

# ***Constitutional Interpretation and Constitutional Theories***

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# Constitutional Theory Constitutional Theory

**Paul W. Kahn**



## **Constitutional Theory Constitutional Theory:**

**Politics, Democracy, and the Supreme Court** Arthur Selwyn Miller, 1985-09-17 Miller proposes that we focus our energies on the question of how the Constitution is to function in an era of rapid and fundamental social change He introduces this provocative collection of essays with the observation that American constitutional theory has arrived at a dead end largely because it has been perceived as constitutional law rather than a form of political theory He puts this view into sharp perspective by looking at what are in effect three constitutions the political the economic and the emergent corporate instrument He analyzes important issues that confront the Supreme Court policymakers and theorists such as the expansion of government control the Court as a political mechanism the power of corporations politics and the First Amendment the challenge of nuclear weapons and questions relating to social justice including equal protection and the right to employment

*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

**Recent Changes in American Constitutional Theory** John William Burgess, 2020-09-28 Constitutional Theory Carl Schmitt, 2008-01-23 This volume makes Schmitt s provocative work on comparative constitutionalism available in English for the first time since it was published in 1928 in Germany

**The Methodology of Constitutional Theory** Dimitrios Kyritsis, Stuart Lakin, 2022-02-24 What sort of methods are best suited to understanding constitutional doctrines and practices Should we look to lawyers and legal methods alone or should we draw upon other disciplines such as history sociology political theory and moral philosophy Should we study constitutions in isolation or in a comparative context To what extent must constitutional methods be sensitive to empirical data about the functioning of legal practice Can ideal theory aid our understanding of real constitutions This volume brings together constitutional experts from around the world to address these types of questions through topical events and challenges such as Brexit administrative law reforms and the increasing polarisations in law politics and constitutional scholarship Importantly it investigates the ways in which we can ensure that constitutional scholars do not talk past each other despite their persistent and often fierce disagreements In so doing it aims systematically to re examine the methodology of constitutional theory

**Constitutional Theory** Michael J. Gerhardt, 2000 Constitutional and Political

Theory Ernst-Wolfgang Böckenförde, 2017 In this comprehensive edition of Ernst Wolfgang Böckenförde's definitive work in constitutionalism law and politics readers have access to the legal discourse of one of Germany's leading contemporary theorists and former judge of the federal constitutional court available in the English language for the first time *The Methodology of Constitutional Theory* Dimitrios Kyritsis, Stuart Lakin, 2022-02-24 What sort of methods are best suited to understanding constitutional doctrines and practices Should we look to lawyers and legal methods alone or should we draw upon other disciplines such as history sociology political theory and moral philosophy Should we study constitutions in isolation or in a comparative context To what extent must constitutional methods be sensitive to empirical data about the functioning of legal practice Can ideal theory aid our understanding of real constitutions This volume brings together constitutional experts from around the world to address these types of questions through topical events and challenges such as Brexit administrative law reforms and the increasing polarisations in law politics and constitutional scholarship Importantly it investigates the ways in which we can ensure that constitutional scholars do not talk past each other despite their persistent and often fierce disagreements In so doing it aims systematically to re-examine the methodology of constitutional theory **Cosmic Constitutional Theory** J. Harvie Wilkinson III, 2012-03-12 American constitutional law has undergone a transformation Issues once left to the people have increasingly become the province of the courts Subjects as diverse as abortion rights and firearms regulations health care reform and counterterrorism efforts not to mention a millennial presidential election are more and more the domain of judges What sparked this development In this engaging volume Judge J Harvie Wilkinson argues that America's most brilliant legal minds have launched a set of cosmic constitutional theories that for all their value are undermining self-governance Thinkers as diverse as Justices William Brennan and Antonin Scalia Professor John Hart Ely Judges Robert Bork and Richard Posner have all produced seminal interpretations of our Founding document but ones that promise to imbue courts with unprecedented powers While crediting the theorists for the sparkling quality of their thoughts Judge Wilkinson argues they will slowly erode the role of representative institutions in America and leave our children bereft of democratic liberty The loser in all the theoretical fireworks is the old and honorable tradition of judicial restraint The judicial modesty once practiced by Learned Hand John Harlan and Oliver Wendell Holmes has given way to competing schools of liberal and conservative activism seeking sanctuary in Living Constitutionalism Originalism Process Theory or the supposedly anti-theoretical creed of Pragmatism Each of these seemingly disparate theories promises their followers an intellectually respectable route to congenial political outcomes from the bench Judge Wilkinson calls for a plainer simpler self-disciplined commitment to judicial restraint and democratic governance a course that alas may be impossible so long as the cosmic constitutionalists so dominate contemporary legal thought *In Defense of the Text* Leslie Friedman Goldstein, 1991 a must read for all students of constitutional law whatever their academic discipline this excellent book accomplishes the author's purpose it forces us to

take textualism seriously **LEGAL STUDIES FORUM** **Cosmic Constitutional Theory** J. Harvie Wilkinson III, 2012-03-09

American constitutional law has undergone a transformation Issues once left to the people have increasingly become the province of the courts Subjects as diverse as abortion rights and firearms regulations health care reform and counterterrorism efforts not to mention a millennial presidential election are more and more the domain of judges What sparked this development In this engaging volume Judge J Harvie Wilkinson argues that America s most brilliant legal minds have launched a set of cosmic constitutional theories that for all their value are undermining self governance Thinkers as diverse as Justices William Brennan and Antonin Scalia Professor John Hart Ely Judges Robert Bork and Richard Posner have all produced seminal interpretations of our Founding document but ones that promise to imbue courts with unprecedented powers While crediting the theorists for the sparkling quality of their thoughts Judge Wilkinson argues they will slowly erode the role of representative institutions in America and leave our children bereft of democratic liberty The loser in all the theoretical fireworks is the old and honorable tradition of judicial restraint The judicial modesty once practiced by Learned Hand John Harlan and Oliver Wendell Holmes has given way to competing schools of liberal and conservative activism seeking sanctuary in Living Constitutionalism Originalism Process Theory or the supposedly anti theoretical creed of Pragmatism Each of these seemingly disparate theories promises their followers an intellectually respectable route to congenial political outcomes from the bench Judge Wilkinson calls for a plainer simpler self disciplined commitment to judicial restraint and democratic governance a course that alas may be impossible so long as the cosmic constitutionalists so dominate contemporary legal thought

*Carl Schmitt's State and Constitutional Theory* Benjamin A. Schupmann, 2017 Can a constitutional democracy commit suicide Can an illiberal antidemocratic party legitimately obtain power through democratic elections and amend liberalism and democracy out of the constitution entirely In Weimar Germany these theoretical questions were both practically and existentially relevant By 1932 the Nazi and Communist parties combined held a majority of seats in parliament Neither accepted the legitimacy of liberal democracy Their only reason for participating democratically was to amend the constitution out of existence This book analyses Carl Schmitt s state and constitutional theory and shows how it was conceived in response to the Weimar crisis Right wing and left wing political extremists recognized that a path to legal revolution lay in the Weimar constitution s combination of democratic procedures total neutrality toward political goals and positive law Schmitt s writings sought to address the unique problems posed by mass democracy Schmitt s thought anticipated constrained or militant democracy a type of constitution that guards against subversive expressions of popular sovereignty and whose mechanisms include the entrenchment of basic constitutional commitments and party bans Schmitt s state and constitutional theory remains important the problems he identified continue to exist within liberal democratic states Schmitt offers democrats today a novel way to understand the legitimacy of liberal democracy and the limits of constitutional change

**Cities in Federal Constitutional Theory** Erika Arban, 2022-07-25

The city as an independent subject of theorisation and investigation is an underexamined area of constitutional law. Although in recent years scholars have started to explore the legal dimension and place of urban areas, the study of cities as constitutional subjects remains very new with a solid theoretical foundation yet to be established. Against this backdrop of general under-theorisation of cities in constitutional law and federalism, *Cities in Federal Constitutional Theory* seeks to offer a fresh theoretical account of cities as federalism subjects, exploring the increased importance they have acquired from political, economic, socio-cultural and demographic perspectives. This volume directly addresses the relationship between cities, federalism and localism or subsidiarity and responds to concerns about the scarcity of innovative theoretical discussion on the topic while at the same time redefining accepted concepts like subsidiarity. Bringing together theoretical reflections on the city from established scholars, this edited collection significantly enriches the field of federal constitutional theory.

*The Distorting Lens of Convergent Constitutional Theory* Peter Cane, 2025-07-24. This book challenges the near universal acceptance of a US style Western constitutional paradigm as the best basis for comparative constitutional studies. It does so on three main grounds: anachronism, othering and cultural specificity. Main pillars of convergent constitutional theory are rooted in the revolutionary late eighteenth century: a lost world constitutional arrangements that deviate from the paradigm are often branded as outliers or even as not constitutional at all, and the foundations of the paradigm in liberal democracy give no space for other forms of constitutionalism. Whatever the attractions of convergent theory as a normative ideal of good government for the purposes of understanding, analysing and explaining constitutional systems, it is far from ideal. This book discusses and questions convergent theory's weddedness to writing as the technology of constitution-making, its image of a constitution as fundamental law, its idea that a constitution expresses the sovereignty of the people, its use of tripartite separation of powers as the basic principle of institutional design, its relative neglect of administrative law, its association of rights with judicially enforceable bills of rights and its obsession with a vaguely specified concept of democracy. It makes suggestions for alternative, preferable methods of understanding, analysing and explaining constitutions and governmental and constitutional systems.

**Constitutional Theory: Schmitt After Derrida** Jacques de Ville, 2017-04-21. Cover, Title, Copyright, Dedication, Contents, Acknowledgements, Note on translations and references, List of abbreviations. 1 Introduction: Schmitt and Derrida. Constitutional theory. Reading Schmitt. Sequence and overview of chapters. 2 The concept of the political. A. *Pol mios*. Introduction. Plato. Schmitt. Freud. Heidegger. The structure of the political. B. Partisan. Introduction. Criteria. The question of technology. Philosophy and the Acheron. The brother as double. Woman as the absolute partisan. Today's terror and the structure of the political. C. Self. Introduction. Defining man. Nakedness. Stirner and his ego. Modern technology. Being placed in question. Self-deception. Descartes and the self as enemy. Hegel and the enemy. Echo. The concept of the political. 3 Constituent power. Introduction. Political unity. Political theology. Fear and the Leviathan. Demos without sovereignty. Conclusion. 4 Identity and representation. Introduction. The formation of identity. Representation reconceived. Conclusion. 5 The

concept of the constitution A Kh ra Introduction Derrida s reading of the Timaeus Kh ra and the political Constitutions as giving place B Crypt Introduction The Wolf Man The Wolf Man s crypt Constitution memory and trauma 6 Human rights Introduction Freedom Equality Living together 7 State Gro beta raum nomos Introduction Nomos Man space nomos Conclusion 8 Conclusion Schmitt before Derrida Derrida reading Schmitt Schmitt after Derrida Bibliography Index

**Words That Bind** John Arthur, 2018-02-12 Words That Bind presents a careful and nuanced treatment of constitutional interpretation and judicial review By bringing constitutional theory and contemporary political philosophy to bear on each other John Arthur illuminates these topics as no other recent author has **The Constitutional Theory of the Federation and the European Union** Signe Rehling Larsen, 2021-02-04 From the start of the European integration process one question has puzzled scholars what type of political association is the European Union In absence of an agreed upon response most scholars have suggested that the European Union is sui generis This book challenges the sui generis thesis by demonstrating that the EU is not a unique form of association but rather a federal union of states or what this book calls a federation This is a discrete form of political association on par with though differentiated from political modernity s two other main forms namely the state and the empire The federation cannot be understood on the basis of the general theory of the state or its concept of sovereignty The statist imaginary still dominates both the debates on federalism and the EU meaning that all federal policies are either seen as confederal associations of sovereign states or sovereign federal states This book challenges this binary by demonstrating that the federation is not a super state but a discrete political form with its own constitutional theory It is characterized by a double political existence a lack of internal hierarchy and the internal absence contestation or repression of sovereignty This book details the key aspects of federal constitutional theory and how this theory accounts for the EU s constitutional form as well as the crises it has faced in recent years This book is broken into five chapters that cover the introduction to federalism origins of the EU state transformation and teleology unity in diversity and emergency rule without a sovereign This book draws on a variety of literatures and historical material to help the reader develop a critical understanding of constitutional myths and the theory of federalism *Legitimacy and History* Paul W. Kahn, 1992 Aims to present an intellectual history of 200 years of American constitutional theory and an original philosophical inquiry into the possibility of self government Kahn sees the development of constitutional theory as a continuous effort to balance self government and history *English Constitutional Theory and the House of Lords 1556-1832 (Routledge Revivals)* Corinne Comstock Weston, 2010-01-22 First published in 1965 this work studies the House of Lords and the various proposals for its reform abolition or limitation of its powers which have been made in the light of prevailing theories of the nature and characteristics of the English government The work also contains a history of the theory of mixed government that arose in Tudor England and lasted until well after the Reform Act of 1832 This history both illuminates the position of the House of Lords and also provides perspective for the study of Democracy in the movement for

parliamentary reform One of the book's most original features is an extensive account of Charles I's Answer to the Nineteen Propositions out of which came the startling new theory of the constitution known as mixed monarchy *The Supreme Court and Constitutional Theory, 1953-1993* Ronald Kahn, 1994 Combining theoretical sophistication with a fundamental comprehension of the political institutions of the USA this study aims to demystify the workings of the United States Supreme Court and its place in democracy



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