

Overview

- *Judicial Review* – the power of courts to declare laws unconstitutional
- *Judicial Restraint Approach* – judges should decide cases strictly on the basis of the language of the Constitution
- *Activist Approach* – judges should discern the general principles underlying the Constitution and apply them to modern circumstances

Constitution Of Judicial Power Defending The Activist Tradition

**United States. Congress. Senate.
Committee on the Judiciary**



Constitution Of Judicial Power Defending The Activist Tradition:

Defending the Republic Bruce Frohnen, Kenneth L. Grasso, 2022-10-07 In recent years our constitutional order has increasingly come under attack as irredeemably undemocratic racist and oppressive At the same time it is increasingly obvious that politic practices in the United States have strayed very far from the founders designs and become deeply dysfunctional The time is thus ripe for renewed reflection about the American political tradition This volume reintroduces readers to the conservative tradition of political and constitutional discourse It brings together prominent political scientists and legal scholars all of whom were deeply influenced by the life and work of the eminent constitutional scholar George W Carey For over 40 years Carey strove mightily to explain the nature and requirements of our political tradition How it fostered meaningful virtuous self government and how our constitutional tradition has been derailed by progressivist ideology He is perhaps best known for his concept of constitutional morality the understanding that our republican constitutional order can be sustained only by a combination of formal mechanisms e g separation of powers and unwritten norms standards of behavior that act to foster deliberation and consensus as well as keep political actors within the boundaries of their constitutional offices Contributors including Francis Canavan Claes G Ryn Paul Edward Gottfried and Peter Augustine Lawler discuss and develop Carey s key insights applying them to issues from the nature of majoritarian government to the purposes of constitutionalism to the decline of virtue that has accompanied the expansion of power among national and international elites Each essay provides penetrating analysis of key aspects of our tradition its inherent purposes growth and subsequent derailment as well as the resources remaining within that tradition for the rebuilding of our constitutional order and a decent common life

Judicial Activism in Bangladesh Ridwanul Hoque, 2011-01-18 This book critically examines the evolving global trend of judicial activism with particular reference to Bangladesh It constructs judicial activism as a golden mean adjudicative technology standing between excessive judicial assertion and unacceptable judicial passivity that may leave injustices un redressed It argues that judicial balancing between over activism and meek administration of justice should essentially be predicated upon domestic conditions and the needs and fundamental public values of the judges respective society Providing cross jurisdictional empirical evidence the study demonstrates that judicial activism steered towards improving justice and grounded in one s societal specificities can be exercised in a morally and legally legitimate form and without rupturing the balance of powers among the state organs This study has sought to displace the myth of judicial activism as constitutional transgression by unelected judges arguing that judicial activism is quite different from excessivism It is argued and shown that a particular judge or judiciary turns out to be activist when other public functionaries avoid or breach their constitutional responsibilities and thus generate injustice and inequality The study treats judicial activism as the conscientious exposition of constitutional norms and enforcement of public duties of those in positions of power The study assesses whether Bangladeshi judges have been striking the correct balance between over

activism and injudicious passivity Broadly the present book reveals judicial under activism in Bangladesh and offers insights into causes for this It is argued that the existing milieu of socio political injustices and over balance of constitutional powers in Bangladesh calls for increased judicial intervention and guidance of course in a balanced and pragmatic manner which is critical for good governance and social justice Writing about judicial activism easily gets shackled by fussy and pedestrian debates about what judges may or may not do as unelected agents of governance The book goes much beyond such reductionist pedestrianisation of law for it courageously lifts the debate into the skies of global legal realism The analysis perceptively addresses bottlenecks of justice identifying shackles and mental blocks in our own minds against activating concerns for justice for the common citizen Prof Werner Menski Foreword

Defending Constitutional Rights Frank Minis Johnson, 2001 Federal Judge Frank M Johnson of Alabama decided many of the most important civil rights and liberties cases in twentieth century American history During the 1950s and 1960s his decisions supported Martin Luther King Jr and other civil rights fighters in their struggles for justice and equality Johnson extended the Constitutional defense of individual rights for women students prisoners mental health patients poor criminal defendants and voters during his active judicial career in Alabama and the South which lasted until 1991 This collection assembles some of Johnson s most thought provoking and insightful essays many of which explain and defend a number of his decisions Also included in this volume is the first published transcript of a 1980 public television interview with Bill Moyers Meticulously detailed and documented yet accessible to a wide range of readers this book explores the constitutional ideals that Johnson forged and defended as he persistently overcame public officials resistance to constitutional rights and social change

A Proposed Constitutional Amendment to Preserve Traditional Marriage United States. Congress. Senate. Committee on the Judiciary, 2005

Judicial Activism Vs. Democracy United States. Congress. Senate. Committee on the Judiciary. Subcommittee on the Constitution, Civil Rights, and Property Rights, 2005

The Max Planck Handbooks in European Public Law Armin von Bogdandy, Peter M. Huber, Christoph Grabenwarter, 2023 The fourth volume of the Max Planck Handbooks in European Public Law series compares European constitutional jurisdiction in the perspective of the European legal space It examines the structures of the organization the appointment of judges the procedures and the methods of argumentation and interpretation their impact on state and society their legitimacy or their role in the division of powers and thus completes the picture following the country reports in Volume III This comparative perspective is supplemented by an examination that illustrates the relationship to the ECJ the ECtHR and the Venice Commission as well as their constitutional function Finally the volume is devoted to the challenges currently facing constitutional jurisdiction in the European Legal Space The historical political and theoretical foundations as well as the basic doctrinal features of constitutional jurisdiction are presented in such a way that the discussion about its role and further development in this legal space is sustainably stimulated

Defending Marriage United States. Congress. House. Committee on the Judiciary. Subcommittee on the

Constitution,2011 **What is Needed to Defend the Bipartisan Defense of Marriage Act of 1996?** United States. Congress. Senate. Committee on the Judiciary. Subcommittee on the Constitution, Civil Rights, and Property Rights,2005

Judicial Activism Luís Pereira Coutinho,Massimo La Torre,Steven D. Smith,2015-05-26 This volume offers different perspectives on judicial practice in the European and American contexts both arguably characterized in the last decades by the emergence of novel normative and even policy arguments by judges The central question deserving the attention of the contributors concerns the degree in which judicial exercises in practical reasoning may amount to forms of judicial usurpation of the legislative function by courts Since different views as to the nature and scope of legal reasoning lead to different degrees of tolerance regarding what should be admissible to courts that same nature and scope is thoroughly debated The main disciplinary approach is that of general jurisprudence but the contributions take stock of other disciplines in which judicial activism has been addressed namely positive theories of judicial behavior Accordingly the book also explores the development of interdisciplinary dialogue about the theme

The Bill of Rights Thomas Tandy Lewis,2002 The Bill of Rights The Amendments 1 10 Over 250 Supreme Court cases Essays on The Issues Academic Freedom Freedom of Assembly association Automobile searches Bad tendency test Bail Right to birth control Blasphemy Capital punishment Censorship Chilling effect Civil rights and liberties Clear and present danger test Commerce clause Commercial speech Comstock Act Conscientious objection Freedom of contract Right to counsel Cruel and unusual punishment Double jeopardy Procedural due process Substantive due process Elastic clause Espionage Acts Exclusionary rule First Amendment absolutism balancing speech tests Flag desecration Gag order Gay lesbian rights Grand jury Hatch Act Hate crimes Hicklin rule Indian Bill of Rights Indigent criminal defendants Japanese American relocation Judicial scrutiny Trial by jury Libel Loyalty oaths Miranda rights Miscegenation laws Natural law Newsroom searches Nuremberg Files Obscenity pornography Right of petition Preferred freedoms doctrine Presumption of innocence Preventive detention Prior restraint Right of privacy Privileges immunities Probable cause Property rights Public forum doctrine Public use doctrine Released time Establishment of religion Freedom of religion School prayer Search seizure Search warrant requirement Sedition Act of 1798 Seditious libel Immunity against self incrimination Silver platter doctrine Smith Act Freedom of speech press Speedy trial States rights Stop frisk rule Symbolic speech Takings clause Time place manner regulations Unprotected speech Confrontation of witnesses and Zoning

Judicial Activism in Post-Emergency Era Dr. Swapna Deka Mandrinath,2015-01-01 Since the day the Constitution of India came into force Judicial Activism has existed in different forms under the Constitution Judicial Activism initiated by the higher judiciary in India has started serious debates on the Court s undefined power to place substantive as well as procedural limits on the executive as well as the legislature The Court s new role to make law and give directions has been criticised as the usurpation of powers that belong to the other two organs The Court has been defending its new role to uphold the constitutional values of protecting the human rights of the people thereby upholding the principle of Rule of Law

Through this book Dr Deka Swapna Manindranath analyses the legitimacy of Judicial Activism in India as well as the intrusions made by the judiciary in the name of Judicial Activism. The author argues that Judicial Activism under the Constitution has been inevitable in view of the socio economic and political conditions of the nation as well as due to the laxity of performance on the part of the other two organs. This book will be of interest to the research scholars and students of Indian Constitutional law and Political Science judges lawyers and general readers interested in knowing about the phenomenon of Judicial Activism in India.

Judicial Activism United States. Congress. Senate. Committee on the Judiciary. Subcommittee on the Constitution, Federalism, and Property Rights, 1997

Forthcoming Books Rose Army, 1997

Judicial Shifts: Exploring the Dynamics of Legal Change and Constitutional Challenges Dino Ellis, 2025-04-24

Judicial Shifts: Exploring the Dynamics of Legal Change and Constitutional Challenges delves into the intricate web of legal transformations and constitutional complexities that shape our societies. This thought provoking work unravels the intricate mechanisms of judicial decision making highlighting the profound impact it has on societal norms and the rule of law. Through a comprehensive analysis of landmark cases and legal precedents the book offers a nuanced understanding of the interplay between legal change and constitutional safeguards. Readers will embark on a journey through the evolving landscape of judicial systems examining the factors that drive legal shifts and the challenges they pose to constitutional principles. By exploring real world examples the book illustrates how the interpretation and application of constitutional provisions shape the outcomes of legal disputes and influence policymaking. It delves into the complexities of judicial activism and judicial restraint shedding light on the delicate balance between safeguarding individual rights and upholding the stability of the legal system. This book is an invaluable resource for legal professionals scholars and anyone seeking to comprehend the intricate workings of the judiciary and its profound impact on our lives. It provides a comprehensive examination of the dynamics of legal change and constitutional challenges empowering readers with a deeper understanding of the role of the courts in shaping the future of our societies.

Liberty of Contract David N. Mayer, 2011-01-16 Examines the history of the liberty of contract and shows how this right has been continuously diminished by court decisions and by our country's growing regulatory and welfare state.

Traditions and Transformations Michaela Hailbrunner, 2015-10-29

German constitutionalism has gained a central place in the global comparative debate but what underpins it remains imperfectly understood. Its distinctive conception of the rule of law and the widespread support for its powerful Constitutional Court are typically explained in one of two ways as a story of change in reaction to National Socialism or as the continuation of an older nineteenth century line of constitutional thought that emphasizes the function of constitutional law as a constraint on state power. But while both narratives account for some important features their explanatory value is ultimately overrated. This book adopts a broader comparative perspective to understand the rise of the German Constitutional Court. It interprets the particular features of German constitutional jurisprudence and the Court's strength as a reconciliation of two different

legal paradigms first a hierarchical legal culture as described by Mirjan Damaska building on Max Weber as opposed to a more co ordinate understanding of legal authority such as prevails in the United States and secondly the turn towards a transformative understanding of constitutionalism as it is today most often associated with countries such as South Africa and India Using post war legal history and sociological and empirical research in addition to case law this book demonstrates how German constitutionalism has harmonized the frequently conflicting demands of these two legal paradigms resulting in a distinctive type of constitutional reasoning at once open pragmatic formalist and technical which this book labels Value Formalism Value Formalism however also comes with serious drawbacks such as a lack of institutional self reflection in the Court s jurisprudence and a closure of constitutional discourse to laymen whom it excludes from the realm of legitimate interpreters

Law, Courts, and Justice in America Howard Abadinsky, 2014-05-01 Faculty praised each of the previous six editions of Howard Abadinsky s clear comprehensive overview of the US legal system His latest edition *Law Courts and Justice in America* previously *Law and Justice* represents a refined updated synthesis of the complex fluid justice system in the United States Part I *Law* describes the history of the US justice system and the emergence of law schools the realities of a law school education and the current state of the legal profession for both women and men Part II *Courts* unravels the structure of federal and state court systems delineating differences between constitutional and legislative courts and between trial and appellate courts the structure and purpose of appellate courts and the Supreme Court noting variations in the interpretation of statutes the Constitution and the original intent of legislators and the roles of judges prosecutors and attorneys Part III *Justice* demystifies the criminal civil and juvenile judicial processes plea bargaining and the controversies surrounding it and adjudication options outside of traditional adversarial legal venues Throughout landmark cases important historical events illustrative examples and boxed items highlight or expand chapter content

My Daily Constitution Vol. I Richard J. Rolwing, 2001-02-02 Subtitled *A NATURAL LAW PERSPECTIVE* 365 essays each 365 words on Uncle Sams birthright genealogy and orientation OR the Constitutions philosophical and historical presuppositions and implications OR *Philosophy for Dummies* Many modern historians and thinkers describe western history as a progressive movement toward freedom freedom from religious and rational morality For them Uncle Sam rides the current crest of this wave The American government is said to be agnostic about religion and indifferent about philosophy There is no universal anthropology behind political judgements no rational psychology behind political institutions no history behind arguments no epistemology behind communications no metaphysics behind American independence no ethics behind our Constitution no moral authority behind our laws and no logic behind their interpretation In fact there are no bonds to anything past especially since there are no foundations either temporal or ontological for any convictions whatsoever This view grossly distorts Uncle Sams basic orientation and the distortion is really an attempted abortion because many moderns have a phobia about that orientation which is Natural Law

Liberalism: Old and New: Volume 24, Part 1 Ellen Frankel Paul, Fred D. Miller, Jeffrey

Paul, 2007-02-12 In this collection thirteen prominent philosophers and political scientists address the nature of liberalism its origins and its meaning and proper interpretation Some essays examine the writings of liberalism s earliest defenders like John Locke and Adam Smith or the influence of classical liberalism on the American founders Some focus on the Progressive movement and the rise of the administrative state while others defend particular conceptions of liberalism or examine liberal theories of justice including those of John Rawls and Robert Nozick Several essays discuss the U S Constitution seeking to determine whether it is best viewed as empowering the federal government to achieve certain ends or as strictly limiting its power to ensure the broadest freedom for individuals to pursue their own ends Other essays address the limits of economic freedom or focus on the nature and extent of property rights and the government s power of eminent domain **Against the Imperial Judiciary** Matthew J. Franck, 1996 Franck s reexamination of the place of natural law in the early Supreme Court is fresh illuminating and long overdue His scholarship is incisive and profound and the exegeses of early Supreme Court opinions are often brilliant Robert L Clinton author of Marbury v Madison and Judicial Review

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