

# CONSTITUTIONAL INTERPRETATION

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James E. Fleming

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# Constitutional Interpretation The Basic Questions

**William B. Glidden**



## **Constitutional Interpretation The Basic Questions:**

*Constitutional Interpretation* Sotirios A. Barber, James E. Fleming, 2007-06-27 Ronald Dworkin famously argued that fidelity in interpreting the Constitution as written calls for a fusion of constitutional law and moral philosophy Barber and Fleming take up that call arguing for a philosophic approach to constitutional interpretation In doing so they systematically critique the competing approaches textualism consensualism originalism structuralism doctrinalism minimalism and pragmatism that aim and claim to avoid a philosophic approach *Constitutional Interpretation The Basic Questions* illustrates that these approaches cannot avoid philosophic reflection and choice in interpreting the Constitution Barber and Fleming contend that fidelity in constitutional interpretation requires a fusion of philosophic and other approaches properly understood Within such a fusion interpreters would begin to think of text consensus intentions structures and doctrines not as alternatives to but as sites of philosophic reflection about the best understanding of our constitutional commitments *Constitutional Interpretation The Basic Questions* examines the fundamental inquiries that arise in interpreting constitutional law In doing so the authors survey the controversial and intriguing questions that have stirred constitutional debate in the United States for over two centuries such as how and for what ends should governmental institutions and powers be arranged what does the Constitution mean under general circumstances and how should it be interpreted during concrete controversies and finally how do we decide what our constitution means and who ultimately decides its meaning

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circumstances and how should it be interpreted during concrete controversies and finally how do we decide what our constitution means and who ultimately decides its meaning

**Populist Challenges to Constitutional Interpretation in Europe and Beyond** Fruzsina Gárdos-Orosz, Zoltán Szente, 2021-05-03 This book explores the relationship between populism or populist regimes and constitutional interpretation used in those regimes The volume discusses the question of whether contemporary populist governments and movements have developed or encouraged new and specific constitutional theories doctrines and methods of interpretation or whether their constitutional and other high courts continue to use the old traditional interpretative tools in constitutional adjudication The book is divided into four parts Part I contains three chapters elaborating the theoretical basis for the discussion Part II examines the topic from a comparative perspective representing those European countries where populism is most prevalent including Austria Croatia the Czech Republic Greece Hungary Italy Poland Romania Spain and the United Kingdom Part III extends the focus to the United States reflecting how American jurisprudence and academia have produced the most important contributions to the theory of constitutional interpretation and how recent political developments in that country might challenge the traditional understanding of judicial review This section also includes a general overview on Latin America where there are also some populist governments and strong populist movements Finally the editors closing study analyses the outcomes of the comparative research summarizing the conclusions of the book Written by renowned national constitutional scholars the book will be essential reading for students academics and researchers working in Constitutional Law and Politics Chapter 1 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4.0 license

**Fidelity to Our Imperfect Constitution** James E. Fleming, 2015-07-17 In recent years some have asked Are we all originalists now and many have assumed that originalists have a monopoly on concern for fidelity in constitutional interpretation In *Fidelity to Our Imperfect Constitution* James Fleming rejects originalisms whether old or new concrete or abstract living or dead Instead he defends what Ronald Dworkin called a moral reading of the United States Constitution or a philosophic approach to constitutional interpretation He refers to conceptions of the Constitution as embodying abstract moral and political principles not codifying concrete historical rules or practices and of interpretation of those principles as requiring normative judgments about how they are best understood not merely historical research to discover relatively specific original meanings Through examining the spectacular concessions that originalists have made to their critics he shows the extent to which even they acknowledge the need to make normative judgments in constitutional interpretation Fleming argues that fidelity in interpreting the Constitution as written requires a moral reading or philosophic approach Fidelity commits us to honoring our aspirational principles not following the relatively specific original meanings or original expected applications of the founders Originalists would enshrine an imperfect Constitution that does not deserve our fidelity Only a moral reading or philosophic approach which aspires to interpret our imperfect Constitution so as to make

it the best it can be gives us hope of interpreting it in a manner that may deserve our fidelity Constructing Basic Liberties James E. Fleming, 2024-05-31 A strong and lively defense of substantive due process From reproductive rights to marriage for same sex couples many of our basic liberties owe their protection to landmark Supreme Court decisions that have hinged on the doctrine of substantive due process This doctrine is controversial a battleground for opposing views around the relationship between law and morality in circumstances of moral pluralism and is deeply vulnerable today Against recurring charges that the practice of substantive due process is dangerously indeterminate and irredeemably undemocratic Constructing Basic Liberties reveals the underlying coherence and structure of substantive due process and defends it as integral to our constitutional democracy Reviewing the development of the doctrine over the last half century James E Fleming rebuts popular arguments against substantive due process and shows that the Supreme Court has constructed basic liberties through common law constitutional interpretation reasoning by analogy from one case to the next and making complex normative judgments about what basic liberties are significant for personal self government Elaborating key distinctions and tools for interpretation Fleming makes a powerful case that substantive due process is a worthy practice that is based on the best understanding of our constitutional commitments to protecting ordered liberty and securing the status and benefits of equal citizenship for all

**The Limits of Constitutional Democracy** Jeffrey K. Tulis, 2010-11-14 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations Uncovering the reasons for this ambivalence this book looks at the difficulties of constitutional democracy and reexamines fundamental questions What is constitutional democracy When does it succeed or fail Can constitutional democracies conduct war Can they preserve their values and institutions while addressing new forms of global interdependence The authors gathered here interrogate constitutional democracy's meaning in order to illuminate its future The book examines key themes the issues of constitutional failure the problem of emergency power and whether constitutions should be suspended when emergencies arise the dilemmas faced when constitutions provide and restrict executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation In addition to the editors the contributors are Sotirios Barber Joseph Bessette Mark Brandon Daniel Deudney Christopher Eisgruber James Fleming William Harris II Ran Hirschl Gary Jacobsohn Benjamin Kleinerman Jan Werner Müller Kim Scheppele Rogers Smith Adrian Vermeule and Mariah Zeisberg

**Religious Liberty and the American Founding** Vincent Phillip Muñoz, 2024-05-31 An insightful rethinking of the meaning of the First Amendment's protection of religious freedom The Founders understood religious liberty to be an inalienable natural right Vincent Phillip Muñoz explains what this means for church state constitutional law uncovering what we can and cannot determine about the original meanings of the First Amendment's Religion Clauses and constructing a natural rights jurisprudence of religious liberty Drawing on early state constitutions declarations of religious freedom Founding era debates

and the First Amendment's drafting record. Muñoz demonstrates that adherence to the Founders' political philosophy would lead neither to consistently conservative nor consistently liberal results. Rather, adopting the Founders' understanding would lead to a minimalist church-state jurisprudence that in most cases would return authority from the judiciary to the American people. Thorough and convincing. *Religious Liberty and the American Founding* is key reading for those seeking to understand the Founders' political philosophy of religious freedom and the First Amendment Religion Clauses. **American**

**Constitutional Law** Donald P. Kommers, John E. Finn, Gary J. Jacobsohn, 2009-07-16 *American Constitutional Law: Essays, Cases, and Comparative Notes* is a unique casebook that encourages citizens and students of the Constitution to think critically about the fundamental principles and policies of the American constitutional order. In addition to its distinguished authorship, the book has two prominent features that set it apart from other books in the field: an emphasis on the social, political, and moral theory that provides meaning to constitutional law and interpretation; and a comparative perspective that situates the American experience within a world context that serves as an invaluable prism through which to illuminate the special features of our own constitutional order. While the focus of the book is entirely on American constitutional law, the book asks students to consider what, if anything, is unique in American constitutional life and what we share with other constitutional democracies. Each chapter is preceded by an introductory essay that highlights these major themes and also situates the cases in their proper historical and political contexts. This new edition offers updated and expanded treatment of a number of important and timely topics, including gerrymandering and campaign finance, the death penalty, privacy, affirmative action, and school segregation. The new edition offers:

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*The Limits of Constitutional Democracy* Jeffrey K. Tulis, Stephen Macedo, 2010-10-18 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations. Uncovering the reasons for this ambivalence, this book looks at the difficulties of constitutional democracy and reexamines fundamental questions: What is constitutional democracy? When does it succeed or fail? Can constitutional democracies conduct war? Can they preserve their values and institutions while addressing new forms of global interdependence? The authors gathered here interrogate constitutional democracy's meaning in order to illuminate its future. The book examines key themes: the issues of constitutional failure, the problem of emergency power, and whether constitutions should be suspended when emergencies arise; the dilemmas faced when constitutions provide and restrict

executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation In addition to the editors the contributors are Sotirios Barber Joseph Bessette Mark Brandon Daniel Deudney Christopher Eisgruber James Fleming William Harris II Ran Hirschl Gary Jacobsohn Benjamin Kleinerman Jan Werner Müller Kim Scheppele Rogers Smith Adrian Vermeule and Mariah Zeisberg *Judicial Review in an Age of Moral Pluralism* Ronald C. Den Otter, 2009-08-31 This book considers how judicial review can be improved to strike the appropriate balance between legislative and judicial power Constitutionalism Larry Alexander, 2001-02-26 A distinguished international team of legal theorists examine the issue of constitutionalism and pose such foundational questions as Why have a constitution How do we know what the constitution of a country really is How should a constitution be interpreted Why should one generation feel bound by the constitution of an earlier one The volume will be of particular importance to those in philosophy law political science and international relations interested in whether and what kinds of constitutions should be adopted in countries without them and involved in debates about constitutional interpretation *Founding Moments in Constitutionalism* Richard Albert, Menaka Guruswamy, Nishchal Basnyat, 2019-10-17 Founding moments are landmark events that break ties with the ancient regime 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

**Constitutional Questions in Latin America and Peru** César Landa, 2024-06-26 The book delves into constitutional essays focused on Latin America with a particular emphasis on Peru It explores legal theories surrounding the development of human rights rooted in constitutional pluralism Drawing from the insights gathered by organizations within the Inter American Human Rights System notably the Court and the Commission this examination extends to its impact on local judicial bodies including the Judiciary and notably the Constitutional Court These efforts aim to protect traditional civil and political rights alongside social rights However the work also addresses the ongoing challenge of safeguarding emerging rights such as fundamental digital and environmental rights while bolstering protections for vulnerable populations like migrants and the LGBTQ community By adopting a holistic approach the book aspires to serve as a valuable resource for academics experts students and professionals engaged in the study and practice of Latin American Constitutionalism

**Congress and the Fourteenth Amendment** William B. Glidden, 2013-08-29 The discrepancy between the fourteenth

amendment's true meaning as originally understood and the Supreme Court's interpretation of its meaning over time has been dramatic and unfortunate. The amendment was intended to be a constitutional rule for the promotion and protection of people's rights administered by the states as front line regulators of life liberty and property to be overseen by Congress and supported by federal legislation as necessary. In this book William B. Glidden makes the case that instead the amendment has operated as a judge dominated negative rights against government regime supervised by the Supreme Court. Whenever Congress has enacted legislation to protect life liberty or property rights of people in the states the laws were often overturned narrowly construed or forced to rely on the power of Congress to regulate interstate commerce under the Supreme Court's constraining interpretations. Glidden proposes that Congress must recover for itself or be restored to its proper role as the designated federal enforcement agency for the fourteenth amendment.

*American Constitutional Law, Volume II* Ralph Rossum, Alan Tarr, Vincent Phillip Munoz, 2019-07-23. *American Constitutional Law 11e Volume II* provides a comprehensive account of the nation's defining document examining how its provisions were originally understood by those who drafted and ratified it and how they have since been interpreted by the Supreme Court. Congress, the President, lower federal courts and state judiciaries. Clear and accessible chapter introductions and a careful balance between classic and recent cases provide students with a sense of how the law has been understood and construed over the years. The 11th Edition now includes several landmark First Amendment cases including *Janus v American Federation of State County and Municipal Employees* 2018, *Minnesota Voters Alliance v Mansky* 2018, *National Institute of Family and Life Advocates v Beccera* 2018, *Trinity Lutheran Church v Comer* 2017 and *Masterpiece Cakeshop v Colorado Civil Rights Commission* 2018. It also includes *Carpenter v United States* 2018. A revamped and expanded companion website offers access to even more additional cases, an archive of primary documents and links to online resources making this text essential for any constitutional law course.

[A New Introduction to American Constitutionalism](#) Mark A. Graber, 2015. *A New Introduction to American Constitutionalism* is the first truly interdisciplinary study of the American constitutional regime. Mark A. Graber explores the fundamental elements of the American constitutional order with particular emphasis on how constitutionalism in the United States is a form of politics and not a means of subordinating politics to law.

*Constitutional Democracy* Walter F. Murphy, 2007. Publisher Description. **American Constitutional Interpretation** Walter F. Murphy, James E. Fleming, Sotirios A. Barber, 1995. *International Journal of Legal Information*, 2008.



## Reviewing **Constitutional Interpretation The Basic Questions**: Unlocking the Spellbinding Force of Linguistics

In a fast-paced world fueled by information and interconnectivity, the spellbinding force of linguistics has acquired newfound prominence. Its capacity to evoke emotions, stimulate contemplation, and stimulate metamorphosis is actually astonishing. Within the pages of "**Constitutional Interpretation The Basic Questions**," an enthralling opus penned by a highly acclaimed wordsmith, readers set about an immersive expedition to unravel the intricate significance of language and its indelible imprint on our lives. Throughout this assessment, we shall delve in to the book is central motifs, appraise its distinctive narrative style, and gauge its overarching influence on the minds of its readers.

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