

Constitutional Structure and Purposes

Critical Commentary

Michael Conant

Constitutional Structure And Purposes Critical Commentary

Alfredo Garcia



Constitutional Structure And Purposes Critical Commentary:

Constitutional Structure and Purposes Michael Conant, 2001 Legal uncertainty is particularly high in constitutional law where the Supreme Court may overrule earlier decisions as not conforming to the Constitution This critical study of constitutional decision making in the Supreme Court emphasizes the failures of the justices to consider constitutional structure and the original meaning of language in context Conant criticizes the Supreme Court's opinions supporting racial segregation and the perpetuation of a caste system until the final overruling in *Brown v Board of Education* the Court's antitrust exemption of professional baseball and the recent finding that physical desecration of the flag is protected under freedom of speech This study challenges the view of the liberal scholars who argue that the Supreme Court must redefine the Constitution to keep up with the changing times because this view gives approval for judicial usurpation of the amending power It also rejects the view of conservative scholars who contend that the Supreme Court must search for the intent of the framers of the Constitution on the grounds that subjective intent is impossible to research There was no verbatim reporter at the 1787 convention and no such notes were available to the ratifying conventions in the states that rendered the proposed constitution into law in 1789 Following the methodology of Justice Holmes Conant focuses this work on constitutional purposes and the meaning of language within its total social context at the time of its adoption

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

The Constitution and Economic Regulation Michael Conant, 2017-10-19 This study uses basic economic analysis as a technique to comment critically on the original meaning and the interpretation of those clauses of the Constitution that have particular bearing on the economy Many new conclusions are markedly different from those of the Supreme Court and earlier commentators Conant's view is that the commerce clause and the equal protection clause if they had been construed

consistently with their comprehensive original meanings would have given much greater federal protection against state laws that impair free markets Economic policy for the nation was vested in Congress To the extent that special interests could buy congressional favor for their anticompetitive activities free markets were impaired within constraints as interpreted by the court These decisions have been criticized for their failure to incorporate the antimonopoly tradition in the Ninth Amendment and their failure to recognize equal protection of laws incorporated into the Fifth Amendment Conant holds that statutory controls of the economy are justifiable in economic theory if they are designed to remedy market failures and thereby increase efficiency If statutes are passed to interfere with markets and create market inefficiencies for the benefit of special interest groups they should be condemned under the standards of normative microeconomics There are four main classes of market failure monopoly externalities public goods and informational asymmetry This masterful analysis examines all four reasons for market failure in depth Litigation costs are analogous to transaction costs If legal principles and rules are clearly and precisely defined by the Supreme Court when they are first appealed litigation and its costs should be minimized Conant claims that if legal principles or rules are uncertain because they lack definable standards the number of legal actions filed and litigation costs will be much greater This promotes additional litigation challenging the many statutes enacted to remedy asserted market failures in an expanding industrial economy This work brilliantly addresses the danger to the economy in court rulings seeking to legislate standards of reasonableness *Not Quite Supreme* Dennis

Baker, 2011-05-01 Baker argues that coordinate interpretation a model which requires both elected and appointed officials to interpret the Charter allows for the creation of a more robust democracy alleviating some of the tension between constitutionalism and democracy while limiting judicial activism Drawing on literature from Montesquieu to recent court decisions *Not Quite Supreme* gives an extensive critique of both Canadian and American judicial models and explores the tensions between the separation of powers in both countries *Not Quite Supreme* is a fresh and substantial contribution to the debate advancing a new argument in support of a more diverse tradition of legal decision making in Canada that makes the constitution rather than individual decisions of the Court its cornerstone **A Natural Right to Die** Raymond A.

Whiting, 2001-11-30 While other books deal with the contemporary issue of the right to die no attempt has been made to demonstrate substantially the historic nature of this question beyond the borders of the United States Whiting demonstrates that the right to die controversy stretches back more than two thousand years and he explains how current attitudes and practices in the U S have been influenced by the legal and cultural development of the ancient western world This perspective allows the reader to understand not only the origins of the controversy but also the different perspectives that each age has contributed to the ongoing debate Whiting discusses the development of legal rights within both western culture and the United States then applies these developments to the question of the right to die In an environment of public debate that features such emotional events as the exploits of Jack Kevorkian the publication of how to suicide manuals and

the counterattacks of Right to Life groups the United States is left with very few options

Choice of Law for American Courts Edwin S. Fruehwald, 2001-03-30 This study proposes a multilateralist method of choice of law in order to alleviate the great disarray that currently exists in American choice law In the early 20th century there was a fairly uniform multilateralist method of choice law In the 1920s and 30s however scholars and courts began to reject this method Viewed as too mechanical the method sometimes resulted in the choice of law of a state with only a tenuous connection to the controversy Currently state courts use four different approaches to choice law with numerous material variations This study rejects these approaches on normative constitutional and practical grounds Instead it advocates that courts adopt a multilateralist approach to choice of law that is forum and content neutral and that respects the rights of both individuals and states The study also argues that such an approach should satisfy a constitutional standard that requires a court not choose one state's law when another state has a significantly closer connection to the controversy The proposed method consists of two parts The first part determines the states that have created legal relations applying to the dispute When more than one state has created a legal relation applying to the dispute When more than one state has created a legal relation that applies to the controversy the second part adopts the law of the state that had the closest connection The study then applies the suggested method to numerous choice of law problems

The Constitutional Structure of Europe's Area of 'Freedom, Security and Justice' and the Right to Justification Ester Herlin-Karnell, 2019-04-18 This book explores the implications of freedom as a non-domination oriented view for understanding EU security regulation and its constitutional implications At a time when the European borders are under pressure and with the refugee and migration crisis which escalated in 2015 the idea of exploring a constitutional theory for the Area of Freedom Security and Justice (AFSJ) might seem to be a utopian project This appears especially true in the light of the increased threat of terrorism in Europe and on a global scale and where the expanding EU security agenda is often advanced through the administrative law path in contrast to the constitutional trajectory Add to this the prolonged financial crisis which continues to cast a long shadow on the future development of EU integration and which suggests that Europe needs to reinvent itself beyond the sphere of economics Therefore it is precisely because of the current uncertainties regarding the progress of the EU and the constitutional law project that a constitutional take on the AFSJ is of particular importance The book investigates the meaning of non-domination and the idea of justice and justification in the area of EU security regulation In doing so it focuses on the development of an AFSJ what it means and why it represents a fascinating example of contemporary constitutional law with interacting layers of security regulation human rights law and transnational legal theory at its core

The Constitutional Review Henry Campbell Black, Herbert Francis Wright, 1921 Includes section Book reviews

The Fifth Amendment Alfredo Garcia, 2002-10-30 The Fifth Amendment is typically equated in both popular and legal discourse with the privilege against self-incrimination This concept Garcia reminds us represents an incomplete view of the amendment Often forgotten are the other two criminal clauses embodied in the text of the

amendment the right to a grand jury indictment for a serious crime and the freedom from double jeopardy for the same offense Garcia emphasizes the relationship among these criminal protections Historical developments suggest that these seemingly disparate provisions have common threads to provide constitutional protection for all trial related rights Underlying these constitutional provisions is the need to check the potential abuse of governmental power over the individual Indeed this theme permeated the historical backdrop to the Fifth Amendment Finally Garcia examples the practical ties of these clauses The right to a grand jury indictment the privilege against self incrimination and the protection against double jeopardy represent points in the continuum of the criminal justice process An important resource for scholars and students involved with American constitutional law criminal justice and criminology *Current Publications in Legal and Related Fields*, 2000 **The Constitutional Review**, 1921 Socialism and the Law Association for Legal and Social Philosophy (Great Britain). Conference, 1992 Aus dem Inhalt Raymond Plant The Austin Lecture Socialism End States and the Law Chris Bertram Would a socialist society be able to dispense with law Andrew Vincent Socialism Law and the State Tradition Elizabeth Kingdom Socialism State and Law Response to Andrew Vincent David Feldman The Left Judicial Review and Theories of the Constitution Hugh Collins Social Market and the Law of Contract Michael Luntley The Long Aim of the Law Response to Hugh Collins Christine Sypnowich Rights and Community Feminism and Social Justice Roger Brownsword A Synthesis of Rights and Community in a different register Response to Christine Sypnowich Bibliography European Constitutional Imaginaries Jan Komárek, 2023 What does it mean to say that the European Union has a constitution theoretically but more importantly practically What sort of possibilities such assertion opens for various actors politicians legal professionals or the general public And what is the role of constitutional thinkers in establishing constitutional discourse as the dominant way in which European law is or was conceived after 1989 This volume seeks to answer such questions with a special emphasis on the last one European Constitutional Imaginaries are the central focus of the book These are sets of ideas and beliefs that help to motivate and at the same time justify the practice of government and collective self rule established by the constitution written or unwritten Such imaginaries are as important as institutions and office holders They provide political action with an overarching sense and purpose recognized by those governed as legitimate The book brings together reflections by lawyers philosophers sociologists or political economists who shed light on various constitutional imaginaries of Europe They provide critical intellectual histories of particular legal approaches to European integration and look behind the language of law to reach deeper insights into the contested history and political economy of Europe They ask us to think about European law differently EU Citizenship and Federalism Dimitry Kochenov, 2017-04-13 Leading experts in EU constitutional law examine the foundational importance of citizenship rights in delimiting the scope of EU law *Virginia Law Review*, 1921 **The American Political Science Review** Westel Woodbury Willoughby, John Archibald Fairlie, Frederic Austin Ogg, 1911 American Political Science Review APSR is the

longest running publication of the American Political Science Association APSA It features research from all fields of political science and contains an extensive book review section of the discipline Columbia Law Review ,1910 Columbia Law Review publishes articles and book reviews of scholarly and professional interest by academic authors and practicing attorneys as well as notes written by members of the review *Rethinking Constitutional Law* Earl M. Maltz,1994 Maltz reformulates the justification for originalist review and refines originalist theory itself he argues that a pure originalist approach mandates excessive judicial intervention under the Constitution and he shows that most nonoriginalist theorists have failed to provide a sufficient functional justification for nonoriginalist intervention **California. Court of Appeal (1st Appellate District). Records and Briefs** California (State)., Mismanaging America Walter Williams,1990 Is the federal government inept Walter Williams says yes Thanks to Ronald Reagan s ill conceived cutbacks reliable policy advice is no longer available to the president The result has been the S L bailout the HUD scandal mismanagement on an unprecedented scale

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