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*principle*

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LEGITIMATE LEGAL  
ARGUMENT AND  
CONSTITUTIONAL  
INTERPRETATION

*Richard S. Markovits*

# Matters Of Principle Legal Argument And Constitutional Interpretation

**Jack M. Balkin, Sanford V. Levinson**



## **Matters Of Principle Legal Argument And Constitutional Interpretation:**

**Matters of Principle** Richard S. Markovits, 1998-07 The United States is generally believed to be a liberal rights based culture In such a society Richard S Markovits asserts arguments of moral principle are the dominant type of legitimate legal argument Markovits analyzes various rights associated with 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 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

**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 guise 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

**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

**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

**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

**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

**Criminal Evidence and Human Rights** Paul Roberts, Jill Hunter, 2012-05-18 Criminal procedure in the common law world is being recast in the image of human rights. The cumulative impact of human rights laws both international and domestic presages a revolution in common law procedural traditions. Comprising 16 essays plus the editors' thematic introduction, this volume explores various aspects of the human rights revolution in criminal evidence and procedure in Australia, Canada, England and Wales, Hong Kong, Malaysia, New Zealand, Northern Ireland, the Republic of Ireland, Singapore, Scotland, South Africa, and the USA. The contributors provide expert evaluations of their own domestic law and practice with frequent reference to comparative experiences in other jurisdictions. Some essays focus on specific topics such as evidence obtained by torture, the presumption of innocence, hearsay, the privilege against self-incrimination, and rape shield laws. Others seek to draw more general lessons about the context of law reform, the epistemic demands of the right to a fair trial, the domestic impact of supra-national legal standards, especially the ECHR, and the scope for reimagining common law procedures through the medium of human rights. This edited collection showcases the latest theoretically informed, methodologically astute, and doctrinally rigorous scholarship in criminal procedure and evidence, human rights, and comparative law, and will be a major addition to the literature in all of these fields.

**Public Law** Andrew Le Sueur, Andrew P. Le Sueur, Maurice Sunkin, Jo Eric Khushf, Murkens, 2023 Public Law Text Cases and Materials offers a fresh approach to the study of constitutional and administrative law by exploring how the law works in practice. The inclusion of extracts from key cases, government reports, and academic articles demonstrates the law in action, and the incisive commentary that accompanies them explains the significance of each. The expert authors have distilled their knowledge of the institutions and legal principles into concise, focused prose, and they encourage reflection through regular questions and hypothetical examples. This leading text provides students with a thorough and wide-ranging knowledge of public law, together with a full understanding of the theoretical and political debates in this fascinating and dynamic area of law. Digital formats and resources: The fifth edition is available for students and institutions to purchase in a variety of formats and is supported by online resources. The e-book offers a mobile experience and convenient access along with functionality tools, navigation features, and links that offer extra learning support. [www.oxfordtextbooks.co.uk/ebooks](http://www.oxfordtextbooks.co.uk/ebooks). The online resources that support the book include multiple choice questions with answer feedback for students to test their understanding.

*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.

Constitutional

Law in Venezuela Allan R. Brewer-Carías, 2023-08-20 Derived from the renowned multi volume International Encyclopaedia of Laws this very useful analysis of constitutional law in Venezuela provides essential information on the country's sources of constitutional law its form of government and its administrative structure Lawyers who handle transnational matters will appreciate the clarifications of particular terminology and its application Throughout the book the treatment emphasizes the specific points at which constitutional law affects the interpretation of legal rules and procedure Thorough coverage by a local expert fully describes the political system the historical background the role of treaties legislation jurisprudence and administrative regulations The discussion of the form and structure of government outlines its legal status the jurisdiction and workings of the central state organs the subdivisions of the state its decentralized authorities and concepts of citizenship Special issues include the legal position of aliens foreign relations taxing and spending powers emergency laws the power of the military and the constitutional relationship between church and state Details are presented in such a way that readers who are unfamiliar with specific terms and concepts in varying contexts will fully grasp their meaning and significance Its succinct yet scholarly nature as well as the practical quality of the information it provides make this book a valuable time saving tool for both practising and academic jurists Lawyers representing parties with interests in Venezuela will welcome this guide and academics and researchers will appreciate its value in the study of comparative constitutional law

**Treaty Interpretation by the WTO Appellate Body** Isabelle Van Damme, 2009 This book analyses how the Appellate Body uses particular principles of general international law in interpreting the WTO covered agreements It deals equally with general international law and WTO law The aim is to explain how the Appellate Body interprets and applies customary international law on treaty interpretation in dealing with the WTO covered agreements The main concern is to analyse the judicial reasoning and ways of justifying judicial decision making In particular it answers the question of how the Appellate Body explains its reading of WTO treaty language It is argued that the Appellate Body has interpreted the WTO covered agreements in a contextual and effective manner an approach that corresponds with general international law The character of the WTO covered agreements has nevertheless confronted the Appellate Body with some questions of interpretation that were until recently unexplored or neglected by other courts and tribunals In that sense the Appellate Body has contributed to the development of general international law on treaty interpretation or at least to its practice WTO law is primarily treaty law but increasingly soft law and broader themes and values from other disciplines such as governance variable geometry and legitimacy are introduced and discussed Customary international law with the exception of the principles of treaty interpretation and general principles of law are often seen as excluded entirely An ancillary theme of this proposed monograph is the extent to which customary international law and general principles of law have penetrated WTO law through the technique of treaty interpretation

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

*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

**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

EU External Relations Law Graham Butler, Ramses A Wessel, 2022-06-02 Marking the 50th anniversary of the influential ERTA doctrine this book analyses and contextualises the entire breadth of the jurisprudence of EU external relations law through a

systematic case by case account of the field The entire framework of EU external relations law has been built from the ground up by the jurisprudence of the Court of Justice of the European Union At the beginning of the field s emergence the legal questions to be answered concerned the division of powers and competence between firstly the Member States and that of the Union and secondly the division of powers and competence between the different institutions of the Union Questions on such matters continue to be asked but more contemporarily new legal questions have arisen that have been in need of adjudication including questions concerning the autonomy of Union law the relationship between the Union and other international organisations the relationship between Union law and international law the scope and breadth of international agreements amongst others The book features established academic scholars judges agents of institutions and Member States and legal practitioners in the field of EU external relations law analysing over 90 cases in which the Court has legally shaped the theory and practice of the external dimension of legal Europe Cited in Opinion of Advocate General Nicholas Emiliou in Case C 516 22 European Commission v United Kingdom of Great Britain and Northern Ireland ECLI EU C 2023 857 Judgment of the UK Supreme Court Court of Justice of the European Union 9 November 2023

*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

**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

*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 constitutional 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 profession

Logical Models of Legal Argumentation H. Prakken, Giovanni Sartor, 2012-12-06 In the study of forms of legal reasoning logic and argumentation theory long followed separate tracks Legal logicians tended to focus on a deductive reconstruction of justifying a decision disregarding the dialectical process leading to the chosen justification Others instead emphasized the adversarial and discretionary nature of legal reasoning involving reasonable evaluation of alternative choices and the use of analogical reasoning Recently however developments in Artificial Intelligence and Law have paved the way for overcoming this separation Logic has widened its scope to defensible argumentation and informal accounts of analogy and dialectics have inspired the construction of computer programs Thus the prospect is emerging of an integrated logical and dialectical account of legal argument adding to the understanding of legal reasoning and providing a formal basis for computer tools that assist and mediate legal debates while leaving room for human initiative This book presents contributions to this development From a logical point of view it covers topics such as evaluating conflicting arguments weighing reasons modelling legal disputes as a dialogue game the role of the burden of proof the relation between principles rules reasons and facts and the relation between deductive and nondeductive arguments Written by leading scholars in the field and building on recent developments in logic and Artificial Intelligence the chapters provide a state of the art account of research on the logical aspects of legal argument

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