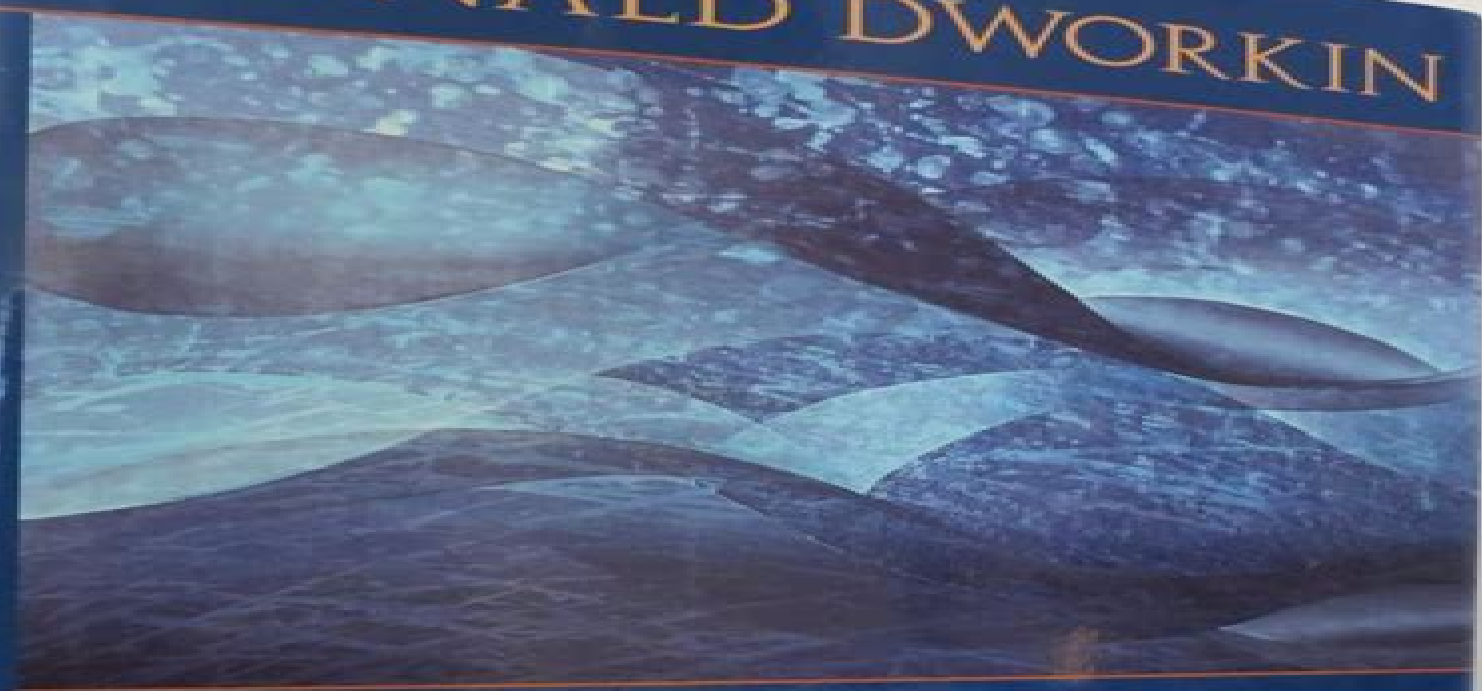


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FREEDOM'S LAW

THE MORAL READING OF THE
AMERICAN CONSTITUTION

Freedom's Law: The Moral Reading Of The American Constitution

Daniel F. McAuley



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Freedom's Law Ronald Dworkin, 1996 Dworkin claims that Americans have been systematically misled about what their Constitution is and how judges interpret it In discussions of constitutional cases and general constitutional principles he argues that a distinctly American version of government based on a moral reading of the Constitution offers the best definition of democracy

Deliberative Democracy and the Institutions of Judicial Review Christopher F. Zurn, 2007-03-26 In this book Christopher F Zurn shows why a normative theory of deliberative democratic constitutionalism yields the best understanding of the legitimacy of constitutional review He further argues that this function should be institutionalized in a complex multi location structure including not only independent constitutional courts but also legislative and executive self review that would enable interbranch constitutional dialogue and constitutional amendment through deliberative civic constitutional forums Drawing on sustained critical analyses of diverse pluralist and deliberative democratic arguments concerning the legitimacy of judicial review Zurn concludes that constitutional review is necessary to ensure the procedural requirements for legitimate democratic self rule through deliberative cooperation Claiming that pure normative theory is not sufficient to settle issues of institutional design Zurn draws on empirical and comparative research to propose reformed institutions of constitutional review that encourage the development of fundamental law as an ongoing project of democratic deliberation and decision

Fidelity to Our Imperfect Constitution James E. Fleming, 2015 James E Fleming argues that fidelity in interpreting the US Constitution as written requires a moral reading or philosophic approach and that fidelity commits to honouring aspirational principles not following the relatively specific original meanings or original expected applications of the founders

The Oxford Handbook of the U.S. Constitution Mark Tushnet, Mark A. Graber, Sanford Levinson, 2015-07-31 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 The historical essays included in this Handbook cover the Constitution from 1620 right through the Reagan Revolution to the present Essays on political science detail how contemporary citizens in the United States rely extensively on political parties interest groups and bureaucrats to operate a constitution designed to prevent the rise of parties interest group politics and an entrenched bureaucracy The essays on law explore how contemporary citizens appear to expect and accept the exertions of power by a Supreme Court whose members are increasingly disconnected from the world of practical politics Essays on rights discuss how contemporary citizens living in a diverse multi racial society seek guidance on the meaning of liberty and equality from a Constitution designed for a society in which all politically relevant persons shared the same race gender religion and ethnicity Lastly the essays on themes explain how in a globalized world

people living in the United States can continue to be governed by a constitution originally meant for a society geographically separated from the rest of the civilized world 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

Fundamental Rights in Europe Federico Fabbrini, 2014-02 This book examines the European system for the protection of fundamental rights The aim is to identify the constitutional dynamics that occur as a result of the interaction between state and transnational human rights standards Fabbrini compares the European system with the US federal system based on four case studies

The Hollow Core of Constitutional Theory Donald L. Drakeman, 2021-04-08 The first major scholarly defense of the centrality of the Framers intentions in constitutional interpretation to appear in years

Ethics in Practice Hugh LaFollette, 2025-03-20 Praise for ETHICS in PRACTICE This new edition of Ethics in Practice offers a cornucopia of 72 expertly edited texts both canonical and contemporary on a wonderfully wide selection of topics in moral theory and applied ethics Students teachers and researchers will find in it a practically endless source of thought provoking and conversation sparking readings

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CHRISTOPHER HEATH WELLMAN Washington University in St Louis Ethics in Practice has guided students through the ethical dimensions of controversial debates for more than two decades providing the knowledge required to confront difficult questions in various practical moral contexts Now in its sixth edition this field defining textbook explores a wide range of global local and personal ethical issues while presenting the historical basis of key developments in ethical theory Editor Hugh LaFollette highly regarded for his contributions in the field of practical ethics critically integrates ethical theory with discussion of applied examples of economic injustice discrimination incarceration genetic modification gun control torture euthanasia hate speech and more Throughout the book student friendly introductions clarify complex concepts and highlight the theoretical and practical aspects of each issue discussed This new edition is fully revised to reflect the latest empirical evidence and applications including new and updated case studies examples data and references Entirely new essays address topics such as punishment sentencing assassination the environment epistemic vices pragmatic ethics biomedical technologies and abortion in the post Dobbs era

The Metaethics of Constitutional Adjudication Bosko Tripkovic, 2018-01-11 In this book Bosko Tripkovic develops a theory of value based arguments in constitutional adjudication In contrast to the standard question of constitutional theory that asks whether the courts get moral answers wrong it asks a more fundamental question of whether the courts get the morality itself wrong Tripkovic argues for an antirealist conception of value one that does not presuppose the existence of mind independent moral truths and accounts for the effect this ought to have on existing value based arguments made by constitutional courts The book identifies three dominant types of value

based arguments in comparative constitutional practice arguments from constitutional identity common sentiment and universal reason and explains why they fail as self standing approaches to moral judgment It then suggests that the appropriate moral judgments emerge from the dynamics between practical confidence which denotes the inescapability of the self and the evaluative attitudes it entails and reflection which denotes the process of challenging and questioning these attitudes The book applies the notions of confidence and reflection to constitutional reasoning and maintains that the moral inquiry of the constitutional court ought to depart from the emotive intuitions of the constitutional community and then challenge these intuitions through reflective exposure to different perspectives in order to better understand and develop the underlying constitutional identity The book casts new light on common constitutional dilemmas and allows us to envisage new ways of resolving them

Constitutional Interpretation Sotirios A. Barber, James E. Fleming, 2007-06-07 The presuppositions of constitutional interpretation The principal questions of constitutional interpretation The principal features of the American constitutional order the positive constitutionalism of The federalist Approaches to constitutional interpretation Textualism and consensualism Narrow originalism intentionalism Broad originalism Structuralism Doctrinalism and minimalism The philosophic approach Pragmatism Epilogue a fusion of approaches to constitutional interpretation

Constitutional Ethos Alexander Tsesis, 2017-02-27 Judges courts and scholars in the United States agree that the Constitution is the supreme law of the land but there is much disagreement about its meaning So what seems to be incontestable truth is riddled with disagreements about every day questions of decision making on matter such as whether people are entitled to government created programs what rights are fundamental the criteria for voting the three branches of governments several responsibilities and even who should have the final say in defining the Constitution s meaning

Constitutional Ethos is a groundbreaking investigation into the fundamental principles of constitutional principle meaning and interpretation It explores the core purposes of American representative democracy in light of historical sources recent precedents and contemporary debates Alexander Tsesis argues that a central norm of U S law can be derived from the Declaration of Independence and Preamble This book develops a theory of constitutional law structured on the public duty to protect individual rights for the general welfare The maxim of constitutional governance synthesizes the protection of individual and public rights The ideal is neither solely theoretical nor customary but tied to a firm foundation that the people then build upon by lobbying elected officials and petitioning appointed judges Representative government has an interlinked obligation to the individual and the general welfare This paradigm for responsible governance sets the baseline against which citizens can hold policy makers accountable to the structural and normative commitments of the Constitution A pluralistic system must respect human dignity and govern for the betterment of the body politic Those mandates set the terms for exercising legitimate power at the federal state and local levels to protect individual rights to achieve the common good of civil society Tsesis demonstrates that ethos is binding on the conduct of all three branches of government and their

officeholders His argument challenges the more common U S perspective among academics and judges who typically discount the existence of any objective constitutional value regarding the document as a construct of social norms To the contrary Tesis shows that the people established the terms of the nation s founding documents to protect universal unalienable rights The structure of government provides the mechanisms of those in a pluralistic state to set reasonable limitations for the betterment of society as a whole Understanding the Constitution s special place in American legal culture is essential for resolving a host of contemporary issues including those involving marital gender and voting equalities The state is a means of optimizing the well being of individuals Human productivity can best flourish in a society of equals where talents can be brought to bear in the betterment of self and other members of the community The Constitution does not create rights but protects those universal ideals of representative democracy first set out in the Declaration of Independence It further grants authority to political institutions for the enforcement of policies and concrete laws for the betterment of society or some relevant segment of it Many scholars with leanings in legal realism and process theory believe the authority of government is a social construct created by popular majorities Tesis convincingly demonstrates to the contrary that even those laws enacted by popular majorities are not authoritative unless they accord with a central maxim of constitutionalism which is the protection of individual rights for the common good

The Promise of Legality Geneviève Cartier, Mark D Walters, 2025-05-15 This book assembles critical contributions on the work of TRS Allan the Professor Emeritus of Jurisprudence and Public Law at the University of Cambridge whose leading work in legal and constitutional theory spans almost 45 years Allan has charted a distinctive path for legal political and moral theory and practice and has become a highly significant figure in the UK and in common law parliamentary systems around the world His ideas challenge established opinions about constitutional law within these systems as well as established views about the rule of law from more abstract or philosophical perspectives Allan claims that law and morality find an inherent connection through the rule of law He argues that there is a connection that flourishes in common law jurisdictions because although Parliament has sovereign legislative powers its laws gain their full legal meaning only through an interpretive lens This lens seeks to reconcile sovereign will with legality s basic moral ideals especially the idea that law must be general and capable of guiding behaviour and thus respectful of the equality and dignity of its subjects Allan s scholarship is powerful yet controversial and it has inspired 20 leading scholars from the UK Canada Australia and New Zealand to engage with the central themes of his work By doing so the contributors help to make that work accessible to a new generation of scholars and students They also provide a timely framework for engaging in the most important challenges facing our democracies today how our legal systems do or do not honour and respect democracy and therefore legislative sovereignty while at the same time honouring and respecting the rule of law or the Promise of Legality

The Global Model of Constitutional Rights Kai Möller, 2012-10-25 Since the end of the Second World War and the subsequent success of constitutional judicial review one

particular model of constitutional rights has had remarkable success first in Europe and now globally This global model of constitutional rights is characterized by an extremely broad approach to the scope of rights sometimes referred to as rights inflation the acceptance of horizontal effect of rights positive obligations and increasingly also socio economic rights and the use of the doctrines of balancing and proportionality to determine the permissible limitations of rights Drawing on analyses of a broad range of cases from the UK the European Court of Human Rights Germany Canada the US and South Africa this book provides the first substantive moral reconstructive theory of the global model It shows that it is based on a coherent conception of constitutional rights which connects to attractive accounts of judicial review democracy and the separation of powers The first part of the book develops a theory of the scope of rights under the global model It defends the idea of a general right to personal autonomy a right to everything which according to the agent s self conception is in his or her interest The function of this right is to acknowledge that every act by a public authority which places a burden on a person s autonomy requires justification The second part of the book proposes a theory of the structure of this justification which offers original and useful accounts of the important doctrines of balancing and proportionality *Freedom of Speech and Society* , **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 **Natural Law and the Antislavery Constitutional Tradition** Justin Buckley Dyer,2012-02-13 Natural Law and the Antislavery Constitutional Tradition is a succinct account of the development of American antislavery

constitutionalism in the years preceding the Civil War In a series of case studies Dyer reconstructs the arguments of prominent antislavery thinkers such as John Quincy Adams John McLean Abraham Lincoln and Frederick Douglass What emerges is a convoluted understanding of American constitutional development that emphasizes the centrality of natural law to America s greatest constitutional crisis **The Antebellum Origins of the Modern Constitution** Simon J. Gilhooley,2020-10-29 Locates the origins of the modern sense of a Founder s Constitution in Antebellum debates over slavery in the nation s capital **The Oxford Handbook of Freedom of Speech** Adrienne Stone,Frederick F. Schauer,2021 Explores the key rationales and principles that underpin our understanding of free speech Provides a comprehensive overview of freedom of speech as a legal principle in national and supranational settings This volume is divided into three parts with part one outlining the history of the idea of the freedom of speech Part two discusses freedom of speech as a legal principle and part three surveys the key controversies in its application Book jacket [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 Myth of Judicial Activism** Kermit Roosevelt,2008-01-01 Constitutional scholar Kermit Roosevelt uses plain language and compelling examples to explain how the Constitution can be both a constant and an organic document and takes a balanced look at controversial decisions through a compelling new lens of constitutional interpretation **Media Ethics** Matthew Kieran,2002-01-22 Media Ethics brings together philosophers academics and media professionals to debate pressing ethical and moral questions for journalists and the media and to examine basic notions such as truth virtue privacy rights offence harm and freedom which are used in answering them

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