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LEGITIMATE LEGAL  
ARGUMENT AND  
CONSTITUTIONAL  
INTERPRETATION

*Richard S. Markovits*

# Matters Of Principle Legal Argument And Constitutional Interpretation

**Lei Shi**



## **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

**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

**Research Handbook on Corporate Purpose and Personhood** Pollman, Elizabeth,Thompson, Robert B.,2021-09-28

This insightful Research Handbook contributes to the theoretical and practical understanding of corporate purpose and personhood which has become the central debate of corporate law. It provides cutting edge thoughts on the role of corporations in society and the nature of their rights and responsibilities.

**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 the Princeton Legacy Library is to vastly increase access to the rich scholarly heritage found in the thousands of books published by Princeton University Press since its founding in 1905.

**Constitutionally Conforming Interpretation - Comparative Perspectives** Matthias Klatt, 2023-11-02 This is the first part of a 2 volume set that presents an in depth investigation into the canon of constitutionally conforming interpretation. These volumes address the fundamental issues the canon raises in the national, supranational and international contexts. In volume 1, experts from 19 jurisdictions including Brazil, Canada, India, the UK and the USA present reports which give concise overviews of the approaches and debates on constitutionally conforming interpretation. These reports cover the structural background, the conditions of application as well as issues of competence. Further aspects discussed are its perceived normativity and popularity in everyday legal practice. Together with volume 2 which explores the canon's use and theoretical impact beyond the national context in a comparative and critical manner, this book fills an important gap in legal scholarship and sets the stage for cross national discourse.

**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

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      **Public Law** Andrew Le Sueur,Andrew P. Le Sueur,Maurice Sunkin,Jo Eric Khushal 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 resourcesThe 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      *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

**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

**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

**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

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