

INTERPRETING THE CONSTITUTION

KENT GREENAWALT

Nice Interpreting Constitution Kent Greenawalt

**Martin Scheinin, Helle Krunke, Marina
Aksenova**



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Realms of Legal Interpretation Kent Greenawalt, 2018-07-06 In *Realms of Legal Interpretation* Kent Greenawalt focuses on how courts decide what is legally forbidden or authorized and how context shapes their decisions The problem he argues is that we do not and never have agreed exist on all the details of the standards United States judges should employ like everyone else judges have different ideas of what constitutes good common sense *The Challenge of Originalism* Grant Huscroft, Bradley W. Miller, 2011-09-12 Originalism is a force to be reckoned with in constitutional interpretation At one time a monolithic theory of constitutional interpretation contemporary originalism has developed into a sophisticated family of theories about how to interpret and reason with a constitution Contemporary originalists harness the resources of linguistic moral and political philosophy to propose methodologies for the interpretation of constitutional texts and provide reasons for fidelity to those texts The essays in this volume which includes contributions from the flag bearers of several competing schools of constitutional interpretation provides an introduction to the development of originalist thought showcases the great range of contemporary originalist constitutional scholarship and situates competing schools of thought in dialogue with each other They also make new contributions to the methodological and normative disputes between originalists and non originalists and among originalists themselves *American Law in a Global Context* George Fletcher, Hoi L. Kong, Steve Sheppard, 2025 *American Law in Global Context* provides an overview of US law focusing on subject areas that make the American legal system distinctive This introductory text serves as a comprehensive and accessible guide to American legal structure history and theory for students of law and lawyers outside the US The authors provide in depth analyses of well known cases to illustrate US law theory as well as practice *Law and Language* Michael D. A. Freeman, Fiona Smith, 2013-02-21 Offers a broad overview of the interaction between law and language and the way they influence each other Contains papers from the 15th annual interdisciplinary colloquium held in the Law School of UCL in July 2011 **The Oxford Handbook of Comparative Constitutional Law** Michel Rosenfeld, András Sajó, 2012-05-17 The field of comparative constitutional law has grown immensely over the past couple of decades Once a minor and obscure adjunct to the field of domestic constitutional law comparative constitutional law has now moved front and centre Driven by the global spread of democratic government and the expansion of international human rights law the prominence and visibility of the field among judges politicians and scholars has grown exponentially Even in the United States where domestic constitutional exclusivism has traditionally held a firm grip use of comparative constitutional materials has become the subject of a lively and much publicized controversy among various justices of the U S Supreme Court The trend towards harmonization and international borrowing has been controversial Whereas it seems fair to assume that there ought to be great convergence among industrialized democracies over the uses and functions of commercial contracts that seems far from the case in constitutional law Can a parliamentary democracy be compared to a presidential one A federal republic to a

unitary one Moreover what about differences in ideology or national identity Can constitutional rights deployed in a libertarian context be profitably compared to those at work in a social welfare context Is it perilous to compare minority rights in a multi ethnic state to those in its ethnically homogeneous counterparts These controversies form the background to the field of comparative constitutional law challenging not only legal scholars but also those in other fields such as philosophy and political theory Providing the first single volume comprehensive reference resource the Oxford Handbook of Comparative Constitutional Law will be an essential road map to the field for all those working within it or encountering it for the first time Leading experts in the field examine the history and methodology of the discipline the central concepts of constitutional law constitutional processes and institutions from legislative reform to judicial interpretation rights and emerging trends

The Hollow Core of Constitutional Theory Donald L. Drakeman, 2021-04-08 The Hollow Core of Constitutional Theory is the first major defense of the central role of the Framers intentions in constitutional interpretation to appear in years This book starts with a reminder that for virtually all of Western legal history when judges interpreted legal texts their goal was to identify the lawmaker s will However for the past fifty years constitutional theory has increasingly shifted its focus away from the Framers Contemporary constitutional theorists who often disagree with each other about virtually everything else have come to share the view that the Framers understandings are unknowable and irrelevant This book shows why constitutional interpretation needs to return to its historical core inquiry which is a search for the Framers intentions Doing so is practically feasible theoretically defensible and equally important not only for discovering the original meaning but also for deciding how to apply the Constitution today

Judges as Guardians of Constitutionalism and Human Rights Martin Scheinin, Helle Krunke, Marina Aksenova, 2016-04-29 There are many challenges that national and supranational judges have to face when fulfilling their roles as guardians of constitutionalism and human rights This book brings together academics and judges from different jurisdictions in an endeavour to uncover the intricacies of the judicial function The contributors discuss several points that each represent contemporary challenges to judging analysis of judicial balancing of conflicting considerations the nature of courts legitimacy and its alleged dependence on public support the role of judges in upholding constitutional values in the times of transition to democracy surveillance and the fight against terrorism and the role of international judges in guaranteeing globally recognized fundamental rights and freedoms This book will be of interest to human rights scholars focusing on the issues of judicial oversight as well as constitutional law scholars interested in comparative perspectives on the role of judges in different contexts It will also be useful to national constitutional court judges and law clerks aiming to familiarise themselves with judicial practices within other jurisdictions

In Praise of Intransigence Richard H. Weisberg, 2014-05-05 Flexibility is usually seen as a virtue in today s world Even the dictionary seems to dislike those who stick too hard to their own positions The thesaurus links intransigence to a whole host of words signifying a distaste for loyalty to fixed positions intractable stubborn Pharisaic close minded and stiff necked

to name a few In this short and provocative book constitutional law professor Richard H Weisberg asks us to reexamine our collective cultural bias toward flexibility open mindedness and compromise He argues that flexibility has not fared well over the course of history Indeed emergencies both real and imagined have led people to betray their soundest traditions Weisberg explores the rise of flexibility which he traces not only to the Enlightenment but further back to early Christian reinterpretation of Jewish sacred texts He illustrates his argument with historical examples from Vichy France and the occupation of the British Channel Islands during World War II as well as post 9 11 betrayals of sound American traditions against torture eavesdropping unlimited detention and drone killings Despite the damage wrought by Western society s incautious embrace of flexibility over the past two millennia Weisberg does not make the case for unthinking rigidity Rather he argues that a willingness to embrace intransigence allows us to recognize that we have beliefs worth holding on to without compromise

The Law of American State Constitutions Robert F. Williams, Lawrence Friedman, 2023 The second edition of The Law of American State Constitutions provides complete coverage of the legal doctrines surrounding applying to and arising from American state constitutions and their judicial interpretation Drawing on examples from specific states Professors Williams and Friedman analyze the nature and function of state constitutions in contrast to the federal Constitution including rights separation of powers issues of interpretation and the processes for amendment and revision In this edition Williams and Friedman focus on recent developments including the state constitutional dimensions of same sex marriage and the reaction of state courts to U S Supreme Court decision making This edition of The Law of American State Constitutions remains an important analytical tool that explains the unique character and the range of interpretive approaches to these constitutions It covers the structure of state governments under state constitutions as well as the distribution of powers among the legislative executive and judicial branches Like the first edition this edition presents a complete picture of state constitutional law and the attributes and features that make this body of law so distinctive

The Tragedy of Religious Freedom Marc O. DeGirolami, 2013-06-10 Legal scholars expect to resolve religious dilemmas according to principles of equality neutrality or separation of church and state But such abstractions fail to do justice to the clashing values in today s pluralistic society Marc DeGirolami explains why conflicts implicating religious liberty are so emotionally fraught and deeply contested

The Law and Religious Market Theory Jianlin Chen, 2017-10-12 With comparative case studies from China Taiwan and Hong Kong Jianlin Chen s new work offers a fresh descriptive and normative perspective on law and religion This presentation of the original law and religious market theory employs an interdisciplinary approach that sheds light on this subject for scholars in legal and sociological disciplines It sets out the precise nature of religious competition envisaged by the current legal regimes in the three jurisdictions and analyses how certain restrictions on religious practices may facilitate normatively desirable market dynamics This updated and invaluable resource provides a new and insightful investigation into this fascinating area of law and religion in Greater China today

From Morality to Law and Back Again Michelle Madden Dempsey, François Tanguay-Renaud, 2023 A book length treatment on the scholarship of John Gardner engaging with many of the concepts themes and issues that were central to his philosophical work and outlook written by a team of contributors whose own work has been influenced by Gardner

The Rule of Recognition and the U.S. Constitution Matthew Adler, Kenneth Einar Himma, 2009-07-20 The Rule of Recognition and the U S Constitution is a volume of original essays that discuss the applicability of Hart s rule of recognition model of a legal system to U S constitutional law The contributors are leading scholars in analytical jurisprudence and constitutional theory including Matthew Adler Larry Alexander Mitchell Berman Michael Dorf Kent Greenawalt Richard Fallon Michael Green Kenneth Einar Himma Stephen Perry Frederick Schauer Scott Shapiro Jeremy Waldron and Wil Waluchow The volume makes a contribution both in jurisprudence using the U S as a test case that highlights the strengths and limitations of the rule of recognition model and in constitutional theory by showing how the model can illuminate topics such as the role of the Supreme Court the constitutional status of precedent the legitimacy of unwritten sources of constitutional law the choice of methods for interpreting the text of the Constitution and popular constitutionalism

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 Justice Trevor R. S. Allan, 2003 Scope of Judicial Review

Comparative Constitutional Law Tom Ginsburg, Rosalind Dixon, 2011-01-01 This landmark volume of specially commissioned original contributions by top international scholars organizes the issues and controversies

of the rich and rapidly maturing field of comparative constitutional law Divided into sections on constitutional design and redesign identity structure individual rights and state duties courts and constitutional interpretation this comprehensive volume covers over 100 countries as well as a range of approaches to the boundaries of constitutional law While some chapters reference the text of legal instruments expressly labeled constitutional others focus on the idea of entrenchment or take a more functional approach Challenging the current boundaries of the field the contributors offer diverse perspectives cultural historical and institutional as well as suggestions for future research A unique and enlightening volume Comparative Constitutional Law is an essential resource for students and scholars of the subject

A Practical Companion to the Constitution Jethro K. Lieberman, 2023-07-28 This is the most comprehensive and readable one volume reference book in print accessible to lay readers and specialists alike on the meaning of the American Constitution as the Supreme Court has interpreted it It is an indispensable tool for students and lay persons who want to understand today's constitutional controversies and their background in our history It is equally useful to lawyers and other specialists who seek quick reviews of constitutional issues with immediate reference to cases for further research Unlike conventional treatises that discuss the Constitution clause by clause or under a few broad concepts this book uniquely treats every aspect of the Constitution and every constitutional topic in alphabetical order in more than 1 000 short essays It is extensively cross referenced and exhaustively indexed so that even a reader with only a minimal notion of the Constitution or constitutional law can quickly find clear answers to questions about pressing issues of the day Among the other unique features a set of introductory essays on the background of the Constitution and the many difficulties of interpreting it a concordance to each word and phrase in the Constitution a year by year chronology of justices who have served on the Supreme Court and a table of the more than 2 650 Supreme Court cases from 1792 to the present referred to in the book listing the vote the author of the majority opinion the concurring and dissenting justices and the length of the opinions This is the most comprehensive and readable one volume reference book in print accessible to lay readers and specialists alike on the meaning of the American Constitution as the Supreme Court has interpreted it It is an indispensable tool for students

Interpreting the Constitution Kent Greenawalt, 2015 This book uniquely presents a sophisticated account of possible approaches to constitutional interpretation and also examines how major provisions in the U S Constitution are and should be interpreted Together the chapters show why simple straightforward approaches such as textual originalism are insupportable and why even providing a more complex but systematic account of what judges should do is impossible

Liberty and Sexuality David J. Garrow, 2015-07-07 Pulitzer Prize winning author David J. Garrow's stirring and essential history of the politics of abortion and America's battle for the right to choose In 1973 the Supreme Court handed down its landmark Roe v. Wade decision legalizing abortion and more than forty years later the issue continues to spark controversy and divisiveness But behind this historic legal case lie the battles women fought to establish their rights to use contraceptives and choose to have an abortion

Liberty and Sexuality traces these political and legal struggles in the decades leading up to Roe v Wade including the momentous 1965 Supreme Court ruling in Griswold v Connecticut that established a constitutional right to privacy Garrow personalizes the struggles by detailing the vital contributions made by dozens of crusaders who tirelessly paved the way This expansive and substantial work also addresses the threats to sexual privacy and the legality of abortion that have risen since Roe v Wade With abortion still a contentious subject on the national political landscape Liberty and Sexuality is not just a historical account of the right to choose but an indispensable read about preserving a freedom that continues to divide America

The Free Exercise of Religion in America Ellis M. West, 2019-02-05 This book explains the original meaning of the two religion clauses of the First Amendment Congress shall make no law 1 respecting an establishment of religion or 2 prohibiting the free exercise thereof As the book shows both clauses were intended to protect the free exercise of religion or religious freedom West shows the position taken by early Americans on four issues 1 the general meaning of the free exercise of religion including whether it is different from the meaning of no establishment of religion 2 whether the free exercise of religion may be intentionally and directly limited and if so under what circumstances 3 whether laws regulating temporal matters that also have a religious sanction violate the free exercise of religion and 4 whether the free exercise of religion gives persons a right to be exempt from obeying valid civil laws that unintentionally and indirectly make it difficult or impossible to practice their religion in some way A definitive work on the subject and a major contribution to the field of constitutional law and history this volume is key to a better understanding of the ongoing constitutional adjudication based on the religion clauses of the First Amendment

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