

RED, WHITE, and BLUE



A Critical Analysis of Constitutional Law

MARK TUSHNET

With a New Foreword by Sanford Levinson
and a New Afterword by the Author

Red White And Blue A Critical Analysis Of Constitutional Law

G. Alan Tarr



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Red, White, and Blue Mark V. Tushnet, 1986 Red, White, and Blue Mark V. Tushnet, 1988 **Red, White, and Blue** Mark V. Tushnet, 2015-06-12 The first paperback edition of a classic of American constitutional theory The book is divided into two parts In Part I Professor Tushnet appraises the five major competing grand theories of constitutional law and interpretation and argues that none of them satisfy their own requirements for coherence and judicial constraint In Part II the author offers a descriptive sociology of constitutional doctrine and raises critical questions as to whether a grand theory is necessary is it possible to construct a coherent useful grand theory and is construction of an uncontroversial grand theory possible Professor Tushnet's new Afterword is organized in parallel fashion to the original text Part I offers a new survey of the contemporary terrain of constitutional interpretation Part II provides an extended discussion of the most prominent of contemporary efforts to provide an external analysis of constitutional law the idea of regime politics This includes discussion of major court decisions including *Bush v Gore* and *Citizens United* **Law's Premises, Law's Promise** Thomas Morawetz, 2019-07-16 This title was first published in 2000 The author is a legal and moral philosopher who has applied the insight and methods of Wittgenstein to a range of topics in constitutional law criminal law and theories of justice This collection offers his most important and influential essays together with an introductory essay which reviews and develops his contribution to legal and moral philosophy **Religious Liberty, Vol. 1** Douglas Laycock, 2010-02-22 The *Collected Works on Religious Liberty* comprehensively collects the scholarship advocacy and explanatory writings of leading scholar and lawyer Douglas Laycock illuminating every major religious liberty issue from both theoretical and practical perspectives This first volume gives the big picture of religious liberty in the United States It fits a vast range of disparate disputes into a coherent pattern from public school prayers to private school vouchers to regulation of churches and believers Laycock clearly and carefully explains what the law is and argues for what the law should be He also reviews the history of Western religious liberty from the American founding to Protestant Catholic conflict in the nineteenth century using this history to cast light on the meaning of our constitutional guarantees *Collected Works on Religious Liberty* is unique in the depth and range of its coverage Laycock helpfully includes both scholarly articles and key legal documents and unlike many legal scholars explains them clearly and succinctly All the while he maintains a centrist perspective presenting all sides believers and nonbelievers alike fairly Collected Works on Religious Liberty, Vol. 1 Douglas Laycock, 2010 One of the most respected and influential scholars of religious liberty in our time Douglas Laycock has argued many crucial religious liberty cases in the U S appellate courts and Supreme Court His noteworthy scholarly and popular writings are being collected in four comprehensive volumes under the title *Religious Liberty* This first volume gives the big picture of religious liberty in the United States fitting a vast range of disparate disputes into a coherent pattern from public school prayers to private school vouchers to regulation of churches and believers Laycock's clear overviews provide the broad historical helpful context often

lacking in today's press **Critical Legal Studies** Andrew Altman, 2021-06-08 Scholars in the Critical Legal Studies movement have challenged some of the most cherished ideals of modern Western legal and political thought CLS thinkers claim that the rule of law is a myth and that its defense by liberal thinkers is riddled with inconsistencies This first book length liberal reply to CLS systematically examines the philosophical underpinnings of the CLS movement and exposes the deficiencies in the major lines of CLS argument against liberalism A Pluralist Theory of Constitutional Justice Michel Rosenfeld, 2022 This book provides a systematic account of the role of distributive justice in the normative legitimation of liberal constitutions The requirements of distributive justice are highly contested and constitutions are susceptible to influencing those they govern Rosenfeld suggests that liberal constitutions must incorporate justice essentials **The Right to Property in Commonwealth Constitutions** Tom Allen, 2000-03-09 Practical theoretical and historical approach to constitutional rights to property in Commonwealth countries **Recapturing the Constitution** Stephen B. Presser, 1994-10-06 Presser makes a compelling case that the original understanding of the Constitution was that religion morality and law were inextricably connected Forrest McDonald **Burdens of Proof in Modern Discourse** Richard H. Gaskins, 1995-02-22 Public and professional debates have come to rely heavily on a special type of reasoning the argument from ignorance in which conclusions depend on the lack of compelling information I win my argument says the skillful advocate unless you can prove that I am wrong This extraordinary gambit has been largely ignored in modern rhetorical and philosophical studies Yet its broad force can be demonstrated by analogy with the modern legal system where courts have long manipulated burdens of proof with skill and subtlety This legal philosophical and rhetorical study by Richard H Gaskins provides the first systematic treatment of arguments from ignorance across a wide range of modern discourse from constitutional law scientific inquiry and moral philosophy to organizational behavior computer operation and personal interaction Gaskins reviews the historic shifts in constitutional proof burdens that have shaped public debate on fundamental rights and by analogy on the fundamental status of intellectual and cultural authority He shows how similar shifts have dominated polemical battles between scientific and ethical modes of authority affecting both academic and popular discussion Finally he discovers the philosophical roots of default reasoning strategies in the arguments of Kant and nineteenth century Kantian schools Concluding that shifting proof burdens are inescapable in a world of scientific and moral uncertainty Gaskins emphasizes the common strategic ground shared by dogmatic and skeptical reasoning Using Hegelian strategies he describes a more pluralistic temper that can move critical thinking beyond polemics and strengthen our capacities for common discourse The Oxford Handbook of the Australian Constitution Cheryl Saunders, Adrienne Stone, 2018 Providing an interdisciplinary overview of Australian constitutional law and practice this Handbook situates the development of the constitutional system in its proper context It also examines recurrent themes and tensions in Australian constitutional law and points the way for future developments *The Constitution and the Pride of Reason* Steven D.

Smith,1998-01-01 Attempting to realize Plato's vision of a republic governed by reason American constitutionalists according to Steven D Smith's bold new critical study have instead reenacted the Tower of Babel myth producing a constitutional discourse marked by rampant confusion elaborate sophistry and thinly veiled authoritarian bullying How is it that the pursuit of such lofty aims by yesterday's framers and today's scholars has left us mired in a constitutional morass This timely book ponders that question with the intellectual vigor it deserves Observing that standard accounts of constitutional law both the conservative and liberal varieties have lost their power to illuminate The Constitution and the Pride of Reason explores how constitutional law hangs together and how it falls apart by investigating the perennial claim that the Constitution and its interpretation somehow embody a commitment to governance by reason What does this claim mean and is it valid In confronting these queries Smith offers revealing and iconoclastic assessments of constitutionalists ranging from Madison and Jefferson to Dworkin and Bork Also detailed in these pages is a provocative overview of the whole constitutional project from its noble aspirations to its tragic failures A truly visionary work that investigates the scholarship the design and the history of the quintessential American legal document this volume also sensibly reflects on the meaning and possibility of the ethical commitment to the life of reason It will appeal not only to students of constitutional law but also to those interested in political science philosophy and American history

Balancing Constitutional Rights Jacco Bomhoff,2013-12-19 The language of balancing is pervasive in constitutional rights jurisprudence around the world In this book Jacco Bomhoff offers a comparative and historical account of the origins and meanings of this talismanic form of language and of the legal discourse to which it is central Contemporary discussion has tended to see the increasing use of balancing as the manifestation of a globalization of constitutional law This book is the first to argue that balancing has always meant radically different things in different settings Bomhoff uses detailed case studies of early post war US and German constitutional jurisprudence to show that the same unique language expresses both biting scepticism and profound faith in law and adjudication and both deep pessimism and high aspirations for constitutional rights An understanding of these radically different meanings is essential for any evaluation of the work of constitutional courts today

The New Constitutional Order Mark Tushnet,2009-02-09 In his 1996 State of the Union Address President Bill Clinton announced that the age of big government is over Some Republicans accused him of cynically appropriating their themes while many Democrats thought he was betraying the principles of the New Deal and the Great Society Mark Tushnet argues that Clinton was stating an observed fact the emergence of a new constitutional order in which the aspiration to achieve justice directly through law has been substantially chastened Tushnet argues that the constitutional arrangements that prevailed in the United States from the 1930s to the 1990s have ended We are now in a new constitutional order one characterized by divided government ideologically organized parties and subdued constitutional ambition Contrary to arguments that describe a threatened return to a pre New Deal constitutional order however this book presents evidence that our current regime's animating principle is not the old belief

that government cannot solve any problems but rather that government cannot solve any more problems Tushnet examines the institutional arrangements that support the new constitutional order as well as Supreme Court decisions that reflect it He also considers recent developments in constitutional scholarship focusing on the idea of minimalism as appropriate to a regime with chastened ambitions Tushnet discusses what we know so far about the impact of globalization on domestic constitutional law particularly in the areas of international human rights and federalism He concludes with predictions about the type of regulation we can expect from the new order This is a major new analysis of the constitutional arrangements in the United States Though it will not be received without controversy it offers real explanatory and predictive power and provides important insights to both legal theorists and political scientists Liberty, Property, and the Future of Constitutional Development Ellen Frankel Paul, Howard Dickman, 1990-07-05 This book is a discussion of current trends in the constitutional protection of economic liberties Since the mid 1930 s the Supreme Court has been reluctant to replace legislative judgements on matters of economic regulation with its own While the Court permits wide legislative experimentation in the economic realm it scrutinizes governmental attempts to regulate or abridge other civil liberties quite closely This state of affairs is known as the double standard The question of the appropriateness of this unequal treatment by the Court of these two classes of liberties generates much of the controversy in this volume Other topics dealt with include the current trends in and relevance of constitutional law for welfare rights labor unions and labor law Recent Supreme Court decisions on property rights also receive much attention **Understanding State Constitutions** G. Alan Tarr, 2018-06-05 For many Americans the word constitution means just one thing the national Constitution According to a recent survey almost half do not know that individual states also have constitutions Scholars have also paid little attention to state constitutions favoring the apparently more dynamic and significant federal scene G Alan Tarr seeks to change that in this landmark book A leading authority on state legal issues he combines history law and political science to present a thorough and long needed account of the distinct and important role of state constitutions in American life Tarr shows that state constitutional politics are dominated by three crucial issues with little salience at the national level the distribution of power among groups and regions within states the scope of state and local governmental authority and the relation of the state to economic activity He explains how state constitutions differ from the national Constitution in treating not only matters of high principle but also such mundane subjects as ski trails and motor vehicle revenues He also explores why state constitutions unlike their federal counterpart have been so frequently amended and replaced Tarr concludes that the United States not only has a system of dual constitutionalism but also has dual constitutional cultures Powerfully argued and meticulously researched the book fills an important gap in political and legal studies and finally gives state constitutions the scholarly attention they richly deserve Legal Hermeneutics Gregory Leyh, 2021-01-08 This title is part of UC Press s Voices Revived program which commemorates University of California Press s mission to seek out and cultivate the brightest

minds and give them voice reach and impact Drawing on a backlist dating to 1893 *Voices Revived* makes high quality peer reviewed scholarship accessible once again using print on demand technology This title was originally published in 1992

In Defense of a Political Court Terri Jennings Peretti, 2001-10-29 Can the Supreme Court be free of politics Do we want it to be Normative constitutional theory has long concerned itself with the legitimate scope and limits of judicial review Too often theorists seek to resolve that issue by eliminating politics from constitutional decisionmaking In contrast Terri Peretti argues for an openly political role for the Supreme Court Peretti asserts that politically motivated constitutional decisionmaking is not only inevitable it is legitimate and desirable as well When Supreme Court justices decide in accordance with their ideological values or consider the likely political reaction to the Court's decisions a number of benefits result The Court's performance of political representation and consensus building functions is enhanced and the effectiveness of political checks on the Court is increased Thus political motive in constitutional decision making does not lead to judicial tyranny as many claim but goes far to prevent it Using pluralist theory Peretti further argues that a political Court possesses instrumental value in American democracy As one of many diverse and redundant political institutions the Court enhances both system stability and the quality of policymaking particularly regarding the breadth of interests represented **Rights** Robin West, 2017-03-02 *Rights* brings together the most influential essays of the last thirty years critiquing and defending the liberal rights tradition Modern rights critics have focused on the perceived conflict between liberal rights and progressive or egalitarian political objectives the preference of liberal states for negative over positive rights and also the dangers to community of the overly atomistic conception of human nature which is arguably at the heart of the liberal rights tradition

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Table of Contents Red White And Blue A Critical Analysis Of Constitutional Law

1. Understanding the eBook Red White And Blue A Critical Analysis Of Constitutional Law
 - The Rise of Digital Reading Red White And Blue A Critical Analysis Of Constitutional Law
 - Advantages of eBooks Over Traditional Books
2. Identifying Red White And Blue A Critical Analysis Of Constitutional Law
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Red White And Blue A Critical Analysis Of Constitutional Law
 - User-Friendly Interface
4. Exploring eBook Recommendations from Red White And Blue A Critical Analysis Of Constitutional Law
 - Personalized Recommendations
 - Red White And Blue A Critical Analysis Of Constitutional Law User Reviews and Ratings
 - Red White And Blue A Critical Analysis Of Constitutional Law and Bestseller Lists
5. Accessing Red White And Blue A Critical Analysis Of Constitutional Law Free and Paid eBooks
 - Red White And Blue A Critical Analysis Of Constitutional Law Public Domain eBooks
 - Red White And Blue A Critical Analysis Of Constitutional Law eBook Subscription Services
 - Red White And Blue A Critical Analysis Of Constitutional Law Budget-Friendly Options
6. Navigating Red White And Blue A Critical Analysis Of Constitutional Law eBook Formats

- ePub, PDF, MOBI, and More
 - Red White And Blue A Critical Analysis Of Constitutional Law Compatibility with Devices
 - Red White And Blue A Critical Analysis Of Constitutional Law Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Red White And Blue A Critical Analysis Of Constitutional Law
 - Highlighting and Note-Taking Red White And Blue A Critical Analysis Of Constitutional Law
 - Interactive Elements Red White And Blue A Critical Analysis Of Constitutional Law
 8. Staying Engaged with Red White And Blue A Critical Analysis Of Constitutional Law
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Red White And Blue A Critical Analysis Of Constitutional Law
 9. Balancing eBooks and Physical Books Red White And Blue A Critical Analysis Of Constitutional Law
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Red White And Blue A Critical Analysis Of Constitutional Law
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Red White And Blue A Critical Analysis Of Constitutional Law
 - Setting Reading Goals Red White And Blue A Critical Analysis Of Constitutional Law
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Red White And Blue A Critical Analysis Of Constitutional Law
 - Fact-Checking eBook Content of Red White And Blue A Critical Analysis Of Constitutional Law
 - Distinguishing Credible Sources
 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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