

Methods of Constitutional Interpretation



- Original Intent or Original History
 - Seek to understand what Founders originally meant
 - “helps maintain stability and neutrality in the law”
- Fundamental Principles
 - Looks to principles – natural rights, republican gov’t – to interpret meaning of words, phrases, or clauses
 - “identifying fundamental principles is useful in determining what meaning of words actually are”
- Modernism or Instrumentalism
 - Premise that Constitutional interpretation should adapt to changing circumstances and contemporary needs.
 - Argue that justices should not “hold back social progress by adhering to outmoded understandings of the Constitution”

Constitutional Interpretation

Susan J Brison



Constitutional Interpretation:

Constitutional Interpretation Keith E. Whittington, 1999 With its detailed and wide ranging explorations in history philosophy and law this book is essential reading for anyone interested in how the Constitution ought to be interpreted and what it means to live under a constitutional government **BOOK JACKET** *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 **Methods of Interpretation** Lackland H. Bloom (Jr.), 2009 Methods of Interpretation How the Supreme Court Reads the Constitution examines the various methodologies the Supreme Court and individual justices have employed throughout history when interpreting the United States Constitution Rather than attempting to set forth an overall theory of constitutional interpretation or plunge into the never ending scholarly debate over interpretative theory Lackland H Bloom Jr focuses exclusively on what the Court and individual justices have done and said about constitutional interpretation in the course of deciding constitutional cases He identifies many of the best and a few of the worst examples of particular interpretative methodologies as well as the best examples of explicit discussions of constitutional interpretation by the Court and individual justices Professor Bloom pays particular focus on the Supreme Court s approaches to constitutional interpretation since it is the Court that sets the standards Although commentators may have the final word on what constitutional interpretation should be he argues that the Court essentially has the final word on what it actually is *Constitutional Interpretation* Jeffrey M. Shaman, 2000-11-30 This study analyzes the process of constitutional interpretation that is the methodology by which the Supreme Court goes about interpreting the Constitution and offers a comprehensive view of constitutional law through the lens of history political science and jurisprudence Shaman examines the practice of creating meaning for the Constitution the dichotomy of legal formalism and realism the levels of judicial scrutiny the perception of reality and the puzzle of legislative motive While the book traces the historical development of constitutional law its main focus is on modern jurisprudence including analyses of the major themes of constitutional interpretation developed by the Warren Burger and Rehnquist Courts Shaman details the Warren Court s move to a more realistic jurisprudence and its development of a multi level system of judicial review that has become increasingly more complex under the Burger and Rehnquist Courts He critiques the Supreme Court s reversion in recent years to an old fashioned formalistic jurisprudence and the growing tendency of the Court to look to the past rather than to future to interpret the Constitution The book also includes discussion of recent major doctrinal developments such as constitutional theory underlying Supreme Court decisions on gender discrimination discrimination on the basis of sexual preference the

right to die abortion and freedom of speech **American Constitutional Interpretation** Walter F. Murphy, 2008 This undergraduate text uses original essays cases and materials to study the very enterprise by which a constitution is interpreted and a constitutional government created It explores the American polity as both a constitutional and democratic entity This volume is organized around a set of basic interrogatives What is the constitution that is to be interpreted Who are its authoritative interpreters How do they go about their interpretive tasks **Selected Theories of Constitutional Interpretation , How to Read the Constitution** Christopher Wolfe, 1996 Prominent constitutional scholar Christopher Wolfe challenges popular opinions by presenting an insightful and well supported defense of originalist interpretations of the Constitution He describes the traditional approach to constitutional interpretation and judicial review and then focuses his analysis on the due process clause which has become the source of most modern constitutional law Wolfe challenges the most influential defenders of judicial activism including Laurence Tribe Michael Dorf Harry Wellington and Mark Tushnet and he persuasively explains the dire political consequences of taking the Constitution out of constitutional law

Contemporary Perspectives On Constitutional Interpretation Susan J Brison, 2018-03-08 Current controversies over abortion affirmative action school prayer hate speech and other issues have sparked considerable public debate about how the U S Constitution should be interpreted Such controversies along with the changing composition of an often deeply divided Supreme Court have led to a resurgence of interest in theories of constitutional interpretation This anthology edited by Susan J Brison and Walter Sinnott Armstrong presents some of the most exciting and influential contemporary work in this area Written by ten of the country s most prominent legal scholars the selections represent a wide variety of interpretive approaches reflecting different political orientations from the far right to the far left These theorists have drawn on a variety of other disciplines including literature economics history philosophy and politics and have in turn influenced these fields The selections were chosen for their accessibility originality variety and importance Together they provide an excellent introduction to constitutional interpretation as well as a valuable collection for experienced scholars in the field

Constitutional Interpretation in Singapore Jaclyn L Neo, 2016-06-17 At the heart of constitutional interpretation is the struggle between on the one hand fidelity to founding meanings and on the other hand creative interpretation to suit the context and needs of an evolving society This book considers the recent growth of constitutional cases in Singapore in the last ten years It examines the underpinnings of Singapore s constitutional system explores how Singapore courts have dealt with issues related to rights and power and sets developments in Singapore in the wider context of new thinking and constitutional developments worldwide It argues that Singapore is witnessing a shift in legal and political culture as both judges and citizens display an increasing willingness to engage with constitutional ideas and norms *Constitutional Interpretation* Sujit Choudhry, Catherine O'Regan, Carlos Bernal-Pulido, 2025-12-16 This insightful Handbook argues that constitutional interpretation has two core elements constitutional text and constitutional context Through a combination of

thematic chapters and country specific case studies the Handbook analyses commitments found in preambles epilogues and other constitutional elements as well as the overall constitutional structure American Constitutional Interpretation Walter F. Murphy, James E. Fleming, Sotirios A. Barber, 1995 **Constitutional Interpretation** Craig R. Ducat, 2000 This text provides a classic comprehensive authoritative approach to constitutional law Volume I chapters 1-6 focuses on federal rights and powers and is appropriate for the first semester in the two semester course sequence in Constitutional Law Volume II chapters 7-13 focuses on individuals rights and responsibilities and is appropriate for the second semester in the two semester course sequence in Constitutional Law commonly called Civil Rights and Liberties Still the comprehensive casebook that has proven itself in the classroom this new edition has been thoroughly updated to reflect the latest court cases

Modes of Constitutional Interpretation Craig R. Ducat, 1978 **Interpreting the Constitution** Kent Greenawalt, 2015-11-04 This book uniquely presents a sophisticated account of possible approaches to constitutional interpretation and also examines how major provisions in the U S Constitution are and should be interpreted Together the chapters show why simple straightforward approaches such as textual originalism are insupportable and why even providing a more complex but systematic account of what judges should do is impossible **Constitution** Jackelyn Haggerty, 2018 While exercising its power to review the constitutionality of governmental action the Supreme Court has relied on certain methods or modes of interpretation that is ways of figuring out a particular meaning of provision within the Constitution The first chapter or report broadly describes the most common modes of constitutional interpretation The next chapters herein examine the Speech or Debate Clause of the US Constitution provides an overview of Congresss power under the Constitution and Congresss role in interpreting the nations founding document and discusses contemporary issues for Congress with regards to Article V of the US Constitution and the two methods by which the nations founding charter may be amended **The Rights Retained by the People: The Ninth Amendment and Constitutional Interpretation** Randy E. Barnett, 1993-03-16 Volume II of The Rights Retained by the People explores how the Ninth Amendment affects the proper way of interpreting the Constitution as a whole Contributors Sotirios A Barber Michael W McConnell Sanford Levinson Stephen Macedo Andrzej Rapaczinski Thomas C Grey Lawrence G Sager Morris S Arnold Earl M Maltz Susanna Sherry Calvin R Massey Thomas McAfee and Raoul Berger Together with Volume I which covers primarily the history and proper interpretation of the amendment itself these books constitute the definitive reference work on the Ninth Amendment

Memory and Authority Jack M. Balkin, 2024-02-27 From one of the nation s preeminent constitutional scholars a sweeping rethinking of the uses of history in constitutional interpretation Fights over history are at the heart of most important constitutional disputes in America The Supreme Court s current embrace of originalism is only the most recent example of how lawyers and judges try to use history to establish authority for their positions Jack M Balkin argues that fights over constitutional interpretation are often fights over collective memory Lawyers and judges construct and erase

memory to lend authority to their present day views they make the past speak their values so they can then claim to follow it The seemingly opposed camps of originalism and living constitutionalism are actually mirror images of a single phenomenon how lawyers use history to adapt an ancient constitution to a constantly changing world Balkin shows how lawyers and judges channel history through standard forms of legal argument that shape how they use history and even what they see in history He explains how lawyers and judges invoke history selectively to construct authority for their claims and undermine the authority of opposing views And he elucidates the perpetual quarrel between historians and lawyers showing how the two can best join issue in legal disputes This book is a sweeping rethinking of the uses of history in constitutional interpretation

Two Studies in Constitutional Interpretation Telford Taylor,1969 *The Challenge of Originalism* Grant

Huscroft,Bradley W. Miller,2011-09-12 Originalism is a force to be reckoned with in constitutional interpretation At one time a monolithic theory of constitutional interpretation contemporary originalism has developed into a sophisticated family of theories about how to interpret and reason with a constitution Contemporary originalists harness the resources of linguistic moral and political philosophy to propose methodologies for the interpretation of constitutional texts and provide reasons for fidelity to those texts The essays in this volume which includes contributions from the flag bearers of several competing schools of constitutional interpretation provides an introduction to the development of originalist thought showcases the great range of contemporary originalist constitutional scholarship and situates competing schools of thought in dialogue with each other They also make new contributions to the methodological and normative disputes between originalists and non originalists and among originalists themselves *An Introduction to Constitutional Interpretation* Lief H. Carter,1991

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