25th Anniversary of The Federalist Society

ORIGINALISM

A QUARTER-CENTURY
OF DEBATE



Foreword by Justice Antonin Scalia

Edited by Steven G. Calabresi

Originalism A Quartercentury Of Debate

Angélica Maria Bernal, Angélica Reyna Bernal

Originalism A Quartercentury Of Debate:

Originalism Steven G. Calabresi, 2007-08-21 What did the Constitution mean at the time it was adopted How should we interpret today the words used by the Founding Fathers In ORIGINALISM A QUARTER CENTURY OF DEBATE these questions are explained and dissected by the very people who continue to shape the legal structure of our country Inside you ll find A foreword by Justice Antonin Scalia and speeches by former attorney general Edwin Meese III Justice William Brennan Judge Robert H Bork and President Ronald Reagan Transcripts from panel discussions and debates engaging some of the brightest legal minds of our time in frank open discussions about the original meaning of the Constitution of the United States and its impact on the rule of law in our country A debate on the original meaning of the Commerce Spending and Necessary and Proper Clauses Concluding thoughts by Theodore Olson forty second solicitor general of the United States and a fellow at both the American College of Trial Lawyers and the American Academy of Appellate Lawyers ORIGINALISM A QUARTER CENTURY OF DEBATE is a lively and fascinating discussion of an issue that has occupied the greatest legal minds in America and one that continues to elicit strong reactions from both those who support and those who oppose the rule of law Steven G Calabresi co founder of the Federalist Society and professor of law at Northwestern University School of Law has compiled an impressive collection of speeches panel discussions and debates from some of the greatest and most Originalism Steven G. Calabresi, 2007-08-21 What did the prominent legal experts of the last twenty five years Constitution mean at the time it was adopted How should we interpret today the words used by the Founding Fathers In ORIGINALISM A QUARTER CENTURY OF DEBATE these questions are explained and dissected by the very people who continue to shape the legal structure of our country This is a lively and fascinating discussion of an issue that has occupied the greatest legal minds in America and one that continues to elicit strong reactions from both those who support and those who oppose the rule of law Steven G Calabresi co founder of the Federalist Society and professor of law at Northwestern University School of Law has compiled an impressive collection of speeches panel discussions and debates from some of the greatest and most prominent legal experts of the last twenty five years 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 Eigenständigkeit und Homogenität in föderalen Systemen Holger Hestermeyer, 2020-01-28 Das Spannungsverhaltnis zwischen Einheit und Vielfalt durchzieht und charakterisiert foderale Systeme Holger P Hestermeyer arbeitet dieses anhand des Gegensatzpaares Eigenstandigkeit und Homogenitat auf Dabei werden die foderalen Systeme Deutschlands der USA und der EU verglichen und der Vergleich um den historischen Kontext bereichert Vier die Eigenstandigkeit der Gliedstaaten betonende Topoi und drei die Verfassungsraume eines foderalen Systems homogenisierende Mechanismen werden untersucht Verfassungsrhetorik von Verfassungsrealitat getrennt und gezeigt welches Gleichgewicht zwischen zentripetalen und zentrifugalen Kraften die Systeme gefunden haben Dabei geht der Verfasser davon aus dass keine optimale Balance zwischen den beiden Polen existiert sondern vielmehr jede Generation für sich neu entscheiden muss welches Mass an Homogenitat und welches Mass an Eigenstandigkeit der Gliedstaaten ihr angemessen erscheint Waffenrecht als Spiegel Friedemann Groth, 2024 Dass sich das deutsche vom US amerikanischen Waffenrecht stark unterscheidet ist allgemein bekannt Diese Dissertation wirft einen Blick auf die kulturellen Hintergr nde der Unterschiede Sie leistet Aufkl rung ber den Kontext der Regelung privaten Waffenbesitzes und der Waffe als kulturelles Symbol frultimative Gewalt In einer dichten Beschreibung setzt sie die verschiedenen Rechts und Staatsverst ndnisse und Annahmen zu Eigentum Widerstandsrecht und Gewaltmonopol in Beziehung zum Waffenrecht Dabei wird klassische Rechtsvergleichung auch methodisch um eine neue Dimension erg nzt **Constitutional Originalism** Robert W. Bennett, Lawrence B. Solum, 2011-06-06 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 Der Europäische Gerichtshof für Menschenrechte als Diskurswächter Björnstjern Baade, 2017-06-05 Das Buch nimmt die aktuelle Kritik am EGMR zum Anlass die Grundsatzfrage zu stellen welche Rolle dieser gegen ber dem demokratisch rechtsstaatlichen Entscheidungsprozess seiner Vertragsstaaten einnehmen sollte Denn die Kritik an der Legitimit t des Gerichtshofs die momentan im Vereinigten K nigreich am drastischsten formuliert wird wirft berechtigte demokratietheoretische Frage auf und ist ernst zu nehmen Neben einer detaillierten rechtstheoretischen und methodischen Bewertung der Rechtsprechung wird die Kritik auch aus staatstheoretischer Sicht behandelt Hierbei werden jeweils interdisziplin r Erkenntnisse der Philosophie sowie der Sprach und Politikwissenschaften herangezogen Nach einer ausf hrlichen Analyse anhand der Wiener Vertragsrechtskonvention werden objektivistische Auslegungsans tze wie original meaning oder positivisme sociologique er rtert und zur ckgewiesen Die Kontrolle der Einhaltung pr existenterNormen ist als alleiniges Erkl rungs und Rechtfertigungsmodell jedenfalls defizit r Aufgabe des Gerichtshofs ist es auch den demokratisch rechtsstaatlichen Entscheidungsdiskurs an seine korrekte Funktionsweise zu binden seine normative Rationalit t sicherzustellen sowie hierf r die Tatsachengrundlage zu pr fen Hierbei kommt der margin of appreciation und dem sie ma geblich bestimmenden Faktor der Legitimit t der kontrollierten Entscheidung besondere Bedeutung zu Sie verhindert ihrerseits dass der Gerichtshof aus seiner Rolle f llt die darin besteht als W chter dieses Diskurses einen Beitrag dazu zu leisten dass die Institutionen demokratischer Rechtsstaaten ihrer Rolle Delegierte Verfassungsentwicklung Maximilian Schneider ,2024-10-11 Die Anwendung des entsprechen Verfassungsrechts auf die sich stetig wandelnde Lebenswirklichkeit ist historisch gebunden nicht aber historisch determiniert Der Verfassungsnormsetzer delegiert Konkretisierungsspielraume an kunftige Generationen in denen sie die Entwicklung der Verfassung ohne Anderung ihres Textes vollziehen Maximilian Schneider arbeitet das komplexe Zusammenspiel entstehungs und geltungszeitlicher Momente in der Verfassungsanwendung heraus Dafur nutzt er die in der deutschen Rechtswissenschaft bislang weitgehend unbeachtet gebliebenen Erkenntnispotenziale der jungeren US amerikanischen Methodendebatte um den Originalism Er zeigt wie methodologisch konsistent von entstehungszeitlicher Auslegung gesprochen werden kann ohne dass diese in eine Versteinerung der Verfassungsanwendung mundet und warum Law and Opera Filippo Annunziata, Giorgio Fabio Colombo, 2018-01-30 This book explores the sie normativ geboten ist various connections between Law and Opera providing a comprehensive multinational and multidisciplinary with approaches from jurists philosophers musicologist historians resource on the subject Further it makes a valuable contribution to studies on law and the humanities While for example the relationship between law and literature has been extensively researched the relationship between Law and Opera remains largely overlooked The book approaches the topic from three perspectives in three main sections Law in Opera Law on Opera and Law around Opera Against Constitutional Originalism Jonathan

Gienapp, 2024-09-03 A detailed and compelling examination of how the legal theory of originalism ignores and distorts the very constitutional history from which it derives interpretive authority Constitutional originalism stakes law to history The theory s core tenet that the U S Constitution should be interpreted according to its original meaning has us decide questions of modern constitutional law by consulting the distant constitutional past Yet originalist engagement with history is often deeply problematic And now that a majority of justices on the U S Supreme Court champion originalism the task of scrutinizing originalists use and abuse of history has never been more urgent In this comprehensive and novel critique of originalism Jonathan Gienapp targets originalists unspoken assumptions about the Constitution and its history Originalists are committed to recovering the Constitution laid down at the American Founding yet they often assume that the Constitution is fundamentally modern Rather than recovering the original Constitution they project their own understandings onto it assuming that eighteenth century constitutional thinking was no different than their own They take for granted what it meant to write a constitution down what law was how it worked and where it came from and how a constitution s meaning was fixed In the process they erase the Constitution that eighteenth century Americans in fact created By understanding how originalism fails we can better understand the Constitution that we have The Second Amendment Michael Waldman, 2015-05-26 Presents a history of the Second Amendment to illuminate its controversies debates and misapprehensions explaining its contexts and purposes while revealing how it came to represent gun ownership rights in the American Constitutional Law, Volume I Ralph Rossum, G. Alan Tarr, Vincent Phillip Munoz, 2019-07-23 American Constitutional Law 11e Volume I provides a comprehensive account of the nation's defining document examining how its provisions were originally understood by those who drafted and ratified it and how they have since been interpreted by the Supreme Court Congress the President lower federal courts and state judiciaries Clear and accessible chapter introductions and a careful balance between classic and recent cases provide students with a sense of how the law has been understood and construed over the years The 11th Edition has been fully revised to include several new cases including Trump v Hawaii 2018 in which Chief Justice Roberts held that Korematsu v United States has been overruled in the court of history Murphy v National Collegiate Athletic Association 2018 in which Justice Alito's majority opinion provides the most compelling argument to date against federal commandeering of state officials and Sveen v Melin 2018 a Contract Clause case that shows the Court's continuing refusal to give a textualist reading of that provision even in the face of Justice Gorsuch's compelling and amusing dissent A revamped and expanded companion website offers access to even more additional cases an archive of primary documents and links to online resources making this text essential for any constitutional law course

American Constitutional Law, Volume II Ralph Rossum, Alan Tarr, Vincent Phillip Munoz, 2019-07-23 American Constitutional Law 11e Volume II provides a comprehensive account of the nation s defining document examining how its provisions were originally understood by those who drafted and ratified it and how they have since been interpreted by the

Supreme Court Congress the President lower federal courts and state judiciaries Clear and accessible chapter introductions and a careful balance between classic and recent cases provide students with a sense of how the law has been understood and construed over the years The 11th Edition now includes several landmark First Amendment cases including Janus v American Federation of State County and Municipal Employees 2018 Minnesota Voters Alliance v Mansky 2018 National Institute of Family and Life Advocates v Beccera 2018 Trinity Lutheran Church v Comer 2017 and Masterpiece Cakeshop v Colorado Civil Rights Commission 2018 It also includes Carpenter v United States 2018 A revamped and expanded companion website offers access to even more additional cases an archive of primary documents and links to online resources making this text essential for any constitutional law course Precedent in the United States Supreme Court Christopher J. Peters, 2014-02-11 This volume presents a variety of both normative and descriptive perspectives on the use of precedent by the United States Supreme Court It brings together a diverse group of American legal scholars some of whom have been influenced by the Segal Spaeth attitudinal model and some of whom have not The group of contributors includes legal theorists and empiricists constitutional lawyers and legal generalists leading authorities and up and coming scholars The book addresses questions such as how the Court establishes durable precedent how the Court decides to overrule precedent the effects of precedent on case selection the scope of constitutional precedent the influence of concurrences and dissents and the normative foundations of constitutional precedent Most of these questions have been addressed by the Court itself only obliquely if at all The volume will be valuable to readers both in the United States and abroad particularly in light of ongoing debates over the role of precedent in civil law nations and emerging legal systems **Indigenous Peoples** and the State Mark Hickford, Carwyn Jones, 2018-07-04 Across the globe there are numerous examples of treaties compacts or other negotiated agreements that mediate relationships between Indigenous peoples and states or settler communities Perhaps the best known of these New Zealand's Treaty of Waitangi is a living and historically rich illustration of this types of negotiated agreement and both the symmetries and asymmetries of Indigenous State relations This collection refreshes the scholarly and public discourse relating to the Treaty of Waitangi and makes a significant contribution to the international discussion of Indigenous State relations and reconciliation The essays in this collection explore the diversity of meanings that have been ascribed to Indigenous State compacts such as the Treaty by different interpretive communities As such they enable and illuminate a more dynamic conversation about their meanings and applications as well as their critical role in processes of reconciliation and transitional justice today Judicial Review in an Age of Moral Pluralism Ronald C. Den Otter, 2009-08-31 This book considers how judicial review can be improved to strike the appropriate balance between legislative and judicial power Beyond Origins Angélica Maria Bernal, 2017-06-30 Beyond Origins challenges the common view of foundings as singular extraordinary moments of political origin and creation Engaging with cases of founding across political traditions from classical Greece to contemporary Latin America the book argues that it is only through pragmatist

understandings of democratic origins that we can realize the potential for radical democratic change **Beyond Origins** Angélica Maria Bernal, Angélica Reyna Bernal, 2017 Beyond Origins challenges the common view of foundings as singular extraordinary moments of political origin and creation Engaging with cases of founding across political traditions from classical Greece to contemporary Latin America the book argues that it is only through pragmatist understandings of democratic origins that we can realize the potential for radical democratic change Law and Religion in a Secular Age Rafael Domingo, 2023-09-28 Essays discussing the relationship of national international and canon law to spirituality God and religion The second half of the book discusses the lives of Christians who have made significant contributions to jurisprudence in various spheres Alberico Gentili Robert Schuman scar Romero Pope John Paul II lvaro d Ors and John Witte The Unexpected Scalia David M. Dorsen, 2017-02-06 Antonin Scalia was one of the most important outspoken and controversial Justices in the past century His endorsements of originalism which requires deciding cases as they would have been decided in 1789 and textualism which limits judges in what they could consider in interpreting text caused major changes in the way the Supreme Court decides cases He was a leader in opposing abortion the right to die affirmative action and mandated equality for gays and lesbians and was for virtually untrammelled gun rights political expenditures and the imposition of the death penalty However he usually followed where his doctrine would take him leading him to write many liberal opinions A close friend of Scalia David Dorsen explains the flawed judicial philosophy of one of the most important Supreme Court Justices of the past century

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