

Constitutional Fate

THEORY
OF THE
CONSTITUTION

PHILIP BOBBITT

Constitutional Fate Theory Of The Constitution

Yale Law Journal



Constitutional Fate Theory Of The Constitution:

Constitutional Fate Philip Bobbitt, 1982-10-28 Here Philip Bobbitt studies the basis for the legitimacy of judicial review by examining six types of constitutional argument historical textual structural prudential doctrinal and ethical through the unusual method of contrasting sketches of prominent legal figures responding to the constitutional crises of their day

Constitutional Fate Philip Bobbitt, 2006-08-31 With the interest in theories of popular constitutionalism currently driving a vigorous debate the interpretation of the American Constitution has taken center stage on the intellectual moral and political agenda of the United States In this revised edition of Constitutional Fate including a new introduction by the author Philip Bobbitt studies the basis for legitimacy of judicial review by examining six types of constitutional argument historical textual structural prudential doctrinal and ethical through the unusual method of contrasting sketches of prominent legal figures responding to the constitutional crises of their day Bobbitt posits characteristic types of constitutional argument by which judicial review is carried out

Interpreting Law and Literature Sanford Levinson, Steven Mailloux, 1988 From the Preface Contemporary theory has usefully analyzed how alternative modes of interpretation produce different meanings how reading itself is constituted by the variable perspectives of readers and how these perspectives are in turn defined by prejudices ideologies interests and so forth Some theorists have argued persuasively that textual meaning in literature and in literary interpretation is structured by repression and forgetting by what the literary or critical text does not say as much as by what it does All these claims are directly relevant to legal hermeneutics and thus it is no surprise that legal theorists have recently been turning to literary theory for potential insight into the interpretation of law This collection of essays is designed to represent the especially rich interactive that has taken place between legal and literary hermeneutics during the past ten years

We the People: The Fourteenth Amendment and the Supreme Court Michael J. Perry, 2001-11-08 Several of the most divisive moral conflicts that have beset Americans in the period since World War II have been transmuted into constitutional conflicts and resolved as such In his new book eminent legal scholar Michael Perry evaluates the grave charge that the modern Supreme Court has engineered a judicial usurpation of politics In particular Perry inquires which of several major Fourteenth Amendment conflicts over race segregation race based affirmative action sex based discrimination homosexuality abortion and physician assisted suicide have been resolved as they should have been He lays the necessary groundwork for his inquiry by addressing questions of both constitutional theory and constitutional history A clear eyed examination of some of the perennial controversies in American life We the People is a major contribution to modern constitutional studies

A Theory of the Executive Branch Margit Cohn, 2021-02-24 The executive branch in Western democracies has been granted a virtually impossible task expected to imperially direct the life of the nation through thick and thin it is concurrently required to be subservient to legislation meted out by a sovereign parliament Drawing on a general argument from constitutional theory that prioritizes dispersal of power over concepts of hierarchy this book argues

that the tension between dominance and submission in the executive branch is maintained by the adoption of various forms of fuzziness under which a guise of legality masks the absence of substantive limitation of power Under this internal tension vision of constitutionalism the executive branch is simultaneously submissive to law and dominant over it while concepts of substantive legality are compromised Building on legal and political science research this volume classifies and analyses thirteen forms of fuzziness ranging from open ended or semi written constitutions to unapplied legislation The study of this unavoidable yet problematic feature of the public sphere is addressed descriptively and normatively Adding detailed examples from two fields of law emergency law and air pollution law in two systems the UK and the US the book ends with a call for raising the threshold of judicial review grounded in theories of participatory and deliberative democracy This book addresses an area that is surprisingly under researched Despite the increase in executive power across democratic polities and increasing public interest in the executive branch and executive powers this much needed book offers a theoretical foundation that should ground all analysis of arguably the most powerful branch of modern government

What Should Constitutions Do? Ellen Frankel Paul, Fred D. Miller, Jr, Jeffrey Paul, 2011-01-31 The essays in this volume written by prominent philosophers political scientists and legal scholars address the basic purposes of constitutions and their status as fundamental law Some deal with specific constitutional provisions they ask for example which branches of government should have the authority to conduct foreign policy or how the judiciary should be organized or what role a preamble should play in a nation s founding document Other essays explore questions of constitutional design they consider the advantages of a federal system of government or the challenges of designing a constitution for a pluralistic society or they ask what form of constitution best promotes personal liberty and economic prosperity

A Companion to Philosophy of Law and Legal Theory Dennis Patterson, 2010-01-15 The articles in this new edition of A Companion to Philosophy of Law and Legal Theory have been updated throughout and the addition of ten new articles ensures that the volume continues to offer the most up to date coverage of current thinking in legal philosophy Represents the definitive handbook of philosophy of law and contemporary legal theory invaluable to anyone with an interest in legal philosophy Now features ten entirely new articles covering the areas of risk regulatory theory methodology overcriminalization intention coercion unjust enrichment the rule of law law and society and Kantian legal philosophy Essays are written by an international team of leading scholars

The Twilight of Constitutionalism? Petra Dobner, Martin Loughlin, 2012-01-26 The concepts and values that underpin traditional constitutionalism are increasingly being challenged by political realities that place substantial power beyond the state Among the few certainties of a global economy is the growing incongruity between the political the world of things that need to be ordered collectively in order to sustain society and the state the major institution of authoritative political decision making during modern times The consequences and possible remedies of this double disjunction of politics and state and of state and constitution form the centre of an open debate about constitutionalism beyond the state The essays gathered in this

collection explore the range of issues raised by this debate The effects of recent changes on two of the main building blocks of constitutionalism statehood and democracy are examined in Parts I and II Since the movement of overcoming statehood has arguably been advanced furthest in the European context the question of the future of constitutionalist ideas in the framework of the EU provides the key theme of Part III The remaining parts consider possible transformations or substitutes The engagement of constitutions with international law offers one line of transmutation of constitutionalism Part IV and the diffusion of constitutionalism into separate social spheres provides an alternative way of pursuing constitutionalism in a new key Part VI Finally the ability of the theory of global administrative law examined in Part V to offer an alternative account of the potential of jurisdictional control of global governing processes is examined Through these explorations the book offers cross disciplinary insights into the impact of recent political and economic changes on modern constitutionalism and an assessment of the prospects for constitutionalism in a transnational environment Founding Moments in Constitutionalism

Richard Albert, Menaka Guruswamy, Nishchal Basnyat, 2019-10-17 Founding moments are landmark events that break ties with the ancien régime and lay the foundation for the establishment of a new constitutional order They are often radically disruptive episodes in the life of a state They reshape national law reset political relationships establish future power structures and influence happenings in neighbouring countries This edited collection brings together leading and emerging scholars to theorise the phenomenon of a founding moment What is a founding moment When does the founding process begin and when does it end Is a founding moment possible without yielding a new constitution Can a founding moment lead to a partial or incomplete transformation And should the state be guided by the intentions of those who orchestrated these momentous breaks from the past Drawing from constitutions around the world the authors ask these and other fundamental questions about making and remaking constitutions **The Constitution and Governance in Cameroon** Laura-Stella E.

Enonchong, 2020-10-18 This book provides a systematic analysis of the major structural and institutional governance mechanisms in Cameroon critically analysing the constitutional and legislative texts on Cameroon's semi presidential system the electoral system the legislature the judiciary the Constitutional Council and the National Commission on Human Rights and Freedoms The author offers an assessment of the practical application of the laws regulating constitutional institutions and how they impact on governance To lay the groundwork for the analysis the book examines the historical constitutional and political context of governance in Cameroon from independence and reunification in 1960 1961 through the adoption of the 1996 Constitution to more recent events including the current Anglophone crisis Offering novel insights on new institutions such as the Senate and the Constitutional Council and their contribution to the democratic advancement of Cameroon the book also provides the first critical assessment of the legislative provisions carving out a special autonomy status for the two Anglophone regions of Cameroon and considers how far these provisions go to resolve the Anglophone Problem This book will be of interest to scholars of public law legal history and African politics The Open Access version of

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The Complete American Constitutionalism Mark A. Graber, Howard Gillman, 2015 The Complete American Constitutionalism is designed to be the comprehensive treatment and source for debates on the American constitutional experience. It provides the analysis, resources, and materials both domestic and foreign readers must understand with regards to the practice of constitutionalism in the United States. This first volume of a projected eight volume set is entitled Introduction and The Colonial Era. Here the authors provide the building blocks for constitutional analysis with an in-depth exploration of the constitutional conflicts in the seventeenth and eighteenth centuries that formed the overall American constitutional experience. This is the first collection of materials that focuses on the crucial constitutional documents and debates that structured American constitutional understandings at the time of the American Revolution. It details the roots of the common law rights that Americans demanded be respected and the different interpretations of the English constitutional experience that increasingly divided Members of Parliament from American Revolutionaries.

American Conservatism Sanford V. Levinson, Melissa S. Williams, Joel Parker, 2016-05-17 A collection of essays that unpacks the history, nature, development, and beliefs of American Conservatism. The topic of American conservatism is especially timely and perhaps volatile. Is there what might be termed an exceptional form of conservatism that is characteristically American in contrast to conservatisms found in other countries? Are views that are identified in the United States as conservative necessarily congruent with what political theorists might classify under that label? Or does much American conservatism almost necessarily reflect the distinctly liberal background of American political thought? In *American Conservatism*, a distinguished group of American political and legal scholars reflect on these crucial questions, unpacking the very nature and development of American conservative thought. They examine both the historical and contemporary realities of arguments offered by self-conscious conservatives in the United States, offering a well-rounded view of the state of this field. In addition to synoptic overviews of the various dimensions of American conservative thought, specific attention is paid to such topics as American constitutionalism, the role of religion and religious institutions, and the particular impact of the late Leo Strauss on American thought and thinkers. Just as American conservatism includes a wide and sometimes conflicting group of thinkers, the essays in this volume themselves reflect differing and sometimes controversial assessments of the theorists under discussion.

Deference in Human Rights Adjudication Cora Chan, 2024-09-27 In human rights adjudication, courts sometimes face issues that they lack the expertise or constitutional legitimacy to resolve. One way of dealing with such issues is to defer or accord a margin of appreciation to the judgments of public authorities. This raises two important questions: what devices should courts use to exercise deference, and how can deference be made more workable for judges and predictable for litigants? Combining in-depth conceptual analysis with practice in a broad range of jurisdictions, *Deference in Human Rights Adjudication* answers these questions. It introduces six devices for deference, namely:

the burden of proof standard of proof standard of review giving of weight choice of interpretation and choice of remedy analyzes how courts should choose amongst them and proposes techniques for rendering deference practicable The book has two distinctive features First it engages with the jurisprudence of six common law jurisdictions that apply a structured proportionality test in rights adjudication namely Canada Hong Kong Ireland Israel New Zealand and the United Kingdom Second it offers guidelines for judges who wish to apply its theoretical arguments As such Deference in Human Rights Adjudication will enable human rights adjudication to be more principled and in line with the rule of law and separation of powers Insightful and pioneering this book will be an important reference for researchers teachers and students of constitutional theory comparative constitutional law and human rights law around the world It will also assist practitioners judges and policymakers who have to grapple with issues of deference in adjudication

Yale Law Journal: Volume 124, Number 8 - June 2015 Yale Law Journal, 2015-06-26 The contents of the June 2015 issue Volume 124 Number 8 of the Yale Law Journal are Article The New Corporate Web Tailored Entity Partitions and Creditors Selective Enforcement Anthony J Casey Note A Reassessment of Common Law Protections for Idiots Michael Clemente Feature Arbitration Transparency and Privatization Diffusing Disputes The Public in the Private of Arbitration the Private in Courts and the Erasure of Rights Judith Resnik Arbitration and Americanization The Paternalism of Progressive Procedural Reform Amalia D Kessler Arbitration s Counter Narrative The Religious Arbitration Paradigm Michael A Helfand Disappearing Claims and the Erosion of Substantive Law J Maria Glover Feature Constitutional Law in an Age of Proportionality Vicki C Jackson Quality digital formatting includes fully linked footnotes and an active Table of Contents including linked Contents for all individual Articles Notes and Essays proper Bluebook formatting and active URLs in footnotes This ebook is the last issue of the academic year 2014 2015 Number 8 of Volume 124 It includes a cumulative Index for the volume

Law and the Order of Culture Robert Post, 2024-03-29 *Law and the Order of Culture* is an outstanding collection of essays that explores the cultural creation of legal meaning addressing interpretive processes within the law as well as the social constitution of legal doctrine Originally published in *Representations* these essays are at the center of the law and literature movement which exemplifies a burgeoning literature in feminist jurisprudence critical legal studies and other work that has focused on law as evidence of cultural orderings For this edition Robert Post has written a new introduction proposing an analytic framework for this literature and discussion of the seven essays contained within the book Ranging over a variety of interdisciplinary perspectives the contributors to the volume address such central issues as the construction of legal normativity interpretive theory and practice in constitutional law the function of legal metaphors the interpretive foundations of the law fact distinction and the role of politics in contemporary critical legal studies *Law and the Order of Culture* will attract a broad and eclectic readership across many disciplines *Law and the Order of Culture* is an outstanding collection of essays that explores the cultural creation of legal meaning addressing interpretive processes within the law as well as the social constitution of

legal doctrine Originally published in Repres Constitutionalism of Australian First Nations Maria Salvatrice Randazzo,2022-07-29 The book considers Australian First Nations constitutionalism by drawing on the chthonic constitutional traditions of three distinct Australian First Nations legal orders the Warlpiri Yolngu and Pintupi legal orders in the endeavour of identifying via a comparative analysis a core of similarities to be drawn upon and articulate an emergent legal theory common to the three legal orders The comparative analysis is undertaken at the most foundational levels of their legal traditions via the prism of a legal paradigm elaborated with reference to an Australian Indigenous cosmological ontological and epistemological standpoint The proposed legal theory comprises a broad overview general concepts normative principles and general working principles In so doing the book expounds how Australian First Nations constitutionalism unfolds into holistic orders of spiritual political and legal authority that are explainable in terms of legal theory At the most foundational level such elaboration may help delineate normative and legal constitutional patterns throughout Indigenous Australia **Provinces** Christopher Dunn,2016-01-01 Provinces is now established as the most comprehensive yet accessible exploration of Canadian provincial politics and government The authors of each chapter draw on their particular expertise to examine themes and issues pertaining to all the provinces from a comparative perspective The book is organized into four major sections political landscapes the state of democracy in the provinces political structures and processes and provincial public policy The third edition features eleven new chapters including province building provincial constitutions provincial judicial systems plurality voting in the provinces voting patterns in the provinces provincial public service provincial party financing provincial health policy social policy climate change and labour market policy All other chapters have been thoroughly revised and updated Bills of Rights Mark Tushnet,2017-07-05 This collection examines the justifications for using bills of rights to protect fundamental human rights and the mechanisms for enforcing provisions in those documents Articles deal with different forms of judicial enforcement and with legislative enforcement of rights protected by such documents The collection includes a road map for evaluating the effectiveness of these alternative enforcement mechanisms **Statutory Interpretation** Douglas Walton,Fabrizio Macagno,Giovanni Sartor,2021-01-21 Combining pragmatics dialectics analytics and legal theory this work translates interpretative canons into patterns of natural argument **Critiquing Free Speech** Matthew D. Bunker,2001-04-01 In this exceptional volume Matthew D Bunker explores the work of contemporary free speech critics and argues that while at times these critics provide important lessons many of their conclusions must be rejected Moreover Bunker suggests that we be wary of interdisciplinary approaches to free speech theory that by their very assumptions and techniques are a poor fit with existing free speech theory and doctrine In his investigation of diverse critiques of free speech theory and his sophisticated rebuttal he provides an innovative and important examination of First Amendment theory In doing so he establishes a new agenda for First Amendment theory scholarship that incorporates some of the critics insights without abandoning the best aspects of the free

speech tradition COPY FOR MAILER Distinctive features in this volume include an overview of the traditional approaches to First Amendment theory an examination of work from key First Amendment scholars and theorists at both the individual and group level an emphasis on interdisciplinarity ranging from feminist and critical legal scholars to economists and literary theorists and a new agenda for First Amendment theory scholarship which incorporates critical comment while preserving the best aspects of the free speech tradition

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