Contest for Constitutional Authority: The Abortion & War Powers Debates SUSAN R. BURGESS

Miriam Smith

Contest for Constitutional Authority Susan Burgess, 1992 Is the judiciary the ultimate authority on constitutional questions Susan Burgess says no Basing her argument on the theory of departmental review Burgess contends that each branch of government has the right to interpret the Constitution and that no branch has final authority Through close study of the abortion and war powers debates Burgess illustrates that the practice of departmental review improves the quality of constitutional debate deepens constitutional consciousness and enhances respect for the rule of law First she investigates the constitutional issues relating to the debates over Roe v Wade and in its wake the 1981 human life bill the 1985 Abortion Funding Restriction Act and contemporaneous court cases She follows with a comparative analysis of the constitutional debates that focused on the infamous 1964 Gulf of Tonkin Resolution and the Persian Gulf crisis of the late 1980s one before and the other after the passage of the 1973 War Powers Act Burgess demonstrates the considerable potential and possible drawbacks of departmental review for creating a common constitutional language that transcends the polemical impasses characterizing much current debate for recapturing active and thoughtful citizen participation and for renewing our faith in the authority of the Constitution War Powers Mariah Zeisberg, 2015-09-01 Armed interventions in Libya Haiti Iraq Vietnam and Korea challenged the US president and Congress with a core question of constitutional interpretation does the president or Congress have constitutional authority to take the country to war War Powers argues that the Constitution doesn't offer a single legal answer to that question But its structure and values indicate a vision of a well functioning constitutional politics one that enables the branches of government themselves to generate good answers to this question for the circumstances of their own times Mariah Zeisberg shows that what matters is not that the branches enact the same constitutional settlement for all conditions but instead how well they bring their distinctive governing capacities to bear on their interpretive work in context Because the branches legitimately approach constitutional questions in different ways interpretive conflicts between them can sometimes indicate a successful rather than deficient interpretive politics Zeisberg argues for a set of distinctive constitutional standards for evaluating the branches and their relationship to one another and she demonstrates how observers and officials can use those standards to evaluate the branches constitutional politics With cases ranging from the Mexican War and World War II to the Cold War Cuban Missile Crisis and Iran Contra scandal War Powers reinterprets central controversies of war powers scholarship and advances a new way of evaluating the constitutional behavior of officials outside of the judiciary **Defending Congress and the Constitution** Louis Fisher, 2011-09-07 The culmination of four decades of research and service on behalf of Congress Louis Fisher's latest work is a fitting capstone to a remarkable career as scholar and writer and presents his most articulate passionate and persuasive defense yet of Congress as an institution Our nation's leading authority on the separation of powers Fisher offers a lucid primer on our nation's government and its executive legislative and judicial branches while vigorously advocating a robust reassertion of Congress s

rightful role within that system Drawing on a wide range of legislation Supreme Court rulings and presidential decisions Fisher illuminates the contentious contest among the three major branches for power and control of government presents a panorama of American history and touches on issues as wide ranging as federalism religious freedom and national security policy Fisher is especially critical of the stereotypical view of the Supreme Court's decisions as possessing a kind of effectiveness and absolute finality that transcends the efforts and powers of Congress Indeed he argues that Congress as much or more than the judiciary has had a major positive impact on protecting individual rights in this country while the judiciary has fallen short in such areas as child labor regulation and compulsory flag salute or has attempted to settle a constitutional issue only to have it fester for years breeding anger and resentment until the political process forces the courts rethink their views He highlights legislative accomplishments in many areas often in the face of judicial opposition and obstruction but also chides Congress for not protecting its key prerogatives over the power of the purse and going to war In yielding to other branches Fishers warns lawmakers fail to represent their constituents and cripple the very system of checks and balances the Framers counted on to limit the destructive capacity of government His book offers a wealth of forceful insights and provides an important reminder of and guide to how our government should really work Or Mercy? François B. Gérard, 2001 This book is meant to provide an overview of and gather the literature on abortion one of the most divisive issues of our times Honest women and men the world over must deal with this issue in their hearts and minds whether or not they ever face the issue personally It is hard to conceive of a single thinking person who doesn t have an opinion on abortion usually strongly held The arguments are cogent on both sides of the issue We hope that this collection will bring to the attention of readers the publications which shed light on the fundamental issues involved Political Court Terri Jennings Peretti, 2001-10-29 Can the Supreme Court be free of politics Do we want it to be Normative constitutional theory has long concerned itself with the legitimate scope and limits of judicial review Too often theorists seek to resolve that issue by eliminating politics from constitutional decisionmaking In contrast Terri Peretti argues for an openly political role for the Supreme Court Peretti asserts that politically motivated constitutional decisionmaking is not only inevitable it is legitimate and desirable as well When Supreme Court justices decide in accordance with their ideological values or consider the likely political reaction to the Court's decisions a number of benefits result The Court's performance of political representation and consensus building functions is enhanced and the effectiveness of political checks on the Court is increased Thus political motive in constitutional decision making does not lead to judicial tyranny as many claim but goes far to prevent it Using pluralist theory Peretti further argues that a political Court possesses instrumental value in American democracy As one of many diverse and redundant political institutions the Court enhances both system stability and the quality of policymaking particularly regarding the breadth of interests represented **Constitutional Dysfunction on Trial** Jasmine Farrier, 2019-12-15 In an original assessment of all three branches Jasmine Farrier reveals a new way in which

the American federal system is broken Turning away from the partisan narratives of everyday politics Constitutional Dysfunction on Trial diagnoses the deeper and bipartisan nature of imbalance of power that undermines public deliberation and accountability especially on war powers By focusing on the lawsuits brought by Congressional members that challenge presidential unilateralism Farrier provides a new diagnostic lens on the permanent institutional problems that have undermined the separation of powers system in the last five decades across a diverse array of partisan and policy landscapes As each chapter demonstrates member lawsuits are an outlet for frustrated members of both parties who cannot get their House and Senate colleagues to confront overweening presidential action through normal legislative processes But these lawsuits often backfire leaving Congress as an institution even more disadvantaged Jasmine Farrier argues these suits are more symptoms of constitutional dysfunction than the cure Constitutional Dysfunction on Trial shows federal judges will not and cannot restore the separation of powers system alone Fifty years of congressional atrophy cannot be reversed in court

To Secure These Rights Scott Douglas Gerber, 1995-06-01 A legal scholar puts forward a rigorous and provocative theory of constitutional interpretation that cuts across today s partisan divide To Secure These Rights enters the fascinating and often contentious debate over constitutional interpretation Scott Douglas Gerber argues that the Constitution of the United States should be interpreted in light of the natural rights political philosophy of the Declaration of Independence and that the Supreme Court is the institution of American government that should be primarily responsible for identifying and applying that philosophy in American life Importantly the theory advanced in this book what Gerber calls liberal originalism is neither consistently liberal nor consistently conservative in the modern conception of those terms Rather the theory is liberal in the classic sense of viewing the basic purpose of government to be safeguarding the natural rights of individuals As Thomas Jefferson wrote in the Declaration of Independence to secure these rights governments are instituted among men In essence Gerber maintains that the Declaration articulates the philosophical ends of our nation and that the Constitution embodies the means to effectuate those ends Gerber's analysis reveals that the Constitution cannot be properly understood without recourse to history political philosophy and law **Constitutional Deliberation in Congress** J. Mitchell Pickerill, 2004-05-17 Analyzes the impact of the Supreme Court's constitutional decisions and its judicial review of statutes on The Founding Fathers, Pop Culture, and Constitutional Law Susan Burgess, 2016-03-03 lawmaking in Congress Applying innovative interpretive strategies drawn from cultural studies this book considers the perennial question of law and politics what role do the founding fathers play in legitimizing contemporary judicial review Susan Burgess uses narrative analysis popular culture parody and queer theory to better understand and to reconstitute the traditional relationship between fatherhood and judicial review Unlike traditional top down public law analyses that focus on elite decision making by courts legislatures or executives this volume explores the representation of law and legitimacy in various sites of popular culture To this end soap operas romance novels tabloid newspapers reality television and coming out narratives provide

alternative ways to understand the relationship between paternal power and law from the bottom up In this manner constitutional discourse can begin to be transformed from a dreary parsing of scholarly and juristic argot into a vibrant discussion with points of access and understanding for all The Oxford Handbook of the U.S. Constitution Mark V. Tushnet, Mark A. Graber, Sanford Levinson, 2015 The Oxford Handbook of the U.S. Constitution offers a comprehensive overview and introduction to the U S Constitution from the perspectives of history political science law rights and constitutional themes while focusing on its development structures rights and role in the U S political system and culture This Handbook enables readers within and beyond the U S to develop a critical comprehension of the literature on the Constitution along with accessible and up to date analysis Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U S constitutionalism today Breaking the Abortion Deadlock Eileen McDonagh, 1996-10-24 For over twenty years the abortion debate has raged with each side entrenched in unyielding positions. This book breaks the impasse by using pro-life premises to reach pro choice conclusions While it is commonly assumed that state protection of the fetus as a form of human life undermines women s reproductive rights McDonagh instead illuminates how it is exactly such state protection of the fetus that strengthens rather than weakens not only women s right to an abortion but even more significantly women s ability to call on the state for abortion funding McDonagh's approach by bridging the divide between pro life and pro choice advocates revolutionizes the abortion debate in a way that opens up a whole new avenue for resolving the abortion conflict and advancing women's rights McDonagh reframes the abortion debate by locating the missing piece of the puzzle the fetus as the cause of pregnancy After exposing the myths on this subject her exacting analysis presents the scientific and legal evidence that the ultimate source of pregnancy is the fetus The central issue then becomes what the fetus as an active agent does to a woman's body during pregnancy whether that pregnancy is wanted or not McDonagh graphically describes the massive changes produced by the fetus when it takes over a woman's body As such pregnancy is best depicted not as a condition that women have a right to choose but rather as a condition to which they must have a right to consent Abortion therefore does not rest on the intensely debated principle stated in Roe that women have a right to be free from state interference when choosing privately what to do with their own bodies Instead as McDonagh s book explains abortion rights flow inevitably from women s more established right to consent to what another agent does to their body Specifically women have a right to resist an unwanted intrusion by a fetus as well as to receive help from the state to stop such an intrusion Moving abortion rights from choice to consent has broad legal and cultural ramifications tapping into the very cornerstone of the American political system consent McDonagh unravels the consequences of extending to pregnant women the same guarantees of bodily integrity and liberty possessed by others in our society Specifically she shows why a woman who does not consent to be made pregnant by a fetus not only has a right to terminate pregnancy but why the state violates

constitutional due process and equal protection guarantees when it fails to provide her with the same protections against nonconsensual intrusions by a fetus as it provides against nonconsensual intrusions by other parties This book pivotally strengthens therefore not only women s right to abortion but also abortion funding By providing new grounds both for the public funding of abortion and for the removal of government restrictions on abortions it lays the foundation for enhancing women's rights through major policy changes in legislatures and courts Commander in Chief Casey B. K. Dominguez, 2024-05-24 The constitutional balance of war powers has shifted from Congress to the president over time Today presidents broadly define their constitutional authority as commander in chief In the nineteenth century however Congress was the institution that claimed and defended expansive war power authority This discrepancy raises important questions How specifically did Congress define the boundaries between presidential and congressional war powers in the early republic Did that definition change and if so when how and why did it do so Based on an original comprehensive dataset of every congressional reference to the commander in chief clause from the Founding through 1917 Casey Dominguez's Commander in Chief systematically analyzes the authority that members of Congress ascribe to the president as commander in chief and the boundaries they put around that authority Dominguez shows that for more than a century members of Congress defined the commander in chief's authority narrowly similar to that of any high ranking military officer But in a wave of nationalism during the Spanish American War members of Congress began to argue that Congress owed deference to the commander in chief They also tended to argue that a president of their own party should have broad war powers while the powers of a president in the other party should be defined narrowly Together these two dynamics suggest that the conditions for presidentially dominated modern constitutional war powers were set at the turn of the twentieth century far earlier than is often acknowledged Our Elusive Constitution Daniel N. Hoffman, 1997-08-14 This volume explores the relationship between religion and politics It brings a varied sample of richly detailed comparative and case studies together with a set of analytical paradigms in an integrated framework It is a major statement on a timely subject and a plea for the acknowledgment of normative pluralism as firmly rooted in the history of religion The editor shows that the fact of political diversity in the history of world religions compels the acceptance of pluralism as a normative principle **Rights** Stephan Stohler, 2019-07-18 Shows how judges work in a deliberative fashion with aligned political parties to re interpret legal and constitutional text Constitutional Politics Sotirios A. Barber, Robert P. George, 2021-03-09 What does it mean to have a constitution Scholars and students associated with Walter Murphy at Princeton University have long asked this question in their exploration of constitutional politics and judicial behavior These scholars concerned with the making maintenance and deliberate change of the Constitution have made unique and significant contributions to our understanding of American constitutional law by going against the norm of court centered and litigation minded research Beginning in the late 1970s this new wave of academics explored questions ranging from the nature of creating the U S

Constitution to the philosophy behind amending it In this collection Sotirios A Barber and Robert P George bring together fourteen essays by members of this Princeton group some of the most distinguished scholars in the field These works consider the meaning of having a constitution the implications of particular choices in the design of constitutions and the meaning of judicial supremacy in the interpretation of the Constitution The overarching ambition of this collection is to awaken a constitutionalist consciousness in its readers to view themselves as potential makers and changers of constitutions as opposed to mere subjects of existing arrangements In addition to the editors the contributors are Walter F Murphy John E Finn Christopher L Eisgruber James E Fleming Jeffrey K Tulis Suzette Hemberger Stephen Macedo Sanford Levinson H N Hirsch Wayne D Moore Keith E Whittington and Mark E Brandon The Supreme Court in American Politics Howard Gillman, Cornell W. Clayton, 1999 For decades political scientists studying the Court have adopted behavioral approaches and focused on the relatively narrow question of how the justices policy preferences influence their voting behavior This emphasis has illuminated important aspects of Supreme Court politics but it has also left unaddressed many other important questions about this unique and fascinating institution Drawing on the new institutionalism in the social sciences the distinguished contributors to this volume attempt to fill this gap by exploring a variety of topics including the Court's institutional development and its relationship to broader political contexts such as party regimes electoral systems social movements social change legal precedents political identities and historically evolving economic structures The book s initial chapters examine the nature of the Court's distinctive norms as well as the development of its institutional powers and practice A second section relates the development of Supreme Court politics to the historical development of other political institutions and social movements Concluding chapters explore how its decision making in particular areas of law or periods of time is influenced by and influences its socio political milieu These contributions offer provocative insights regarding the Court's role in maintaining or disrupting political and economic structures as well as social structures and identities tied to ideology class race gender and sexual orientation The Supreme Court in American Politics shows how we can develop an enriched understanding of this institution and open up exciting new areas of research by placing it in the broader context of Special Issue Austin Sarat, 2012-10-02 This special issue is dedicated to the life and work of politics in the United States beloved legal scholar Stuart Scheingold The articles brought together in this volume articulate the inspiring contribution Scheingold has made to the field of political science The final chapter on Rights Community and Democracy is a work authored by Stuart Scheingold which has been comple **Politics and Constitutionalism** Robert J. Spitzer, 2000-05-18 Politics and Constitutionalism presents a collection of eight original essays by leading political science and law scholars organized to recognize and analyze Louis Fisher's prolific and important body of work The essays explore the role of all three branches of government in shaping constitutional meaning and institutional behavior noting that the courts do not have sole interpretive power This principle is applied to such topics as the dynamic of key court rulings federalism war powers

diplomacy government secrecy and the impact of the legal community on constitutional interpretation The book s contributors also turn renewed attention to the study of American institutions as the fountainhead of political analysis a movement in which Fisher has been a pioneer Fisher himself contributes a summative essay Contributors include David Gray Adler Dean Alfange Jr Neal Devins Louis Fisher Michael J Glennon Loch K Johnson Nancy Kassop and Robert J Spitzer

Political Institutions and Lesbian and Gay Rights in the United States and Canada Miriam Smith, 2008-08-18 Lesbian and gay citizens today enjoy a much broader array of rights and obligations and a greater ability to live their lives openly in both the U S and Canada However while human rights protections have been exponentially expanded in Canada over the last twenty years even basic protections in areas such as employment discrimination are still unavailable to many in the United States This book examines why these similar societies have produced such divergent policy outcomes focusing on how differences between the political institutions of the U S and Canada have shaped the terrain of social movement and counter movement mobilization It analyzes cross national variance in public policies toward lesbians and gay men especially in the areas of the decriminalization of sodomy the passage of anti discrimination laws and the enactment of measures to recognize same sex relationships For political science sociology and queer studies alike this book will prove vital as movements for lesbian and gay rights continue to recast the social landscape in North America and beyond

The President and the Supreme Court Paul M. Collins (Jr.), Matthew Eshbaugh-Soha, 2019 Examines the relationship between the president and the Supreme Court including how presidents view the norm of judicial independence

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