

Recent Changes In American Constitutional Theory



John W. Burgess

Recent Changes In American Constitutional Theory

Jack M. Balkin, Reva B. Siegel



Recent Changes In American Constitutional Theory:

Recent Changes in American Constitutional Theory John William Burgess, 1923 Examines the changes in American constitutional theory from the Spanish American War to the 1920s It argues that contemporary developments in constitutional theory and law could be troubling for the country and offers suggestions on how America can correct its course

Legitimacy and History Paul W. Kahn, 1992-01-01 For Americans legitimate government means self government In this brilliant and disturbing analysis Paul W Kahn shows that the American Constitution itself makes self government impossible Constitutional theory he argues has been a history of failed attempts to resolve this paradox **The Living Constitution**

David A. Strauss, 2010-05-19 Supreme Court Justice Antonin Scalia once remarked that the theory of an evolving living Constitution effectively rendered the Constitution useless He wanted a dead Constitution he joked arguing it must be interpreted as the framers originally understood it In *The Living Constitution* leading constitutional scholar David Strauss forcefully argues against the claims of Scalia Clarence Thomas Robert Bork and other originalists explaining in clear jargon free English how the Constitution can sensibly evolve without falling into the anything goes flexibility caricatured by opponents The living Constitution is not an out of touch liberal theory Strauss further shows but a mainstream tradition of American jurisprudence a common law approach to the Constitution rooted in the written document but also based on precedent Each generation has contributed precedents that guide and confine judicial rulings yet allow us to meet the demands of today not force us to follow the commands of the long dead Founders Strauss explores how judicial decisions adapted the Constitution's text and contradicted original intent to produce some of our most profound accomplishments the end of racial segregation the expansion of women's rights and the freedom of speech By contrast originalism suffers from fatal flaws the impossibility of truly divining original intent the difficulty of adapting eighteenth century understandings to the modern world and the pointlessness of chaining ourselves to decisions made centuries ago David Strauss is one of our leading authorities on Constitutional law one with practical knowledge as well having served as Assistant Solicitor General of the United States and argued eighteen cases before the United States Supreme Court Now he offers a profound new understanding of how the Constitution can remain vital to life in the twenty first century *Constitutional Construction*

Keith E. Whittington, William Nelson Cromwell Professor of Politics and the Director of Graduate Studies in the Department of Politics Keith E Whittington, 2009-06-01 This book argues that the Constitution has a dual nature The first aspect on which legal scholars have focused is the degree to which the Constitution acts as a binding set of rules that can be neutrally interpreted and externally enforced by the courts against government actors This is the process of constitutional interpretation But according to Keith Whittington the Constitution also permeates politics itself to guide and constrain political actors in the very process of making public policy In so doing it is also dependent on political actors both to formulate authoritative constitutional requirements and to enforce those fundamental settlements in the future Whittington

characterizes this process by which constitutional meaning is shaped within politics at the same time that politics is shaped by the Constitution as one of construction as opposed to interpretation Whittington goes on to argue that ambiguities in the constitutional text and changes in the political situation push political actors to construct their own constitutional understanding The construction of constitutional meaning is a necessary part of the political process and a regular part of our nation's history how a democracy lives with a written constitution The Constitution both binds and empowers government officials Whittington develops his argument through intensive analysis of four important cases the impeachments of Justice Samuel Chase and President Andrew Johnson the nullification crisis and reforms of presidential congressional relations during the Nixon presidency

Recent Changes in American Constitutional Theory John William Burgess, 1925

Responding to Imperfection Sanford Levinson, 1995-01-24 An increasing number of constitutional theorists within both the legal academy and university departments of government are focusing on the conceptual and political problems attached to the notion of constitutional amendment Amendments are among other things recognitions of the imperfection of existing schemes of government The relative ease or difficulty of amendment has significant implications for the ways that governments respond to problems that call either for new structures of governance or new powers for already established structures This book brings together essays by leading legal authorities and political scientists on a range of questions from whether the U S Constitution is subject to amendment by procedures other than those authorized by Article V to how significant change is conceptualized within classical rabbinic Judaism Though the essays are concerned for the most part with the American experience other constitutional traditions are considered as well The contributors include Bruce Ackerman Akhil Reed Amar Mark E Brandon David R Dow Stephen M Griffin Stephen Holmes and Cass R Sunstein Sanford Levinson Donald Lutz Walter Murphy Frederick Schauer John R Vile and Noam J Zohar

Cosmic Constitutional Theory J. Harvie Wilkinson, 2012-03-12 What underlies this development In this concise and highly engaging work Federal Appeals Court Judge and noted author From Brown to Bakke J Harvie Wilkinson argues that America's most brilliant legal minds have launched a set of cosmic constitutional theories that for all their value are undermining self governance

Making Constitutions Gabriel L. Negretto, 2013-06-17 Examines constitutional change in Latin America from 1900 to 2008 and provides the first systematic explanation of the origins of constitutional designs

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

Originalism's Promise Lee J. Strang, 2019-08-08 Provides the first natural law justification for an originalist interpretation of the American Constitution

Comparative Constitutional Theory Gary Jacobsohn, Miguel Schor, 2018-02-23 The need for innovative thinking about alternative constitutional experiences is evident and readers of Comparative Constitutional Theory will find in its pages a compendium of original theory driven essays The authors use a variety of theoretical perspectives to explore the diversity of global constitutional experience in a post 1989

world prominently marked by momentous transitions from authoritarianism to democracy by multiple constitutional revolutions and devolutions by the increased penetration of international law into national jurisdictions and by the enhancement of supra national institutions of governance

The People's Constitution John F. Kowal, Wilfred U. Codrington III, 2021-09-21 The 233 year story of how the American people have taken an imperfect constitution the product of compromises and an artifact of its time and made it more democratic Who wrote the Constitution That's obvious we think fifty five men in Philadelphia in 1787 But much of the Constitution was actually written later in a series of twenty seven amendments enacted over the course of two centuries The real history of the Constitution is the astonishing story of how subsequent generations have reshaped our founding document amid some of the most colorful contested and controversial battles in American political life It's a story of how We the People have improved our government's structure and expanded the scope of our democracy during eras of transformational social change The People's Constitution is an elegant sobering and masterly account of the evolution of American democracy From the addition of the Bill of Rights a promise made to save the Constitution from near certain defeat to the post Civil War battle over the Fourteenth Amendment from the rise and fall of the noble experiment of Prohibition to the defeat and resurgence of an Equal Rights Amendment a century in the making The People's Constitution is the first book of its kind a vital guide to America's national charter and an alternative history of the continuing struggle to realize the Framers' promise of a more perfect union

Our Undemocratic Constitution Sanford Levinson, 2008 Levinson here argues that too many of our Constitution's provisions promote either unjust or ineffective government Under the existing blueprint we can neither rid ourselves of incompetent presidents nor assure continuity of government following catastrophic attacks Worse our Constitution is the most difficult to amend or update in the world Levinson boldly challenges the Americans to undertake a long overdue public discussion on how they might best reform this most hallowed document and construct a constitution adequate to our democratic values

United States Constitutional Law DANIEL A. SIEGEL FARBER (NEIL S.), Neil S. Siegel, 2019-02-06 United States Constitutional Law guides law students political science students and engaged citizens through the complexities of U S Supreme Court doctrine and its relationship to constitutional politics in key areas ranging from federalism and presidential power to equal protection and substantive due process Rather than approach constitutional law as a static structure or imagine the Supreme Court as acting in isolation from society the book elaborates and clarifies key constitutional doctrines while also drawing on scholarship in law and political science that relates the doctrines to large social changes such as industrialization social movements such as civil rights and second wave feminism and institutional tensions between governmental actors Combining legal analysis with historical narrative and sensitivity to political context the book provides deeper understanding of how constitutional law arises functions and changes in a complex often divided society

Can America Govern Itself? Frances E. Lee, Nolan McCarty, 2019-06-20 Can America Govern Itself brings together a diverse group of distinguished scholars to analyze how

rising party polarization and economic inequality have affected the performance of American governing institutions. It is organized around two themes: the changing nature of representation in the United States and how changes in the political environment have affected the internal processes of institutions; overall government performance and policy outcomes. The chapters in this volume analyze concerns about power, influence, and representation in American politics; the quality of deliberation and political communications; the management and implementation of public policy; and the performance of an eighteenth-century constitution in today's polarized political environment. These renowned scholars provide a deeper and more systematic grasp of what is new and what is perennial in challenges to democracy at a fraught moment.

Keeping Faith with the Constitution Goodwin Liu, Pamela S. Karlan, Christopher H. Schroeder, 2010-08-05

Chief Justice John Marshall argued that a constitution requires that only its great outlines should be marked and its important objects designated. Ours is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. In recent years, Marshall's great truths have been challenged by proponents of originalism and strict construction. Such legal thinkers as Supreme Court Justice Antonin Scalia argue that the Constitution must be construed and applied as it was when the Framers wrote it. In *Keeping Faith with the Constitution*, three legal authorities make the case for Marshall's vision. They describe their approach as constitutional fidelity: not to how the Framers would have applied the Constitution but to the text and principles of the Constitution itself. The original understanding of the text is one source of interpretation but not the only one to preserve the meaning and authority of the document. To keep it vital, applications of the Constitution must be shaped by precedent, historical experience, practical consequence, and societal change. The authors range across the history of constitutional interpretation to show how this approach has been the source of our greatest advances: from *Brown v. Board of Education* to the New Deal, from the *Miranda* decision to the expansion of women's rights. They delve into the complexities of voting rights, the malapportionment of legislative districts, speech freedoms, civil liberties, and the War on Terror, and the evolution of checks and balances. The Constitution's framers could never have imagined DNA, global warming, or even women's equality. Yet these and many more realities shape our lives and outlook. Our Constitution will remain vital into our changing future, the authors write, if judges remain true to this rich tradition of adaptation and fidelity.

The Constitution in 2020 Jack M. Balkin, Reva B. Siegel, 2009-05-26

The Constitution in 2020 is a powerful blueprint for implementing a more progressive vision of constitutional law in the years ahead. Edited by two of America's leading constitutional scholars, the book provides a new framework for addressing the most important constitutional issues of the future in clear, accessible language. Featuring some of America's finest legal minds—Cass Sunstein, Bruce Ackerman, Robert Post, Harold Koh, Larry Kramer, Noah Feldman, Pam Karlan, William Eskridge, Mark Tushnet, Yochai Benkler, and Richard Ford, among others—the book tackles a wide range of issues, including the challenge of new technologies, presidential power, international human rights, religious liberty, freedom of speech, voting, reproductive rights, and economic rights. *The Constitution in 2020* calls on liberals

to articulate their constitutional vision in a way that can command the confidence of ordinary Americans *Freedom's Law*
Ronald Dworkin, 1999 Written by the world's best known political and legal theorist *Freedom's Law: The Moral Reading of the American Constitution* is a collection of essays that discuss almost all of the great constitutional issues of the last two decades including abortion euthanasia capital punishment homosexuality pornography and free speech Professor Dworkin offers a consistently liberal view of the Constitution and argues that fidelity to it and to law demands that judges make moral judgments He proposes that we all interpret the abstract language of the Constitution by reference to moral principles about political decency and justice His moral reading therefore brings political morality into the heart of constitutional law The various chapters of this book were originally published separately and are now drawn together to provide the reader with a rich full length treatment of Dworkin's general theory of law *Conservatives and the Constitution* Ken I.

Kersch, 2019-03-28 Since the 1980s a ritualized opposition in legal thought between a conservative originalism and a liberal living constitutionalism has obscured the aggressively contested tradition committed to and mobilization of arguments for constitutional restoration and redemption within the broader postwar American conservative movement *Conservatives and the Constitution* is the first history of the political and intellectual trajectory of this foundational tradition and mobilization By looking at the deep stories told either by identity groups or about what conservatives took to be flashpoint topics in the postwar period Ken I Kersch seeks to capture the developmental and integrative nature of postwar constitutional conservatism challenging conservatives and liberals alike to more clearly see and understand both themselves and their presumed political and constitutional opposition *Conservatives and the Constitution* makes a unique contribution to our understanding of modern American conservatism and to the constitutional thought that has in critical ways informed and defined it **A Community Built on Words** H. Jefferson Powell, 2005-05-01 H. Jefferson Powell offers a powerful new

approach to one of the central issues in American constitutional thinking today the problem of constitutional law's historicity or the many ways in which constitutional arguments and outcomes are shaped both by historical circumstances and by the political goals and commitments of various actors including judges The presence of such influences is often considered highly problematic if constitutional law is political and historical through and through then what differentiates it from politics per se and what gives it integrity and coherence Powell argues that constitutional theory has as its sometimes hidden agenda the ambition of showing how constitutional law can escape from history and politics while much constitutional history seeks to identify an historically true meaning of the constitutional text that once uncovered can serve as a corrective to subsequent deviations from that truth Combining history and theory Powell analyzes a series of constitutional controversies from 1790 to 1944 to demonstrate that constitutional law from its very beginning has involved politically charged and ideologically divisive arguments Nowhere in our past can one find the golden age of apolitical constitutional thinking that a great deal of contemporary scholarship seeks or presupposes Viewed over time American constitutional law is a history of political dispute

couched in constitutional terms Powell then takes his conclusions one step further claiming that it is precisely this historical tradition of argument that has given American constitutional law a remarkable coherence and integrity over time No matter what the particular political disputes of the day might be constitutional argument has provided a shared language through which our political community has been able to fight out its battles without ultimately fracturing A Community Built on Words will be must reading for any student of constitutional history theory or law

Decoding **Recent Changes In American Constitutional Theory**: Revealing the Captivating Potential of Verbal Expression

In a time characterized by interconnectedness and an insatiable thirst for knowledge, the captivating potential of verbal expression has emerged as a formidable force. Its ability to evoke sentiments, stimulate introspection, and incite profound transformations is genuinely awe-inspiring. Within the pages of "**Recent Changes In American Constitutional Theory**," a mesmerizing literary creation penned with a celebrated wordsmith, readers attempt an enlightening odyssey, unraveling the intricate significance of language and its enduring impact on our lives. In this appraisal, we shall explore the book's central themes, evaluate its distinctive writing style, and gauge its pervasive influence on the hearts and minds of its readership.

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