

What Are The Principles Of Constitutional Law?

Bicameralism

Separation of Powers

Checks and Balances

Federalism

Public Values In Constitutional Law

Stephen E. Gottlieb



Public Values In Constitutional Law:

Public Values in Constitutional Law Stephen E. Gottlieb, 1993 Critical examination of the concept of compelling government interests *Constitutional Law and Its Interpretation* Jules L. Coleman, Anthony James Sebok, 1994 **The Constitutional Underclass** Evan Gerstmann, 1999-04 When the Supreme Court struck down Colorado's Amendment 2 which would have nullified all state and local laws protecting gays and lesbians from discrimination it was widely regarded as a victory for gay rights Yet many gays and lesbians still risk losing their jobs custody of their children and even their liberty under the law Using the Colorado initiative as his focus Gerstmann untangles the complex standards and subtle rhetoric the Supreme Court uses to apply the equal protection clause The Court divides people into legal classes that receive varying levels of protection gays and lesbians and other groups such as the elderly and the poor receive the least Gerstmann reveals how these standards are used to favor certain groups over others and also how Amendment 2 advocates used the Court's doctrine to convince voters that gays and lesbians were seeking special rights in Colorado Concluding with a call for wholesale reform of equal protection jurisprudence this book is essential reading for anyone interested in fair coherent and truly equal protection under the law **Constitutional Cultures** Robert F. Nagel, 1989 **Interpreting the Constitution** Harry H. Wellington, 1992-07-29 How does the Supreme Court work Is there something undemocratic about having unelected judges overturn laws passed by elected legislators How can a brief two hundred year old constitution continue to provide the fundamental law for governing the United States In this book a prominent legal scholar explores these questions with unusual clarity Harry H Wellington discusses judicial review the process by which the court decides whether laws are valid and the interpretive role the court plays in constitutional regulation and the resolution of individual disputes Written in an engaging and accessible manner the book offers fascinating examples of the court at work in particular showing how it has addressed one of the most controversial political and judicial issues of our time abortion Harry H Wellington takes a frank and provocative look at the process of adjudication showing how it incorporates and shapes public values and mores as they change from one generation to the next He explains why democracies can tolerate judicial review by nonelected officials and he refutes the politically popular doctrine of original intent and explains why those who interpret the Constitution must be responsive to precedent and process Wellington also shows how the American political system allows the public to respond to the Court's decisions on such strongly debated issues as abortion Although he argues for the retention of *Roe v Wade* Wellington points out that the Court makes mistakes and he asserts that institutions groups and individuals sometimes have an obligation to contest the court's readings and its authority This often noisy dialogue says Wellington is necessary to make judicial regulation compatible with the democratic ideology on which the United States is based The Constitutional Bases of Political and Social Change in the United States Shlomo Slonim, 1990-04-23 This volume collects the papers presented at a conference sponsored by the Hebrew University of Jerusalem to mark the bicentennial of the framing and adoption of the U S

Constitution The conference joined distinguished members of the American judiciary bar and academia and their Israeli counterparts in an intensive debate on the part the Constitution has assumed in American life during the 200 years of its existence Each paper focuses specifically on one aspect of the Constitution the subject matter ranges from executive legislative relations to minority rights religious freedom and constitutional reform Throughout comments and rebuttals are also included Unique in its international approach to constitutional issues and developments this volume will be of significant interest to constitutional and legal scholars Following two papers that provide a backdrop to the debate by reviewing the historical background of the Constitution and examining the rise of the Supreme Court the contributors move on to address such issues as the issue of executive legislative relations and the impacts of the Constitution on these relations over the years the inherent tensions that exist between the establishment and free exercise clauses in the First Amendment the question of minority rights under the Constitution as relates to both race and gender and the newly discovered right of privacy under the constitution Subsequent papers address whether the Constitution needs amending and explore the impact of the U S Constitution on Israeli jurisprudence In the final group of essays the contributors deal with the possible assumption by the U S Supreme Court of a new role a more forthright involvement in promoting social justice

Philosophical Dimensions Of The Constitution Diana T Meyers, Kenneth Kipnis, Steve Griffin, 2019-06-18 In the closing decades of the eighteenth century the newly independent colonies along the mid Atlantic coast of North America commenced an unprecedented public debate concerning the principles of civil government The debate culminated in 1787 with the Philadelphia convention where the United States Constitution was drafted and adopted After rati

Constitutional Originalism Robert W. Bennett, Lawrence B. Solum, 2011-06-06 Problems of constitutional interpretation have many faces but much of the contemporary discussion has focused on what has come to be called originalism The core of originalism is the belief that fidelity to the original understanding of the Constitution should constrain contemporary judges As originalist thinking has evolved it has become clear that there is a family of originalist theories some emphasizing the intent of the framers while others focus on the original public meaning of the constitutional text This idea has enjoyed a modern resurgence in good part in reaction to the assumption of more sweeping power by the judiciary operating in the name of constitutional interpretation Those arguing for a living Constitution that keeps up with a changing world and changing values have resisted originalism This difference in legal philosophy and jurisprudence has since the 1970s spilled over into party politics and the partisan wrangling over court appointments from appellate courts to the Supreme Court In *Constitutional Originalism* Robert W Bennett and Lawrence B Solum elucidate the two sides of this debate and mediate between them in order to separate differences that are real from those that are only apparent In a thorough exploration of the range of contemporary views on originalism the authors articulate and defend sharply contrasting positions Solum brings learning from the philosophy of language to his argument in favor of originalism and Bennett highlights interpretational problems in the dispute resolution context describing instances in

which a living Constitution is a more feasible and productive position The book explores those contrasting positions to be sure but also uncovers important points of agreement for the interpretational enterprise This provocative and absorbing book ends with a bibliographic essay that points to landmark works in the field and helps lay readers and students orient themselves within the literature of the debate

Overcriminalization Douglas Husak, 2008-01-08 In the US one out of every 138 residents is incarcerated The size of the prison population has quadrupled since 1980 Approximately 2.4% of Americans are either on probation and parole The US has the highest rate of criminal punishment in the Western world The problem with American criminal law as the philosopher of law Douglas Husak and many others see it is that there is simply too much of it Recent years have seen a dramatic expansion in the amount of criminal statutes and in the resulting reliance on punishment for convictions under those laws Husak argues that this is regrettable for several reasons but most importantly he says that much of the resulting punishment is unjust excessive and disproportionate He also claims that it is destructive to the rule of law and undermines the principle of legality What should be done Husak's goal in this book is formulate a normative theory of criminalization that will allow us to distinguish which criminal laws are justified and which are not something he sees this as essential in order to reverse the trend towards too many criminal laws The first part of his book makes the case that there is both too much criminal law and too much punishment and clarifies the relationship between the two using empirical data He then provides examples of dubious criminal laws enacted by legislatures in particular statutes on drugs possession and guns The latter part of the book develops his theory which establishes principles that should set limits both external and internal to the criminal law on what we can and should criminalize

Our Elusive Constitution Daniel N. Hoffman, 1997-01-01 This volume explores the relationship between religion and politics It brings a varied sample of richly detailed comparative and case studies together with a set of analytical paradigms in an integrated framework It is a major statement on a timely subject and a plea for the acknowledgment of normative pluralism as firmly rooted in the history of religion The editor shows that the fact of political diversity in the history of world religions compels the acceptance of pluralism as a normative principle

The Constitutional Corporation Stephen Bottomley, 2007 Corporate laws are based on the idea that the interests of shareholders should be the primary concern of company directors However some argue that the proper role for shareholders is to sit back and let the corporation's managers do their job or that the pursuit of shareholders interests detracts from the concerns of employees or victims of corporate wrongdoing or other stakeholders Stephen Bottomley argues that instead of consigning shareholders to this passive role they should be given opportunities to be active members of corporations Corporations are constitutional arrangements rather than mere contractual agreements They are decision making organizations in which questions of process and structure are important Thus instead of using economic criteria such as efficiency as the sole measure for deciding what constitutes good corporate governance this book examines whether ideas of accountability deliberation and contestability provide a valuable framework for assessing

corporate structures and process and for encouraging greater shareholder participation Human Dignity Aharon Barak, 2015-01-29 An analytical study of human dignity as the humanity of a person as a constitutional value and a constitutional right **Unfit for Democracy** Stephen E. Gottlieb, 2018-04 Since its founding Americans have worked hard to nurture and protect their hard won democracy And yet few consider the role of constitutional law in America s survival In *Unfit for Democracy* Stephen Gottlieb argues that constitutional law without a focus on the future of democratic government is incoherent illogical and contradictory Approaching the decisions of the Roberts Court from political science historical comparative and legal perspectives Gottlieb highlights the dangers the court presents by neglecting to interpret the law with an eye towards preserving democracy From back cover *Proportionality Balancing and Constitutional Governance* Alec Stone Sweet, Jud Mathews, 2019-05-16 In this book Alec Stone Sweet and Jud Mathews focus on the law and politics of rights protection in democracies and in human rights regimes in Europe the Americas and Africa After introducing the basic features of modern constitutions with their emphasis on rights and judicial review the authors present a theory of proportionality that explains why constitutional judges embraced it Proportionality analysis is a highly intrusive mode of judicial supervision it permits state officials to limit rights but only when necessary to achieve a sufficiently important public interest Since the 1950s virtually every powerful domestic and international court has adopted proportionality analysis as the central method for protecting rights In doing so judges positioned themselves to review all important legislative and administrative decisions and to invalidate them as unconstitutional when such policies fail the proportionality test The result has been a massive and global transformation of law and politics The book explicates the concepts of trusteeship the system of constitutional justice the effectiveness of rights adjudication and the zone of proportionality A wide range of case studies analyse how proportionality has spread and variation in how it is deployed the extent to which the U S Supreme Court has evolved and resisted similar doctrines the role of proportionality in building ongoing constitutional dialogues with the other branches of government and the importance of the principle to the courts of regional human rights regimes While there is variance in the intensity of proportionality based dialogues such interactions are today at the very heart of governance in the modern constitutional state and beyond **Morality Imposed** Stephen E. Gottlieb, 2000-09 We like to think of judges and justices as making decisions based on the facts and the law But to what extent do jurists decide cases in accordance with their own preexisting philosophy of law and what specific ideological assumptions account for their decisions Stephen E Gottlieb adopts a unique perspective on the decision making of Supreme Court justices blending and re characterizing traditional accounts of political philosophy in a way that plausibly explains many of the justices voting patterns A seminal study of the Rehnquist Court *Morality Imposed* illustrates how in contrast to previous courts which took their mandate to be a move toward a freer and or happier society the current court evidences little concern for this goal focusing instead on thinly veiled moral judgments Delineating a fault line between liberal and conservative justices on the Rehnquist Court

Gottlieb suggests that conservative justices have rejected the basic principles that informed post New Deal individual rights jurisprudence and have substituted their own conceptions of moral character for these fundamental principles. Morality Imposed adds substantially to our understanding of the Supreme Court its most recent cases and the evolution of judicial philosophy in the U S **Oliver Wendell Holmes, Jr., Legal Theory, and Judicial Restraint** Frederic R.

Kellogg, 2006-12-11 Oliver Wendell Holmes Jr is considered by many to be the most influential American jurist. The voluminous literature devoted to his writings and legal thought however is diverse and inconsistent. In this study Frederic R. Kellogg follows Holmes's intellectual path from his early writings through his judicial career. He offers a fresh perspective that addresses the views of Holmes's leading critics and explains his relevance to the controversy over judicial activism and restraint. Holmes is shown to be an original legal theorist who reconceived common law as a theory of social inquiry and who applied his insights to constitutional law. From his empirical and naturalist perspective on law with its roots in American pragmatism emerged Holmes's distinctive judicial and constitutional restraint. Kellogg distinguishes Holmes from analytical legal positivism and contrasts him with a range of thinkers How to Read the Constitution Christopher Wolfe, 1996. Prominent constitutional scholar Christopher Wolfe challenges popular opinions by presenting an insightful and well supported defense of originalist interpretations of the Constitution. He describes the traditional approach to constitutional interpretation and judicial review and then focuses his analysis on the due process clause which has become the source of most modern constitutional law. Wolfe challenges the most influential defenders of judicial activism including Laurence Tribe, Michael Dorf, Harry Wellington and Mark Tushnet and he persuasively explains the dire political consequences of taking the Constitution out of constitutional law *Political Liberalism* John Rawls, 2005. This book continues and revises the ideas of justice as fairness that John Rawls presented in *A Theory of Justice* but changes its philosophical interpretation in a fundamental way. That previous work assumed what Rawls calls a well ordered society, one that is stable and relatively homogenous in its basic moral beliefs and in which there is broad agreement about what constitutes the good life. This book goes deeper to ask how a stable and just society of free and equal citizens can live in concord when divided by reasonable but incompatible doctrines **Liberalism and American Constitutional Law** Rogers M. Smith, 1985. A major work in the field of American political and legal philosophy, Smith analyzes the liberal goals of the framers of the Constitution and the weaknesses of their political thought. This book will undoubtedly be the focus of debate in scholarly and legal circles for years to come. It is a work of grand scholarship. Thomas A. Karel, *Law Books in Review* *Constitutional Essentials* Frank I. Michelman, 2022. In *Constitutional Essentials* On the Constitutional Theory of Political Liberalism, Michelman explains why constitutional debates persist in modern day democracies. Through the lens of John Rawls's seminal work *Political Liberalism*, Michelman responds to the problems governments of constitutional democratic societies face from deep lying disagreement among citizens by presenting them with Rawls's solution: an accepted constitution.

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