Legitimacy and History

Self-Government
in
American
Constitutional
Theory

Paul W. Kahn

<u>Legitimacy And History Self Government In American</u> <u>Constitutional Theory</u>

Peri Bearman, Bernard G. Weiss, Wolfhart Heinrichs

Legitimacy And History Self Government In American Constitutional Theory:

Legitimacy and History Paul W. Kahn, 1992 **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 **Understanding State Constitutions** G. Alan Tarr, 2018-06-05 For many Americans the word constitution means just one thing the national Constitution According to a recent survey almost half do not know that individual states also have constitutions Scholars have also paid little attention to state constitutions favoring the apparently more dynamic and significant federal scene G Alan Tarr seeks to change that in this landmark book A leading authority on state legal issues he combines history law and political science to present a thorough and long needed account of the distinct and important role of state constitutions in American life Tarr shows that state constitutional politics are dominated by three crucial issues with little salience at the national level the distribution of power among groups and regions within states the scope of state and local governmental authority and the relation of the state to economic activity. He explains how state constitutions differ from the national Constitution in treating not only matters of high principle but also such mundane subjects as ski trails and motor vehicle revenues He also explores why state constitutions unlike their federal counterpart have been so frequently amended and replaced Tarr concludes that the United States not only has a system of dual constitutionalism but also has dual constitutional cultures Powerfully argued and meticulously researched the book fills an important gap in political and legal studies and finally gives state constitutions the scholarly attention they richly deserve

The Lost World of Classical Legal Thought William M. Wiecek, 2001 This text examines the ideology of elite lawyers and judges from the Gilded Age to the New Deal Between 1866 and 1937 this coherent outlook or legal orthodoxy shaped the way the American bar interpreted and understood the law On the Barricades of Berlin Brass August Brass, 2020-02-10 The 1848 wave of worker rebellions that swept across Europe struck the German states with the March Revolution The writer August Brass led the successful defense of the barricades in Berlin's Alexanderplatz public square Published in English for the first time On the Barricades of Berlin provides a riveting firsthand account of this uprising Brass testimony begins with the tumultuous events leading up to the revolution the peaceful democratic agitation the demands that were brought to the king and the key actors involved on all sides of the still peaceful yet tense struggle It then follows the events that led to the outbreak of resistance to the forces of order and sheds light on the aftermath of the fighting once the exhausted Prussian army withdrew from the city Political Theology Paul W. Kahn, 2012 Annotation In a text innovative in both form and substance Kahn forces an engagement with Schmitt's four chapters offering a new version of each that is responsive to the American political imaginary **Dreams of a More Perfect Union** Rogan Kersh, 2013-06-04 In a brilliantly conceived and elegantly written book Rogan Kersh investigates the idea of national union in the United States For

much of the period between the colonial era and the late nineteenth century he shows union was the principal rhetorical means by which Americans expressed shared ideals and a common identity without invoking strong nationalism or centralized governance Through his exploration of how Americans once succeeded in uniting a diverse and fragmented citizenry Kersh revives a long forgotten source of U S national identity Why and how did Americans perceive themselves as one people from the early history of the republic How did African Americans and others at the margins of U S civic culture apply this concept of union Why did the term disappear from vernacular after the 1880s In his search for answers Kersh employs a wide range of methods including political theory analysis of writings by James Madison Frederick Douglass and Abraham Lincoln and empirical analysis drawing on his own extensive database of American newspapers The author s findings are persuasive and often surprising One intriguing development for instance was a strong resurgence of union feelings among Southerners including prominent former secessionists after the Civil War With its fascinating and novel approach Dreams of a More Perfect Union offers valuable insights about American political history especially the rise of nationalism and federalism Equally important the author s close retracing of the religious institutional and other themes coloring the development of unionist thought unveils new knowledge about the origination and transmittal of ideas in a polity

Constitutional Argument and Institutional Structure in the United States Nicholas Papaspyrou, 2018-03-22 US constitutional jurisprudence often conflates two distinct enquiries how to interpret the Constitution and how to allocate interpretive authority This book explains the distinct role of judgements about interpretive authority in constitutional practice It argues that these judgements do not determine what qualifies as good constitutional argument and cannot substitute for it Rather they specify the division of labour between the political branches and the judiciary in forming applicable constitutional determinations. This explanation of the structure of constitutional reasoning sets the stage for the development of a normative theory about each enquiry The book advances a theory of substantive constitutional argument It argues that constitutional interpretation is a special kind of practical reasoning aiming to construct and specify morally sound accounts of the Constitution and surrounding constitutional practice Yet this task is entrusted to a scheme of institutions as agents of free and equal citizens The standard of review is an interlocking component of that scheme regulating the judicial assignment As such it should aim to facilitate best performance of the overall interpretive task so that the judicial process settles on appropriate constitutional determinations grounded on morally sound reasons that reach all citizens and uphold the fundamental commitments to freedom and equal citizenship The Reign of Law Paul W. Kahn, 1997-01-01 This is the first major work to apply to the rule of law the insights of modern cultural theory ranging from Clifford Geertz to Michel Foucault Starting from Thomas Paine's observation that in America law is king Paul Kahn asks What are the elements of our belief in the rule of law And what are the rhetorical techniques by which the courts maintain this belief Kahn centers his exploration on the 1803 Supreme Court case of Marbury v Madison still the greatest of our

constitutional cases Kahn shows that Marbury is the judicial response to President Thomas Jefferson's belief that his election represented a Second American Revolution Kahn uses the confrontation between president and Court to analyze the contrasting ways in which the revolutionary and the legal imaginations understand and give shape to political events This contest continues today in the conflicting demands we make for a politics that preserves the past yet celebrates popular The Political Dimension of Constitutional Law Miguel Noqueira de Brito, Luís Pereira Coutinho, 2020-03-21 This book discusses in what sense constitutional law has a political dimension raising the question whether constitutional law is fundamentally political as to its validity terms of its origin conceptual structure and or corresponding practice. It also poses the question whether that dimension is a political theological dimension A positive answer to these questions challenges the prevailing view that constitutional law is to be conceived strictly as law moreover as written law approved at a certain point in history by a particular power and interpreted as any other law by the judiciary The essays included in this book written by leading scholars in constitutional theory including Martin Loughlin Paul Kahn Manon Altwegg Boussac and Massimo La Torre address these questions in a timely and original way Communication in Modern Social Ordering Kai Eriksson, 2011-07-21 Communication in Modern Social Ordering investigates the modern history of communication in relation to the thinking of the political community in the United States By illustrating the intertwining of the technological developments in communication methods and its community building effects the different representations of society and their political implications are examined against the development of communication systems from the telegraph to the telephone to computer networks It was the telegraph that made communication a continual process thus freeing it from the rhythmical motion of the postal service and from physical transportation in general and provided both a model and a mechanism of control Using the theories of both Foucault and Heidegger to provide a lens for new investigation the author studies not the meanings of communication and its logic as such but rather the conditions and structures that allow meanings and logic to be formulated in the first place The book offers an original combination of historical analysis with an ontological discussion of the evolution of telecommunications in the U S as a phenomenon of modern social ordering **Putting Liberalism in Its** Place Paul W. Kahn, 2009-01-10 In this wide ranging interdisciplinary work Paul W Kahn argues that political order is founded not on contract but on sacrifice Because liberalism is blind to sacrifice it is unable to explain how the modern state has brought us to both the rule of law and the edge of nuclear annihilation We can understand this modern condition only by recognizing that any political community even a liberal one is bound together by faith love and identity Putting Liberalism in Its Place draws on philosophy cultural theory American constitutional law religious and literary studies and political psychology to advance political theory It makes original contributions in all these fields Not since Charles Taylor's The Sources of the Self has there been such an ambitious and sweeping examination of the deep structure of the modern conception of the self Kahn shows that only when we move beyond liberalism s categories of reason and interest to a Judeo

Christian concept of love can we comprehend the modern self Love is the foundation of a world of objective meaning one form of which is the political community Arguing from these insights Kahn offers a new reading of the liberalism communitarian debate a genealogy of American liberalism an exploration of the romantic and the pornographic a new theory of the will and a refoundation of political theory on the possibility of sacrifice Approaching politics from the perspective of sacrifice allows us to understand the character of twentieth century politics which combined progress in the rule of law with massive slaughter for the state Equally important this work speaks to the most important political conflicts in the world today It explains why American response to September 11 has taken the form of war and why for the most part Europeans have been reluctant to follow the Americans in their pursuit of a violent sacrificial politics Kahn shows us that the United States has maintained a vibrant politics of modernity while Europe is moving into a postmodern form of the political that has turned away from the idea of sacrifice Together with its companion volume Out of Eden Putting Liberalism in Its Place finally answers Clifford Geertz's call for a political theology of modernity **Routledge Handbook of Comparative Constitutional Change** Xenophon Contiades, Alkmene Fotiadou, 2020-06-11 Comparative constitutional change has recently emerged as a distinct field in the study of constitutional law It is the study of the way constitutions change through formal and informal mechanisms including amendment replacement total and partial revision adaptation interpretation disuse and revolution The shift of focus from constitution making to constitutional change makes sense since amendment power is the means used to refurbish constitutions in established democracies enhance their adaptation capacity and boost their efficacy Adversely constitutional change is also the basic apparatus used to orchestrate constitutional backslide as the erosion of liberal democracies and democratic regression is increasingly affected through legal channels of constitutional change Routledge Handbook of Comparative Constitutional Change provides a comprehensive reference tool for all those working in the field and a thorough landscape of all theoretical and practical aspects of the topic Coherence from this aspect does not suggest a common view as the chapters address different topics but reinforces the establishment of comparative constitutional change as a distinct field The book brings together the most respected scholars working in the field and presents a genuine contribution to comparative constitutional studies comparative public law political science and constitutional history The Political Morality of Liberal Democracy Michael J. Perry, 2009-11-23 In this important new work in political and constitutional theory Michael J Perry elaborates and defends an account of the political morality of liberal democracy the moral convictions and commitments that in a liberal democracy should govern decisions about what laws to enact and what policies to pursue The fundamental questions addressed in this book concern 1 the grounding 2 the content 3 the implications for one or another moral controversy and 4 the judicial enforcement of the political morality of liberal democracy The particular issues discussed include whether government may ban pre viability abortion whether government may refuse to extend the benefit of law to same sex couples and what role religion should play in the politics and law of a

liberal democracy International Law and Religion Martti Koskenniemi, Mónica García-Salmones Rovira, Paolo Amorosa, 2017 This collective volume brings together contributions by academics in various fields of law and the humanities in order to tackle the complex interactions between international law and religion The originality and the variety of approaches makes this book a must have for academics planning to approach the topic in the future the Heroic Age of the Supreme Court R. Kent Newmyer, 2007-04-01 John Marshall 1755 1835 was arguably the most important judicial figure in American history As the fourth chief justice of the United States Supreme Court serving from 1801 to 1835 he helped move the Court from the fringes of power to the epicenter of constitutional government His great opinions in cases like Marbury v Madison and McCulloch v Maryland are still part of the working discourse of constitutional law in America Drawing on a new and definitive edition of Marshall's papers R Kent Newmyer combines engaging narrative with new historiographical insights in a fresh interpretation of John Marshall's life in the law More than the summation of Marshall's legal and institutional accomplishments Newmyer's impressive study captures the nuanced texture of the justice's reasoning the complexity of his mature jurisprudence and the affinities and tensions between his system of law and the transformative age in which he lived It substantiates Oliver Wendell Holmes Jr s view of Marshall as the most representative Fundamental Rights and Democratic Governance Simeon C. R. McIntosh, 2005 The Caribbean figure in American law Community CARICOM has assumed a greater role in guiding and coordinating the affairs of its member states The introduction of the CARICOM Single Market and Economy CSME and the Caribbean Court of Justice CCJ bring the guest for democratic governance into sharp relief Using Caribbean cases Simeon McIntosh discusses the fundamental rights and freedoms of speech and of the press freedom of religion and freedom form inhuman and degrading punishment He examines the protection of these rights and freedoms in the light of changes in society social progress and other developments in the Commonwealth Caribbean within the context of the CSME and the CCI Fundamental Rights and Democratic Governance is the first body of work to give serious philosophical treatment to the question of fundamental rights in the Caribbean In this second instalment on Caribbean Constitutionalism McIntosh builds on his earlier work Caribbean Constitutional Reform Rethinking the West Indian Polity in laying the theoretical justification for the Caribbean Court of Justice The Law Applied Peri Bearman, Bernard G. Weiss, Wolfhart Heinrichs, 2008-01-30 A sea change has taken place in Islamic legal studies This book both reflects and contributes to that change Traditionally scholars in this field have tended to focus on law as a body of rules and doctrines as figh This volume is more interested in how the law has been applied to concrete situations It looks at judicial decision making legal responses fatwas customary practices the actions of public inspectors cultural contexts and theological discourses as well as modern legal reform and constitutional development Reflecting the interests of a new academic generation The Law Applied offers an ambitious and textured account of how Islamic law works in practice in the social life of the contemporary world Victory of Law Deak Nabers, 2006-08-07 In Victory of Law Deak Nabers examines

developing ideas about the nature of law as reflected in literary and political writing before during and after the American Civil War Nabers traces the evolution of antislavery thought from its pre war opposition to the constitutional order of the young nation to its ultimate elevation of the U S Constitution as an expression of the ideal of justice an ideal embodied in the Fourteenth Amendment Nabers shows how the intellectual history of the Fourteenth Amendment was rooted in literary sources including Herman Melville s Battle Pieces Harriet Beecher Stowe s Uncle Tom s Cabin and William Wells Brown s Clotel as well as in legal texts such as Somerset v Stewart Dred Scott v Sandford and Charles Sumner's Freedom National address Not only were prominent writers like Ralph Waldo Emerson and Frederick Douglass instrumental in remapping the relations between law and freedom but figures like Sumner and John Bingham helped develop a systematic antislavery reading of the Constitution which established literary texts as sources for legal authority This interdisciplinary study sheds light on the transformative significance of emerging legalist and constitutionalist forms of antislavery thinking on the literature of the 1850s and 1860s and the growing centrality of aesthetic considerations to antebellum American legal theory and practice the historical terms in which a distinctively American cultural identity was conceived Making the Case Paul W. Kahn, 2016-04-26 Writing in the tradition of Karl Llewellyn's classic The Bramble Bush Paul Kahn speaks in this book simultaneously to students and scholars Drawing on thirty years of teaching experience Kahn introduces students to the deep narrative structure of the judicial opinion Learning to read the opinion the student learns the nature of legal argument Thus Kahn's exposition of the opinion simultaneously offers a theory of legal meaning that will be of great interest to scholars of law humanities and the social sciences At the center of Kahn's approach are ideas of narrative persuasion and self government His sweeping account of interpretation in law offers innovative views of the nature of authorship the development and decline of doctrine and the construction of facts

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