The Inescapability Of Constitutional Theory

This book offers a systematic exposition of Aristotle's legal thought and account of the relationship between law and politics.

A brilliant new approach to the Constitution and courts of the United States by Supreme Court Justice Stephen Breyer.For Justice Breyer, the Constitution's primary role is to preserve and encourage what he calls "active liberty": citizen participation in shaping government and its laws. As this book argues, promoting active liberty requires judicial modesty and deference to Congress; it also means recognizing the changing needs and demands of the populace. Indeed, the Constitution's lasting brilliance is that its principles may be adapted to cope with unanticipated situations, and Breyer makes a powerful case against treating it as a static guide intended for a world that is dead and gone. Using contemporary examples from federalism to privacy to affirmative action, this is a vital contribution to the ongoing debate over the role and power of our courts.

This is Habermas's long awaited work on law, democracy and the modern constitutional state in which he develops his own account of the nature of law and democracy.

With the appointment of Justices Gorsuch and Kavanaugh to the Supreme Court, jurists in the mold of Justice Scalia, textualism and originalism are more prominent then ever before. These justices insist that in interpreting the Constitution, they focus on text while other justices neglect the Constitution. In The (Un)Written Constitution, George Thomas reveals that textualists and originalists rely on unwritten understandings that shape their reading of theConstiution's text. Our most pressing debates over how to interpret the Constitution are debates about unwritten ideas, not the text. And these debates have been with us from the creation of the Constitution to the present.

The Many Constitutions of Europe

An Institutional Theory of Legal Interpretation

Constitutional Theory

Law and Legitimacy in the Supreme Court

Constitutional Dictatorship

Comparative Judicial Review

From abortion to same-sex marriage, today's most urgent political debates will hinge on this two-part question: What did the United States Constitution originally mean and who now understands its meaning best? Rakove chronicles the Constitution from inception to ratification and, in doing so, traces its complex weave of ideology and interest, showing how this document has meant different things at different times to different groups of Americans.

Our Constitution speaks in general terms of liberty and property, of the privileges and immunities of citizens, and of the equal protection of the laws--open-ended phrases that seem to invite readers to reflect in them their own visions and agendas. Yet, recognizing that the Constitution cannot be merely what its interpreters wish it to be, this volume's authors draw on literary and mathematical analogies to explore how the fundamental charter of American government should be construed today.

Questions of citizenship and the role of constitutions in determining its boundaries are under scrutiny in this judicious and accessible analysis from Jo Shaw. With populism on the rise and debates about immigration intensifying, it draws on examples from around the world to set out the shifting boundaries of state inclusion and exclusion.

This book advances a new reading of the central works of Carl Schmitt and, in so doing, rethinks the primary concepts of constitutional theory. In this book, Jacques de Ville engages in a close analysis of a number of Schmitt's texts, including Dictatorship (1921), The Concept of the Political (1927), Constitutional Theory (1928), Land and Sea (1942), Ex Captivitate Salus (1950), The Nomos of the Earth (1950) and The Theory of the Partisan (1963). This engagement takes place from the perspective of constitutional theory and focuses specifically on concepts or themes such as sovereignty, the state, the political, constituent power, democracy, representation, the constitution and human rights. The book seeks to rethink the structure of these concepts in line with Derrida's analysis of Schmitt's texts on the concept of the political in Politics of Friendship (1993). This happens by way of an analysis of Derrida's engagement with Freud and other psychoanalysts. Although the main focus in the book is on Schmitt's texts, it further examines two texts of Derrida (Khōra (1993) and Fors: The Anglish Words of Nicholas Abraham and Maria Torok (1976)), by reading these alongside Schmitt's own reflections on the positive concept of the constitution.

Why Americans Are Losing Their Inalienable Right to Self-Governance

Rule of Law, Legitimate Governance & Development in the Pacific

The Paradox of Constitutionalism

The People in Question

A Theory of Constitutional Self-Government

A Debate

How should the United States be governed during times of crisis? Definitely not as we are in times of tranquility, asserts this classic study. The war on terrorism is a case in point. The horrors of terror attacks on the United States have forced Americans to accept legislative changes that might be unthinkable at other times. The "inescapable truth," Clinton Rossiter wrote in his classic study of modern democracies in crisis, is that "No form of government can survive that excludes dictatorship when the life of the nation is at stake."

Judges and legal scholars talk past one another, if they have any conversation at all. Academics criticize judicial decisions in theoretical terms, which leads many judges to dismiss academic discourse as divorced from reality. Richard Posner reflects on the causes and consequences of this widening gap and what can be done to close it.

In modern political communities ultimate authority is often thought to reside with 'the people'. This book examines how constitutions act as a delegation of power from 'the people' to expert institutions, and looks at the attendant problems of maintaining the legitimacy of these constitutional arrangements.

When people disagree about justice and about individual rights, how should political decisions be made among them? How should they decide about issues like tax policy, welfare provision, criminal procedure, discrimination law, hate speech, pornography, political dissent and the limits of religious toleration? The most familiar answer is that these decisions should be made democratically, by majority voting among the people or their representatives. Often, however, this answer is qualified by adding ' providing that the majority decision does not violate individual rights.' In this book Jeremy Waldron has revisited and thoroughly revised thirteen of his most recent essays. He argues that the familiar answer is correct, but that the qualification about individual rights is incoherent. If rights are the very things we disagree about, then we are quarrelling precisely about what that qualification should amount to. At best, what it means is that disagreements about rights should be resolved by some other procedure, for example, by majority voting, not among the people or their representatives, but among judges in a court. This proposal - although initially attractive - seems much less agreeable when we consider that the judges too disagree about rights, and they disagree about them along exactly the same lines as the citizens. This book offers a comprehensive critique of the idea of the judicial review of legislation. The author argues that a belief in rights is not the same as a commitment to a Bill of Rights. He shows the flaws and difficulties in many common defences of the 'democratic' character of judicial review. And he argues for an alternative approach to the problem of disagreement: when disagreements about rights arise, the respectful way to resolve them is by decision-making among the right-holders on a basis that reflects an equal respect for them as the holders of views about rights. This respect for ordinary right-holders, he argues, has been sadly lacking in the theories of justice, rights, and constitutionalism put forward in recent years by philosophers such as John Rawls and Donald Dworkin. But the book is not only about judicial review. The first tranche of essays is devoted to a theory of legislation, a theory which highlights the size, the scale and the diversity of modern legislative assemblies. Although legislation is often denigrated as a source of law, Waldron seeks to restore its tattered dignity. He deprecates the tendency to disparage legislatures and argues that such disparagement is often a way of bolstering the legitimacy of the courts, as if we had to transform our parliaments into something like the American Congress to justify importing American-style judicial reviews. Law and Disagreement redresses the balances in modern jurisprudence. It presents legislation by a representative assembly as a form of law making which is especially apt for a society whose members disagree with one another about fundamental issues of principle, for it is a form of law making that does not attempt to conceal the fact that our decisions are made and claim their authority in the midst of, not in spite of, our political and moral disagreements. This timely rights-based defence of majoritarian legislation will be welcomed by scholars of legal and political philosophy throughout the world.

A Functional Reconsideration of the Role of the Supreme Court

Second Edition

Constitutional Theory: Schmitt after Derrida

Freedom and Time

Crisis Government in the Modern Democracies

Interpreting the Constitution

Judge Bork shares a personal account of the Senate Judiciary Committee's hearing on his nomination as well as his view on politics versus the law. In The Tempting of America, one of our most distinguished legal minds offers a brilliant argument for the wisdom and necessity of interpreting the Constitution according to the original understanding of the Framers and the people for whom it was written. Widely hailed as the most important critique of the nation's intellectual climate since The Closing of the American Mind, The Tempting of America illuminates the history of the Supreme Court and the underlying meaning of constitutional controversy. Essential to understanding the relationship between values and the law, it concludes with a personal account of Judge Bork's chillingly emblematic experiences during the Senate Judiciary Committee's hearing on his Supreme Court nomination.

Can a constitutional democracy commit suicide? Can an illiberal antidemocratic party legitimately obtain power through democratic elections and amend liberalism and democracy out of the constitution entirely? In Weimar Germany, these theoretical questions were both practically and existentially relevant. By 1932, the Nazi and Communist parties combined held a majority of seats in parliament. Neither accepted the legitimacy of liberal democracy. Their only reason for participating democratically was to amend the constitution out of existence. This book analyses Carl Schmitt's state and constitutional theory and shows how it was conceived in response to the Weimar crisis. Right-wing and left-wing political extremists recognized that a path to legal revolution lay in the Weimar constitution's combination of democratic procedures, total neutrality toward political goals, and positive law. Schmitt's writings sought to address the unique problems posed by mass democracy. Schmitt's thought anticipated 'constrained' or 'militant' democracy, a type of constitution that guards against subversive expressions of popular sovereignty and whose mechanisms include the entrenchment of basic constitutional commitments and party bans. Schmitt's state and constitutional theory remains important: the problems he identified continue to exist within liberal democratic states. Schmitt offers democrats today a novel way to understand the legitimacy of liberal democracy and the limits of constitutional change.

Problems of constitutional interpretation have many faces, but much of the contemporary discussion has focused on what has come to be called "originalism." The core of originalism is the belief that fidelity to the original understanding of the Constitution should constrain contemporary judges. As originalist thinking has evolved, it has become clear that there is a family of originalist theories, some emphasizing the intent of the framers, while others focus on the original public meaning of the constitutional text. This idea has enjoyed a modern resurgence, in good part in reaction to the assumption of more sweeping power by the judiciary, operating in the name of constitutional interpretation. Those arguing for a "living Constitution" that keeps up with a changing world and changing values have resisted originalism. This difference in legal philosophy and jurisprudence has, since the 1970s, spilled over into party politics and the partisan wrangling over court appointments from appellate courts to the Supreme Court. In Constitutional Originalism, Robert W. Bennett and Lawrence B. Solum elucidate the two sides of this debate and mediate between them in order to separate differences that are real from those that are only apparent. In a thorough exploration of the range of contemporary views on originalism, the authors articulate and defend sharply contrasting positions. Solum brings learning from the philosophy of language to his argument in favor of originalism, and Bennett highlights interpretational problems in the dispute-resolution context, describing instances in which a living Constitution is a more feasible and productive position. The book explores those contrasting positions, to be sure, but also uncovers important points of agreement for the interpretational enterprise. This provocative and absorbing book ends with a bibliographic essay that points to landmark works in the field and helps lay readers and students orient themselves within the literature of the debate.

In this book, Adrian Vermeule shows that any approach to legal interpretation rests on institutional and empirical premises about the capacities of judges and the systemic effects of their rulings. He argues that legal interpretation is above all an exercise in decisionmaking under severe empirical uncertainty.

An Italian Perspective

Judicial Review and the National Political Process

Constitutional Choices

The Politics of Nomos

Interpreting Our Democratic Constitution

University of Chicago Law Review

As constitutional scholar John Nowak noted when the book was first released, "Professor Choper's Judicial Review and the National Political Process is mandatory reading for anyone seriously attempting to study our constitutional system of government. It is an important assessment of the democratic process and the theoretical and practical role of the Supreme Court." That view is no less true today, as borne out by the countless citations to this landmark work over the decades, including scores in the last few years alone. It is simply part of the foundational canon of constitutional law and political theory, an essential part of the library of scholars, students, and educated readers interested in considering the hard choices inherent in what the courts should decide and how they should decide them.

"This work will become the defining text on progressive constitutionalism — a parallel to Thomas Picketty's contribution but for all who care deeply about constitutional law. Beautifully written and powerfully argued, this is a masterpiece." --Lawrence Lessig, Harvard Law School, and author of Free Culture Worried about what a super conservative majority on the Supreme Court means for the future of civil liberties? From gun control to reproductive health, a conservative court will reshape the lives of all Americans for decades to come. The time to develop and defend a progressive vision of the U.S. Constitution that protects the rights of all people is now. University of California Berkeley Dean and respected legal scholar Erwin Chemerinsky expertly exposes how conservatives are using the Constitution to advance their own agenda that favors business over consumers and employees, and government power over individual rights. But exposure is not enough. Progressives have spent too much of the last forty-five years trying to preserve the legacy of the Warren Court's most important rulings and reacting to the Republican-dominated Supreme Courts by criticizing their erosion of rights—but have not yet developed a progressive vision for the Constitution itself. Yet, if we just look to the promise of the Preamble—liberty and justice for all—and take seriously its vision, a progressive reading of the Constitution can lead us forward as we continue our fight ensuring democratic rule, effective government, justice, liberty, and equality. Includes the Complete Constitution and Amendments of the United States of America

Linguistics and Law offers a clear and concise introduction to making sense of the law through linguistics. Drawing on lexical semantics, syntax, and pragmatics to interpret both written and spoken laws, this book: addresses how to interpret legal documents such as contracts, statutes, constitutional provisions and trademarks; provides thorough analyses of "language crimes" including solicitation, perjury, defamation, and conspiracy, as well as talk between police and criminal suspects; analyzes the Miranda warning in depth; tackles the question of whether there is a "language" of the law; draws on real-life case studies to aid understanding. Written in an approachable, conversational style and aimed at undergraduate students with little or no prior knowledge of linguistics or law, this book is essential reading for those approaching this topic for the first time.

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.

A Critical Analysis

Original Meanings

Volume 80, Number 2 - Spring 2013

Judging Social Rights

Carl Schmitt's State and Constitutional Theory

Constitutional Theory: Schmitt After Derrida

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 notion that the rule of law embodies or guarantees all the essential requirements for a perfectly just society is extravagant and naive. That said, it is certainly the case that the rule of law remains an essential human virtue whose usefulness the world has yet to outgrow. Using the rule of law as a mobilizing theme, this book recasts Western theories of law, good governance, and development in a Pacific perspective. While the author works primarily within a legal analytical framework, he employs a multifaceted approach to address the challenge of making Western theories relevant to the concrete and normative contexts of the Pacific peoples, and to accommodate Pacific values, ideologies, structures, and practices within the modern discourse on law.

Carl Schmitt's magnum opus, Constitutional Theory, was originally published in 1928 and has been in print in German ever since. This volume makes Schmitt's masterpiece of comparative constitutionalism available to English-language readers for the first time. Schmitt is considered by many to be one of the most original—and, because of his collaboration with the Nazi party, controversial—political thinkers of the twentieth century. In Constitutional Theory, Schmitt provides a highly distinctive and provocative interpretation of the Weimar Constitution. At the center of this interpretation lies his famous argument that the legitimacy of a constitution depends on a sovereign decision of the people. In addition to being subject to long-standing debate among legal and political theorists in Western Europe and the United States, this theory of constitution-making as decision has profoundly influenced constitutional theorists and designers in Asia, Latin America, and Eastern Europe. Constitutional Theory is a significant departure from Schmitt's more polemical Weimar-era works not just in terms of its moderate tone. Through a comparative history of constitutional government in Europe and the United States, Schmitt develops an understanding of liberal constitutionalism that makes room for a strong, independent state. This edition includes an introduction by Jeffrey Seitzer and Christopher Thornhill outlining the cultural, intellectual, and political contexts in which Schmitt wrote Constitutional Theory; they point out what is distinctive about the work, examine its reception in the postwar era, and consider its larger theoretical ramifications. This volume also contains extensive editorial notes and a translation of the Weimar Constitution.

This book advances a new reading of the central works of Carl Schmitt and, in so doing, rethinks the primary concepts of constitutional theory. In this book, Jacques de Ville engages in a close analysis of a number of Schmitt's texts, including Dictatorship (1921), The Concept of the Political (1927), Constitutional Theory (1928), Land and Sea (1942), Ex Captivitate Salus (1950), The Nomos of the Earth (1950) and The Theory of the Partisan (1963). This engagement takes place from the perspective of constitutional theory and focuses specifically on concepts or themes such as sovereignty, the state, the political, constituent power, democracy, representation, the constitution and human rights. The book seeks to rethink the structure of these concepts in line with Derrida's analysis of Schmitt's texts on the concept of the political in Politics of Friendship (1993). This happens by way of an analysis of Derrida's engagement with Freud and other psychoanalysts. Although the main focus in the book is on Schmitt's texts, it further examines two texts of Derrida (Kh?ra (1993) and Fors: The Anglish Words of Nicholas Abraham and Maria Torok (1976)), by reading these alongside Schmitt's own reflections on the positive concept of the constitution.

The Constitutional Commission, Or, The Inescapable Politics of Constitutional Change

How Judges Think

Judging Under Uncertainty

We the People

Bridging Idealism and Realism

Linguistics and Law

"The book addresses questions about the roles of law and politics and the challenge of legitimacy in constitutional adjudication in the Supreme Court. With all sophisticated observers recognizing that the Justices' political outlooks influence their decision making, many political scientists, some of the public, and a few prominent judges have become Cynical Realists. In their view Justices vote based on their policy preferences, and legal reasoning is mere window-dressing. This book rejects Cynical Realism, but without denying many Realist insights. It explains the limits of language and history in resolving contentious constitutional issues. To rescue the notion that the Constitution is law that binds the Justices, the book provides an original account of what law is and means in the Supreme Court. It also offers a theory of legitimacy in Supreme Court adjudication. Given the nature of law in the Supreme Court, we need to accept and learn to respect reasonable disagreement about many constitutional issues. If so, the legitimacy question becomes: how would the Justices need to decide cases so that even those who disagree with the outcomes ought to respect the Justices' processes of decision? The book gives a fresh and counterintuitive answer to that vital question. Adapting a methodology made famous by John Rawls, it argues that the Justices should strive to achieve a "reflective equilibrium" between their interpretive principles, framed to identify the Constitution's enduring meaning, and their judgments about appropriate outcomes in particular cases, evaluated as prescriptions for the nation to live by in the future. The book blends the perspectives of law, philosophy, and political science to answer theoretical and practical questions of pressing national importance"--

A distinguished and experienced appellate court judge, Posner offers in this new book a unique and, to orthodox legal thinkers, a startling perspective on how judges and justices decide cases.

Jeff King argues in favour of constitutionalising social rights, and presents an incrementalist approach to judicial enforcement.

The University of Chicago Law Review's second issue of 2013 features articles and essays from internationally recognized legal and policy scholars. Contents include: Article, "Property Lost in Translation," by Abraham Bell & Gideon Parchomovsky Article, "Tiers of Scrutiny in Enumerated Powers Jurisprudence," by Aziz Z. Huq Article, "State and Federal Models of the Interaction between Statutes and Unwritten Law," by Caleb Nelson Article, "Our Electoral Exceptionalism," by Nicholas O. Stephanopoulos Essay, "Reverse Advisory Opinions," by Neal Devins & Saikrishna B. Prakash Review Essay, "The Inescapability of Constitutional Theory," by Erwin Chemerinsky (reviewing a new book by Judge J. Harvie Wilkinson III) Comment, "Amongst the 'Waives': Whether Sovereign Immunity for Contractual Damages Is Waived under the Public Vessels Act or the Suits in Admiralty Act," by Maria A. Lanahan The University of Chicago Law Review first appeared in 1933, thirty-one years after the Law School offered its first classes. Since then the Law Review has continued to serve as a forum for the expression of ideas of leading professors, judges, and practitioners, as well as student-authors ... and as a training ground for University of Chicago Law School students, who serve as its editors and contribute original research. Principal articles and essays are authored by internationally recognized legal scholars. Quality eBook editions feature active Contents, linked footnotes, and linked URLs in notes.

Law and Disagreement

On Reading the Constitution

Freedom and Economic Order

Politics and Ideas in the Making of the Constitution

Constitutional Originalism

The Metaethics of Constitutional Adjudication

Constitutional courts around the world play an increasingly central role in day-to-day democratic governance. Yet scholars have only recently begun to develop the interdisciplinary analysis needed to understand this shift in the relationship of constitutional law to politics. This edited volume brings together the leading scholars of constitutional law and politics to provide a comprehensive overview of judicial review, covering theories of its creation, mechanisms of its constraint, and its comparative applications, including theories of interpretation and doctrinal developments. This book serves as a single point of entry for legal scholars and practitioners interested in understanding the field of comparative judicial review in its broader political and social context.

"Interpreting The Constitution" doesn't fit neatly into the extensive literature on judicial review and constitutional interpretation that reconciles judicial review with democracy defined as majority rule. Indeed, Chemerinsky criticizes this method of interpretation and contends that the Constitution exists to protect political minorities and fundamental rights from majority rule. Chapter by chapter, he keenly defends this unique method of interpretation, challenges the general approach, and offers thorough, expert coverage.

Should we try to " live in the present " ? Such is the imperative of modernity, Jed Rubenfeld writes in this important and original work of political theory. Since Jefferson proclaimed that " the earth belongs to the living " —since Freud announced that mental health requires people to " get free of their past " —since Nietzsche declared that the happy man is the man who " leaps " into " the moment—modernity has directed its inhabitants to in the present, as if there alone could they find happiness, authenticity, and above all freedom. But this imperative, Rubenfeld argues, rests on a profoundly inadequate, deforming picture of the relationship between freedom and time. Instead, Rubenfeld suggests, human freedom—human being itself—necessarily extends into both past and future; self-government consists of giving our lives meaning and purpose over time. From this conception of self-government, Rubenfeld derives a new theory of constitutional law ' s place in democracy. Democracy, he writes, is not a matter of governance by the present " will of the people " it is a matter of a nation ' s laying down and living up to enduring political and legal commitments. Constitutionalism is not counter to democracy, as many believe, or a pre-condition of democracy; it is or should be democracy itself--over time. On this basis, Rubenfeld offers a new understanding of constitutional interpretation and of the fundamental right of privacy.

Freedom and Economic Order is the second of three volumes comprising a comprehensive study of Freedom and American Society. Volume II examines the relation of freedom to the economic arrangements of society. It examines capitalism and the market process; socialism and the planned economy; the Marxist critique of capitalism; and the conceptions of justice and social justice correlative to capitalism and socialism, respectively.

Aristotle's Legal Theory

The (un)Written Constitution

Between Facts and Norms

Divergent Paths

Constitutionalism and the Rule of Law

Comparative Constitutional Theory

In recent years, the European Convention on Human Rights (ECHR) gained unexpected relevance in the European constitutional culture. On the one hand, its increasing importance is closely linked to institutional reforms that strengthened the European Court of Human Rights' reputation vis-a-vis the Member States. On the other hand, and even more importantly, the ECHR's significance arises from a changing perception of its constitutional potential. Starting with the assumption that the ECHR is transforming the European constitutional landscape, this book shows that the European Convention raises unprecedented problems that involve, first of all, its own theoretical status as constitutional instrument that ensures the protection of human rights in Europe. Changing paradigms concerning its incorporation in domestic law, as well as the growing conflicts about the protection of some rights and liberties that are deeply rooted in national legal contexts (such as teaching of religion, bio law, and rights of political minorities), are jointly examined in order to offer a unified methodology for the study of European constitutional law centered upon human rights. For a detailed analysis of these issues, the book examines the different facets of the ECHR's constitutional relevance by separating the ECHR's role as a 'factor of Europeanization' for national constitutional systems (Part I) from its role as a veritable European transnational constitution in the field of human rights (Part II). Written for legal scholars focusing on the emerging trends of European and transnational constitutional law, the book investigates the basic tenets of the role of the ECHR as a cornerstone of European constitutionalism.

Challenging the ruling premises underlying many of the Supreme Court's positions on fundamental issues of government authority and individual rights, Tribe shows how the Court is increasingly coming to resemble a judicial Office of Management and Budget, straining constitutional discourse through a managerial sieve to defend its constitutional rulings. Tribe explains how the Court's "calculus" systematically excludes basic concerns about the distribution of wealth and power and conceals fundamental choices about the American polity. Calling for a more candid confrontation of those choices, Tribe exposes what has gone wrong and suggests how the Court can reclaim the historic role entrusted to it by the Constitution. ISBN 0-674-16538-1: $29.95.

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.

This volume makes a contribution to the ongoing lively discussion on European constitutionalism by offering a new perspective and a new interpretation of European constitutional plurality. The book combines diverse disciplinary approaches to the constitutional debate. It brings together complementing contributions from scholars of European politics, economics, and sociology, as well as established scholars from various fields of law. Moreover, it provides analytical clarity to the discussion and combines theory with more practical and critical approaches that make use of the constitutional toolbox in analysing the tensions between the different constitutions. The collection is a valuable point of reference not only for scholars interested in European studies but also for graduate and post-graduate students.

The Academy and the Judiciary

Contributions to a Discourse Theory of Law and Democracy

Constituent Power and Constitutional Form

How Democratic Is the American Constitution?

A Progressive Reading of the Constitution for the Twenty-First Century

Citizens and Constitutions in Uncertain Times

In this provocative book, one of our most eminent political scientists questions the extent to which the American Constitution furthers democratic goals. Robert Dahl reveals the Constitution's potentially antidemocratic elements and explains why they are there, compares the American constitutional system to other democratic systems, and explores how we might alter our political system to achieve greater equality among citizens. In a new chapter for this second edition, he shows how increasing differences in state populations revealed by the Census of 2000 have further increased the veto power over constitutional amendments held by a tiny minority of Americans. He then explores the prospects for changing some important political practices that are not prescribed by the written Constitution, though most Americans may assume them to be so.

Rule of law and constitutionalist ideals are understood by many, if not most, as necessary to create a just political order. Defying the traditional division between normative and positive theoretical approaches, this book explores how political reality on the one hand, and constitutional ideals on the other, mutually inform and influence each other. Seventeen chapters from leading international scholars cover a diverse range of topics and case studies to test the hypothesis that the best normative theories, including those regarding the role of constitutions, constitutionalism and the rule of law, conceive of the ideal and the real as mutually regulating.

The Tempting of America

Active Liberty

The Constitutional Relevance of the ECHR in Domestic and European Law

Cosmic Constitutional Theory