

# Constitutional Originalism

Lawrence B. Solum

Robert W. Bennett

A DEBATE



# Constitutional Originalism A Debate

**Frank O. Bowman III, Frank O. Bowman**

## **Constitutional Originalism A Debate:**

**Constitutional Originalism** Robert W. Bennett, Lawrence B. Solum, 2011-06-06 Elucidates the debate between constitutional originalism and the living constitution approach

**The American Constitution and the Debate Over Originalism** Dennis J. Goldford, 2005-04-25 This is a work of constitutional theory that explores the nature of American constitutional interpretation through a reconsideration of the long standing debate between the interpretive theories of originalism and nonoriginalism The book presents the novel argument that a critique of the underlying premises of originalism dissolves not just originalism but nonoriginalism as well which leads to the recognition that constitutional interpretation is already and always structured By their fidelity to the Constitution Americans are a textual people in that they live in and through the terms of a fundamental text On the basis of this central idea the book presents a new understanding of constitutional interpretation and an innovative account of the democratic legitimacy and binding capacity of the Constitution

**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 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

**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      **Originalism in American Law and Politics** Johnathan O'Neill, 2005-07-12 This book explains how the debate over originalism emerged from the interaction of constitutional theory U S Supreme Court decisions and American political development Refuting the contention that originalism is a recent concoction of political conservatives like Robert Bork Johnathan O Neill asserts that recent appeals to the origin of the Constitution in Supreme Court decisions and commentary especially by Justices Antonin Scalia and Clarence Thomas continue an established pattern in American history Originalism in American Law and Politics is distinguished by its historical approach to the topic Drawing on constitutional commentary and treatises Supreme Court and lower federal court opinions congressional hearings and scholarly monographs O Neill s work will be valuable to historians academic lawyers and political scientists      **High Crimes and Misdemeanors** Frank O. Bowman III, Frank O. Bowman, 2019-08-30 Explains impeachment from its English roots through 250 years of American constitutional experience including the case against President Trump      **Gadamer and Law** Francis J. Mootz III, 2017-07-05 Hans Georg Gadamer s philosophical hermeneutics is especially relevant for law which is grounded in the interpretation of authoritative texts from the past to resolve present day disputes In this collection leading scholars consider the importance of Gadamer s philosophy for ongoing disputes in legal theory The work of prominent philosophers including Fred Dallmayr P Christopher Smith and David Hoy is joined with the work of leading legal theorists such as William Eskridge Lawrence Solum and Dennis Patterson to provide an overview of the connections between law and Gadamer s hermeneutical philosophy Part I considers the relevance of Gadamer s philosophy to longstanding disputes in legal theory such as the debate over originalism the rule of law and proper modes of statutory and constitutional exegesis Part II demonstrates Gadamer s significance for legal theory by comparing his approach to the work of Nietzsche Habermas and Dworkin      The Supreme Court and Constitutional Theory, 1953-1993 Ronald Kahn, 1994 Combining theoretical sophistication with a fundamental comprehension of the political institutions of the USA this study aims to demystify the workings of the United States Supreme Court and its place in democracy      *Beyond Babel* Andre LeDuc, 2016 This Article completes a therapeutic treatment of the originalism debate The long running debate over constitutional originalism is pathological more confused than insightful or important This Article completes the course of therapy by sketching the constitutional discourse and practice we may hope for after the debate over originalism is transcended and left behind In so doing it disarms the final defense of the participants in that debate in that they have no alternative Only by sketching what that alternative is can its existence be proved and the ideopolises of the protagonists finally be reconstructed This Article shows the constitutional theory and criticism we may aspire to if we are freed of the bonds of the debate over originalism and its underlying assumptions First the Article outlines what a post debate constitutional decision process would look like if the judicial decision makers no longer felt compelled to articulate their opinions in the vocabulary of that debate Second it describes what constitutional scholarship could look like without the

constraints of the Weltanschauung shared by the protagonists in the originalism debate Third the Article gives currency to the claim that abandoning the debate about originalism can revive the public discourse about our Constitution what it says what it does not say and what it should say Fourth and finally the Article suggest how abandoning the perspective of the debate about constitutional originalism frees even the principal protagonists in that debate to engage with the American Constitution and with those who would apply the Constitution very differently in a more direct and powerful way The framework of the originalism debate constrains and distorts the argument and discourse rather than enriches it At all of these levels leaving the debate over constitutional originalism behind gives us a revived constitutional discourse and a more robust American Constitution

**The Flexible Constitution** Sean Wilson, 2013 This is an ambitious work on constitutional theory Influenced by the views of Ludwig Wittgenstein Sean Wilson tackles the problem of how a judge can obey a document written in ordinary flexible language He argues that whether something is constitutional is not an historical fact but is an artisan judgment Criteria are set forth showing why some judgments represent superior connoisseurship and why others do not Along the way Wilson offers a potent critique of originalism He not only explains this belief system but shows why it is inherently incompatible with the American legal system His conclusion is that originalism can only be understood as a legal ideology not a meaningful contribution to philosophy of law The ways of thinking about constitutional interpretation provided in the book end up challenging the scholarship of Ronald Dworkin and numerous law professors And the findings also challenge the way that professors of politics often think about whether a judge has followed law

Constitutionalism and American Culture Sandra F. VanBurkleo, Kermit L. Hall, Robert J. Kaczorowski, 2002 Cultural history and the amendment New York Times v Sullivan and its times Kermit L Hall New directions in American constitutional history Words as hard as cannon balls women's rights agitation And liberty of speech in nineteenth century America Sandra F VanBurkleo Race state market and civil society in constitutional history Mark Tushnet Constitutional history and the cultural turn cross Examining the legal reelist narratives of Henry Fonda Norman L Rosenberg Contributors

Judicial Politics in the United States Mark C. Miller, 2018-09-03 Judicial Politics in the United States examines the role of courts as policymaking institutions and their interactions with the other branches of government and other political actors in the U S political system Not only does this book cover the nuts and bolts of the functions structures and processes of our courts and legal system it goes beyond other judicial process books by exploring how the courts interact with executives legislatures and state and federal bureaucracies It also includes a chapter devoted to the courts interactions with interest groups the media and general public opinion and a chapter that looks at how American courts and judges interact with other judiciaries around the world Judicial Politics in the United States balances coverage of judicial processes with discussions of the courts interactions with our larger political universe making it an essential text for students of judicial politics

*Texas Journal on Civil Liberties & Civil Rights*, 2014

**Constitutional Commentary**, 2005

*Originalism as Faith* Eric J. Segall, 2018-10-18 Originalism as Faith presents a

comprehensive history of the originalism debates It shows how the doctrine is rarely used by the Supreme Court but is employed by academics pundits and judges to maintain the mistaken faith that the Court decides cases under the law instead of the Justices personal values Tracing the development of the doctrine from the founding to present day Eric J Segall shows how originalism is used by judges as a pretext for reaching politically desirable results The book also presents an accurate description and evaluation of the late Justice Scalia s jurisprudence and shows how he failed to practice the originalism method that he preached This illuminating work will be of interest to lawyers law students undergraduates studying the Court law professors and anyone else interested in an honest discussion and evaluation of originalism as a theory of constitutional interpretation a political weapon and an article of faith

The Constitutional Jurisprudence and Judicial Method of the High Court of Australia Rachael Gray, 2008 This book reviews the movements that have occurred in the High Court s approach to constitutional issues during the Dixon Mason and Gleeson eras using the legal theory perspectives of legalism realism and pragmatism To date the relevance of theoretical reasoning to Australian constitutional jurisprudence has received relatively little attention Analysis of constitutional decisions has tended to focus on outcomes rather than method The book provides a contemporary comparative and analytical perspective on the manner in which theoretical perspectives can be used to understand and explain the movement of the High Court s constitutional jurisprudence The discussion is timely in view of the retirement of Chief Justice Gleeson in August 2008 which is likely to focus attention on the Gleeson Court s approach to constitutional issues and the Court s contribution to Australian law

**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 What are the chances that in 2024 a new book could fundamentally reorient how we understand America s founding Jonathan Gienapp has written such a book You read it and you get vertigo Gienapp s book comes as a thunderclap Cass Sunstein Washington Post 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

**Symposium, a New Constitutional Order?** ,2006      Rethinking Constitutional Law Earl M. Maltz,1994 Maltz reformulates the justification for originalist review and refines originalist theory itself he argues that a pure originalist approach mandates excessive judicial intervention under the Constitution and he shows that most nonoriginalist theorists have failed to provide a sufficient functional justification for nonoriginalist intervention      **Ourselves and Our Posterity** Bradley C. S. Watson,2009-01-01 Arguments over constitutional interpretation increasingly highlight the full range of political moral and cultural fault lines in American society Yet all the contending parties claim fealty to the Constitution This volume brings together some of America s leading scholars of constitutional originalism to reflect on the nature and significance of various approaches to constitutional interpretation and controversies Throughout the book the contributors highlight the moral and political dimensions of constitutional interpretation In doing so they bring constitutional interpretation and its attendant disputes down from the clouds showing their relationship to the concerns of the citizen In addition to matters of interpretation the book deals with the proper role of the judiciary in a free society the relationship of law to politics and the relationship of constitutional originalism to the deepest concerns of political thought and philosophy Book jacket

## Decoding **Constitutional Originalism A Debate**: Revealing the Captivating Potential of Verbal Expression

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### **Table of Contents Constitutional Originalism A Debate**

1. Understanding the eBook Constitutional Originalism A Debate
  - The Rise of Digital Reading Constitutional Originalism A Debate
  - Advantages of eBooks Over Traditional Books
2. Identifying Constitutional Originalism A Debate
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Constitutional Originalism A Debate
  - User-Friendly Interface
4. Exploring eBook Recommendations from Constitutional Originalism A Debate
  - Personalized Recommendations
  - Constitutional Originalism A Debate User Reviews and Ratings
  - Constitutional Originalism A Debate and Bestseller Lists



5. Accessing Constitutional Originalism A Debate Free and Paid eBooks
  - Constitutional Originalism A Debate Public Domain eBooks
  - Constitutional Originalism A Debate eBook Subscription Services
  - Constitutional Originalism A Debate Budget-Friendly Options
6. Navigating Constitutional Originalism A Debate eBook Formats
  - ePub, PDF, MOBI, and More
  - Constitutional Originalism A Debate Compatibility with Devices
  - Constitutional Originalism A Debate Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Constitutional Originalism A Debate
  - Highlighting and Note-Taking Constitutional Originalism A Debate
  - Interactive Elements Constitutional Originalism A Debate
8. Staying Engaged with Constitutional Originalism A Debate
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Constitutional Originalism A Debate
9. Balancing eBooks and Physical Books Constitutional Originalism A Debate
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Constitutional Originalism A Debate
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Constitutional Originalism A Debate
  - Setting Reading Goals Constitutional Originalism A Debate
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Constitutional Originalism A Debate
  - Fact-Checking eBook Content of Constitutional Originalism A Debate
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

### 14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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