

Constitutional Fate Theory Of The Constitution

Raymond W. Gibbs

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

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 gave 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 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 tooffer the most up to date coverage of current thinking inlegal philosophy Represents the definitive handbook of philosophy of law and contemporary legal theory invaluable to anyone with an interest inlegal 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 leadingscholars A Theory of the Executive Branch Margit Cohn, 2021 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 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 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 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 The Politically Incorrect Guide to the Supreme Court John Yoo, Robert J. Delahunty, 2023-06-27 Justice in the Balance Alexander Hamilton famously predicted that the judiciary would be the least dangerous branch of government How s that working out The Supreme Court stands as arbiter over a country increasingly unable to govern itself Americans can t agree on the meaning of the Constitution or even the rule of law Are the nine high priests enthroned in their marble temple the saviors of the Republic or the pallbearers of democracy Are they defenders of the Constitution as written or super legislators who make law from the bench What did the Founders envision when they vested the judicial Power in one supreme Court John Yoo a professor of law at UC Berkeley and Robert J Delahunty a fellow at the Claremont Institute Center for the American Way of Life provide the answers with an incisive reading of the law and constitutional history The Politically Incorrect Guide to the Supreme Court explains The turbulent history of the court's early years and the eventual triumph of judicial supremacy The Bill of Rights how the Court has defined free speech freedom of religion and the right to bear arms The Court's notorious rulings and how they were overturned from Dred Scottto Roe v Wade Why court packing is a constant temptation for Democratic presidents The Supreme Court's best and worst justices and what qualities distinguished them The future of the Supreme Court Will it be the rubber stamp of corrupt administrations or the ultimate watchdog protecting our nation's liberties The Politically Incorrect Guide to the Supreme Court offers a penetrating and irreverent account of the justices ideologues and cowards geniuses and mediocrities all of them thoroughly human and a fascinating analysis of a Court that has swung like a pendulum from preserving the Republic to undermining government by the people and back to defending the Constitution Sprightly informative and powerfully argued this book is

guaranteed to give the reader a deeper understanding of America's most powerful judicial body The Power of Precedent Michael J. Gerhardt, 2011 The author connects the vast social science data and legal scholarship to provide a wide ranging assessment of precedent He outlines the major issues in the continuing debates on the significance of precedent and evenly considers all sides Intentions in the Experience of Meaning Raymond W. Gibbs, 1999-09-13 What do our assumptions about authorship matter for our experience of meaning This book examines the debates in the humanities and social sciences over whether authorial intentions can or should constrain our interpretation of language and art Scholars assume that understanding of linguistic and artistic meaning should not be constrained by beliefs about authors and their possible intentions in creating a human artifact It is argued here that people are strongly disposed to infer intentionality when understanding oral speech written texts artworks and many other human actions Although ordinary people and scholars may infer meanings that diverge from or extend beyond what authors intend our experience of human artifacts as meaningful is fundamentally tied to our assumptions of intentionality This challenges the traditional ideas of intentions as existing solely in the minds of individuals and formulates a new conceptual framework for examining if and when intentions influence the interpretation of meaning University of Chicago Law Review: Volume 80, Number 3 - Summer 2013 University of Chicago Law Review, 2013-09-29 The University of Chicago Law Review s third issue of 2013 features articles and essays from internationally recognized legal and policy scholars as well as extensive student research on cutting edge topics Contents include ARTICLES Tortfest by J Shahar Dillbary Judging the Flood of Litigation by Marin K Levy Unbundling Constitutionality by Richard Primus When Nudges Fail Slippery Defaults by Lauren E Willis COMMENTS The Firearm Disability Dilemma Property Insights into Felon Gun Rights Pleading in Technicolor When Can Litigants Incorporate Audiovisual Works into Their Complaints Fun with Numbers Gall s Mixed Message regarding Variance Calculations The Availability of Discovery Sanctions for Violations of Protective Orders Corruption Clarified Defining the Reach of Agent in 18 USC 666 Extra Venues for Extraterritorial Crimes 18 USC 3238 and Cross Border Criminal Activity A Historical Approach to Negligent Misrepresentation and Federal Rule of Civil Procedure 9 b REVIEW ESSAY Commons and Growth The Essential Role of Open Commons in Market Economies by Yochai Benkler The University of Chicago Law Review first appeared in 1933 thirty one years after the Law School offered its first classes Since then the Law Review has continued to serve as a forum for the expression of ideas of leading professors judges and practitioners as well as student authors and as a training ground for University of Chicago Law School students who serve as its editors and contribute original research Principal articles and essays are authored by internationally recognized legal scholars Quality eBook editions feature active Contents linked footnotes and linked URLs in notes The Cult Of The Court John Brigham, 1991-02-25 In recent years widespread attention has been focused on decisions handed down by the Supreme Court that grapple with passionate issues integration school prayer abortion affirmative action The appointment of new justices is a highly charged political event although the Court is

supposed to be above politics Amidst the bicentennial celebration of the Constitution and almost daily reports of major confrontations awaiting the highest court's judicial review John Brigham presents a fresh and innovative examination of the U S Supreme Court as the final arbiter of constitutional interpretation Drawing on philosophy and anthropology The Cult of the Court offers a social scientific investigation of an institution whose authority has come to be taken for granted The author emphasizes that the Court is an institution and that its authority is founded less in the claim of legal expertise than in hierarchical finality the assertion of political will not of legal judgment He shows how the Court has supplanted the Constitution as the authority in our political world and that what makes legal sense is affected by these factors of institutionalization bureaucratization and court dominated constitutionalism Harvard Law Review: Volume 130, Number 1 - November 2016 Harvard Law Review, 2016-11-10 The End of the Charter Revolution Peter J. McCormick, 2014-12-15 The Canadian Charter of Rights and Freedoms became an entrenched part of the Canadian Constitution on April 17 1982 The Charter represented a significant change in Canadian constitutional order and carried the courts and the Supreme Court in particular decisively into some of the biggest controversies in Canadian politics Although the impact of the Charter on Canadian law and society was profound a new status quo has been established Even though there will be future Charter surprises and decisions that will claim news headlines Peter J McCormick argues that these cases will be occasional rather than frequent and that the Charter revolution is over Or as he puts it in his introduction I will tell a story about the Charter about the big ripples that have gradually but steadily died away such that the surface of the pond is now almost smooth The End of the Charter Revolution explores the Canadian Charter of Rights and Freedoms beginning with a general historical background followed by a survey of the significant changes brought about as Charter decisions were made The book addresses a series of specific cases made before the Dickson Lamer and McLachlin Courts and then provides empirical data to support the argument that the Charter revolution has ended The Supreme Court has without question become a national institution of the first order but even though the Charter is a large part of why this has happened it is not Charter decisions that will showcase the exercise of this power in the future *Reconstructing the* National Bank Controversy Eric Lomazoff, 2018-11-07 The Bank of the United States sparked several rounds of intense debate over the meaning of the Constitution's Necessary and Proper Clause which authorizes the federal government to make laws that are necessary for exercising its other powers Our standard account of the national bank controversy however is incomplete The controversy was much more dynamic than a two sided debate over a single constitutional provision and was shaped as much by politics as by law With Reconstructing the National Bank Controversy Eric Lomazoff offers a far more robust account of the constitutional politics of national banking between 1791 and 1832 During that time three forces changes within the Bank itself growing tension over federal power within the Republican coalition and the endurance of monetary turmoil beyond the War of 1812 drove the development of our first major debate over the scope of federal power at

least as much as the formal dimensions of the Constitution or the absence of a shared legal definition for the word necessary These three forces sometimes alone sometimes in combination repeatedly reshaped the terms on which the Bank s constitutionality was contested Lomazoff documents how these three dimensions of the polity changed over time and traces the manner in which they periodically led federal officials to adjust their claims about the Bank's constitutionality This includes the emergence of the Coinage Clause which gives Congress power to coin money regulate the value thereof as a novel justification for the institution He concludes the book by explaining why a more robust account of the national bank controversy can help us understand the constitutional basis for modern American monetary politics The Supreme Court and Religion in American Life, Vol. 2 James Hitchcock, 2009-01-10 School vouchers The Pledge of Allegiance The ban on government grants for theology students The abundance of church and state issues brought before the Supreme Court in recent years underscores an incontrovertible truth in the American legal system the relationship between the state and religion in this country is still fluid and changing This the second of two volumes by historian and legal scholar James Hitchcock offers a complete analysis and interpretation of the Court's historical understanding of religion explaining the revolutionary change that occurred in the 1940s In Volume I The Odyssey of the Religion Clauses Princeton Hitchcock provides the first comprehensive survey of the court cases involving the Religion Clauses including a number that scholars have ignored Here Hitchcock examines how in the early history of our country a strict separation of church and state was sustained through the opinions of Jefferson and Madison even though their views were those of the minority Despite the Founding Fathers ideas the American polity evolved on the assumption that religion was necessary to a healthy society and cooperation between religion and government was assumed This view was seldom questioned until the 1940s notes Hitchcock Then with the beginning of the New Deal and the appointment of justices who believed they had the freedom to apply the Constitution in new ways the judicial climate changed Hitchcock reveals the personal histories of these justices and describes how the nucleus of the Court after World War II was composed of men who were alienated from their own faiths and who looked at religious belief as irrational divisive and potentially dangerous assumptions that became enshrined in the modern jurisprudence of the Religion Clauses He goes on to offer a fascinating look at how the modern Court continues to grapple with the question of whether traditional religious liberty is to be upheld **Freedom and Indigenous** Constitutionalism John Borrows, 2016-01-01 John Borrows uses Ojibwe law stories and principles to suggest alternative ways in which Indigenous peoples can work to enhance freedom Responsive Judicial Review Rosalind Dixon, 2023-01-18 Democratic dysfunction can arise in both at risk and well functioning constitutional systems It can threaten a system's responsiveness to both minority rights claims and majoritarian constitutional understandings Responsive Judicial Review aims to counter this dysfunction using examples from both the global north and global south including leading constitutional courts in the US UK Canada India South Africa and Colombia as well as select aspects of the constitutional jurisprudence of

courts in Australia Fiji Hong Kong and Korea In this book Dixon argues that courts should adopt a sufficiently dialogic approach to countering relevant democratic blockages and look for ways to increase the actual and perceived legitimacy of their decisions through careful choices about their framing and the timing and selection of cases By orienting judicial choices about constitutional construction toward promoting democratic responsiveness or toward countering forms of democratic monopoly blind spots and burdens of inertia judicial review helps safeguard a constitutional system's responsiveness to democratic majority understandings The idea of responsive judicial review encourages courts to engage with their own distinct institutional position and potential limits on their own capacity and legitimacy Dixon further explores the ways that this translates into the embracing of a weakened approach to judicial finality compared to the traditional US model of judicial supremacy as well as a nuanced approach to the making of judicial implications a calibrated approach to judicial scrutiny or judgments about proportionality and an embrace of weak strong rather than wholly weak or strong judicial remedies Not all courts will be equally well placed to engage in review of this kind or successful at doing so For responsive judicial review to succeed it must be sensitive to context specific limitations of this kind Nevertheless the idea of responsive judicial review is explicitly normative and aspirational it aims to provide a blueprint for how courts should think about the practice of judicial review as they strive to promote and protect democratic constitutional values <u>Judicial Review and Judicial Power in the</u> Supreme Court Kermit L. Hall, 2014-07-22 Available as a single volume or as part of the 10 volume set Supreme Court in **American Society**

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