public Law Hennie Strydom,Joanna Botha,2020-10-27 The essays in this book authored by academics from the Faculties of Law at the University of Johannesburg and Nelson Mandela University respectively emanate from a joint research project and conference arranged by the Faculties in 2018 The essays focus on public law issues impacting on governance and accountability in South African law and in international and regional law but with a specific focus on problems afflicting the African continent

Wittgenstein and Law Dennis Michael Patterson,2004 The papers collected in this volume reflect a focus on the continuing relevance and importance of Wittgenstein s work for philosophy in general and legal theory in particular

Research Handbook on Legal Pluralism and EU Law Gareth Davies,Matej Avbelj,

The Research Handbook on Legal Pluralism and EU Law explores the diversity of phenomenon of overlapping legal systems within the European Union the nature of their interactions and how they deal with the difficult question of the legal hierarchy between them The contributors reflect on the history sociology and legal scholarship on constitutional and legal pluralism and develop this further in the light of the challenges currently facing the EU *Introduction to Critical Legal Theory* Ian Ward, 2012-10-02 *Introduction to Critical Legal Theory* provides an accessible introduction to the study of law and legal theory It covers all the seminal movements in classical modern and postmodern legal thought engaging the reader with the ideas of jurists as diverse as Aristotle Hobbes and Kant Marx Foucault and Dworkin At the same time it impresses the interdisciplinary nature of critical legal thought introducing the reader to the philosophy the economics and the politics of law This new edition focuses even more intently upon the narrative aspect of critical legal thinking and the re emergence of a distinctive legal humanism as well as the various related challenges posed by our new world order *Introduction to Critical Theory* is a comprehensive text for both students and teachers of legal theory jurisprudence and related subjects

Interpreting Constitutions Charles J. G. Sampford, Kim Preston, 1996 Constitutions can be viewed as the road map of liberal democracies And like any road map they need to be constantly reconsidered and redrawn as the territory develops and changes The contributors undertake this re interpretation on a number of levels They examine first the theoretical approaches to constitutional interpretation and then move on to implied rights There then follows a consideration of the role of the judiciary and parliament in constitutional interpretation drawing upon a number of examples from around the world

Moral Foundations of Constitutional Thought Graham Walker, 2014-07-14 Graham Walker boldly recasts the debate over issues like constitutional interpretation and judicial review and challenges contemporary thinking not only about specifically constitutional questions but also about liberalism law justice and rights Walker targets the skeptical moral nihilism of leading American judges and writers on both the political left and right charging that their premises undermine the authority of the Constitution empty its moral words of any determinate meaning and make nonsense of ostensibly normative theories But he is even more worried about those who desire to conduct constitutional government by direct recourse to an authoritative moral truth Augustine's political ethics Walker argues offers a solution a way to embrace substantive goodness while relativizing its embodiment in politics and law Walker sees in Augustinian theory an understanding of the rule of law that prevents us from mistaking law for moral truth Pointing out how the tensions in that theory resonate with the normative ambivalence of America's liberal constitutionalism he shows that Augustine can provide successful but decidedly nonliberal grounds for the artifices and compromises characteristic of law in a liberal state Originally published in 1990 The Princeton Legacy Library uses the latest print on demand technology to again make available previously out of print books from the distinguished backlist of Princeton University Press These editions preserve the original texts of these important books while presenting them in durable paperback and hardcover editions The goal of

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Populist Challenges to Constitutional Interpretation in Europe and Beyond Fruzsina Gárdos-Orosz, Zoltán Szente, 2021-05-03 This book explores the relationship between populism or populist regimes and constitutional interpretation used in those regimes The volume discusses the question of whether contemporary populist governments and movements have developed or encouraged new and specific constitutional theories doctrines and methods of interpretation or whether their constitutional and other high courts continue to use the old traditional interpretative tools in constitutional adjudication The book is divided into four parts Part I contains three chapters elaborating the theoretical basis for the discussion Part II examines the topic from a comparative perspective representing those European countries where populism is most prevalent including Austria Croatia the Czech Republic Greece Hungary Italy Poland Romania Spain and the United Kingdom Part III extends the focus to the United States reflecting how American jurisprudence and academia have produced the most important contributions to the theory of constitutional interpretation and how recent political developments in that country might challenge the traditional understanding of judicial review This section also includes a general overview on Latin America where there are also some populist governments and strong populist movements Finally the editors closing study analyses the outcomes of the comparative research summarizing the conclusions of the book Written by renowned national constitutional scholars the book will be essential reading for students academics and researchers working in Constitutional Law and Politics Chapter 1 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4 0 license

Political Argumentation in the United States David Zarefsky, 2014-09-15 In the United States political argumentation occurs in institutionalized settings and the broader public forum in efforts to resolve conflict and efforts to foster it in settings with time limits and controversies that extend over centuries From the ratification of the U S Constitution to the presidency of Barack Obama this book contains twenty studies of U S political argumentation grouped under four themes early American political discourse Abraham Lincoln s political argumentation argumentation about foreign policy and public policy argumentation since the 1960s Deploying methods of rhetorical criticism argument analysis and evaluation the studies are rich in contextual grounding and critical perspective They integrate the European emphasis on politics as an argumentative context with the U S tradition of public address studies Two essays have never before been published The others are retrieved from journals and books published between 1979 and 2014 The introductory essay is new for this volume

Parliament, the Constitution, and Property in the United Kingdom Tom Allen, 2025-01-02 This book considers whether Parliament recognises a constitutional right to property Parliament is supreme in theory there is nothing to stop it from passing laws to confiscate property Nevertheless MPs often argue that a proposed law would be unconstitutional What does this mean in a system without a written constitution What

counts as a sound argument about constitutional rights And what influence do constitutional arguments have on the legislative process The book takes a close look at these questions It reviews legislation and debates from the Middle Ages through to more recent legislation and covers a wide range of topics such as land reform nationalisation taxation regulatory laws and retrospection It also looks at the most recent debates and considers the relevance of constitutional thinking to election manifestos of the main political parties

Free Speech and the Politics of Identity David A. J. Richards, 1999 Free Speech and the Politics of Identity challenges the scholarly view as well as the dominant legal view outside the United States that the right of free speech may reasonably be traded off in pursuit of justice to stigmatized minorities These views appeal to an alleged reasonable balance between two basic human rights the right of free speech and the right against unjust discrimination Compelling arguments of normative political theory and interpretative history show however that these rights are structurally linked the abridgement of one compromises the other To make this case David Richards offers an original political theory of toleration and of structural injustice that addresses the nature and scope of the right of free speech and the right against unjust discrimination its analytic focus is on the role played by members of subordinated groups in the protest of the terms of structural injustice the politics of identity advancing constitutional justice under law While the argument is developed on the basis of American constitutional experience from the antebellum period forward its normative force is brought to bear both in defending and criticizing some aspects of American law and in challenging the continuing legitimacy of laws against group libel obscenity and blasphemy under national legal systems including Germany France Britain Canada Israel India South Africa and others regional systems the jurisprudence of the European Court of Human Rights and public international law The book's innovative normative and interpretative methodology calls for a new departure in comparative public law in which all states responsibly address their common problems not only of inadequate protection of free speech but correlative failure to take seriously the continuing political power of such evils as anti-Semitism racism sexism and homophobia

Constitutional Argument and Institutional Structure in the United States

Nicholas Papaspyrou, 2018-03-22 US constitutional jurisprudence often conflates two distinct enquiries how to interpret the Constitution and how to allocate interpretive authority This book explains the distinct role of judgements about interpretive authority in constitutional practice It argues that these judgements do not determine what qualifies as good constitutional argument and cannot substitute for it Rather they specify the division of labour between the political branches and the judiciary in forming applicable constitutional determinations This explanation of the structure of constitutional reasoning sets the stage for the development of a normative theory about each enquiry The book advances a theory of substantive constitutional argument It argues that constitutional interpretation is a special kind of practical reasoning aiming to construct and specify morally sound accounts of the Constitution and surrounding constitutional practice Yet this task is entrusted to a scheme of institutions as agents of free and equal citizens The standard of review is an interlocking component

of that scheme regulating the judicial assignment As such it should aim to facilitate best performance of the overall interpretive task so that the judicial process settles on appropriate constitutional determinations grounded on morally sound reasons that reach all citizens and uphold the fundamental commitments to freedom and equal citizenship

Landmark Cases in EU Law, Volume 2 Paul Craig, Robert Schütze, 2025-07-10 From Van Gend en Loos and Costa v ENEL to Cassis de Dijon and Consten and Grundig Landmark Cases in EU Law explores the most important and well known EU law cases in two volumes These volumes show how the European Court of Justice has played a fundamental role in the construction of the European Union in the past 70 years Many EU landmark cases have been controversial yet no one can deny that they have been essential in defining the Union legal order as we find it today Volume 2 explores the substantive cases that have shaped the Union's internal market its competition law as well as its internal and external policies Each of the twenty cases within this volume is placed in its historical and doctrinal context and each chapter also presents the history of its reception by the Court and academia

Methods in Medical Ethics Jeremy Sugarman, Daniel P. Sulmasy, 2001 Twenty four American specialists provide descriptions of techniques critiques and notes on resources and training on a variety of methods used in medical ethics Individual chapters are devoted to each of 11 methods philosophy religion and theology professional codes legal methods casuistry history qualitative ethnographic quantitative surveys experimental methods and economics and decision science Discussion includes how these methods can relate to one another and how to assess the quality of scholarship in medical ethics in connection with such issues as physician assisted suicide euthanasia and medical genetics For scholars teachers editors and students in all disciplines contributing to the field c Book News Inc

The Cambridge Handbook of Deliberative Constitutionalism Ron Levy, Hoi Kong, Graeme Orr, Jeff King, 2018-04-19 Deliberative democratic theory emphasises the importance of informed and reflective discussion and persuasion in political decision making The theory has important implications for constitutionalism and vice versa as constitutional laws increasingly shape and constrain political decisions The full range of these implications has not been explored in the political and constitutional literatures to date This unique Handbook establishes the parameters of the field of deliberative constitutionalism which bridges deliberative democracy with constitutional theory and practice Drawing on contributions from world leading authors this volume will serve as the international reference point on deliberation as a foundational value in constitutional law and will be an indispensable resource for scholars students and practitioners interested in the vital and complex links between democratic deliberation and constitutionalism

Constitutional Law for the Criminal Justice Professional Carl J. Franklin, 1999-03-16 Written in a simple straightforward manner this book will help today's criminal justice student better understand con law issues as well as the complicated development of constitutional rights and law In its simple easy to understand format this book is a must for both current criminal justice professionals and students studying to enter the p

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