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INTERPRETING CONSTITUTIONS

A COMPARATIVE STUDY

Edited by
Jeffrey Goldsworthy

Interpreting Constitutions

Jeffrey Goldsworthy



Interpreting Constitutions:

Interpreting Constitutions Jeffrey Denys Goldsworthy, 2006-02-09 This book describes the constitutions of six major federations and how they have been interpreted by their highest courts compares the interpretive methods and underlying principles that have guided the courts and explores the reasons for major differences between these methods and principles Among the interpretive methods discussed are textualism purposivism structuralism and originalism Each of the six federations is the subject of a separate chapter written by a leading authority in the field Jeffrey Goldsworthy Australia Peter Hogg Canada Donald Kommers Germany S P Sathe India Heinz Klug South Africa and Mark Tushnet United States Each chapter describes not only the interpretive methodology currently used by the courts but the evolution of that methodology since the constitution was first enacted The book also includes a concluding chapter which compares these methodologies and attempts to explain variations by reference to different social historical institutional and political circumstances

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Interpreting Constitutions Charles J. G. Sampford, Kim Preston, 1996 Constitutions can be viewed as the road map of liberal democracies And like any road map they need to be constantly reconsidered and redrawn as the territory develops and changes The contributors undertake this re interpretation on a number of levels They examine first the theoretical approaches to constitutional interpretation and then move on to implied rights There then follows a consideration of the role of the judiciary and parliament in constitutional interpretation drawing upon a number of examples from around the world

Judicial Approach to Interpretation of Constitution Ijaiya, Hakeem Olasunkanmi, 2017-05-05 This book Judicial Approach to Interpretation of Constitution A Study of Nigeria Australia Canada and India is the outcome of a doctoral study of the judicial interpretation of the constitutions in selected Commonwealth jurisdictions and a survey of the theories of constitutional interpretation and adjudication the rules applied by the courts in the interpretation of the provisions of the constitutions and determined the extent to which the existing approaches to the interpretation of the constitution have hindered the development of constitutional jurisprudence in those countries In all the statutes and constitutions are

expressed in English language and some words are prone to distortions thereby requiring the need for the courts to discover the intention of the legislators when interpreting such statutes and constitutions. It is further observed that the theories and rules of interpretation currently adopted by the courts are conflicting and this is partly due to vagueness and also that in many cases where a rule appears to support a particular interpretation there is another rule often of equal status which can be invoked in favour of an interpretation which could lead to different result. The general conclusion is that the existing approaches to constitutional interpretation are somewhat inefficient and inadequate to enable the courts to effectively discover the intention of the legislators and therefore the courts should be allowed to examine all relevant parliamentary documents and debates.

Purposive Interpretation in Law Aharon Barak, 2005. This book presents a comprehensive theory of legal interpretation by a leading judge and legal theorist. Currently legal philosophers and jurists apply different theories of interpretation to constitutions, statutes, rules, wills and contracts. Aharon Barak argues that an alternative approach, purposive interpretation, allows jurists and scholars to approach all legal texts in a similar manner while remaining sensitive to the important differences. Moreover, regardless of whether purposive interpretation amounts to a unifying theory, it would still be superior to other methods of interpretation in tackling each kind of text separately. Barak explains purposive interpretation as follows: All legal interpretation must start by establishing a range of semantic meanings for a given text from which the legal meaning is then drawn. In purposive interpretation, the text's purpose is the criterion for establishing which of the semantic meanings yields the legal meaning. Establishing the ultimate purpose and thus the legal meaning depends on the relationship between the subjective and objective purposes that is between the original intent of the text's author and the intent of a reasonable author and of the legal system at the time of interpretation. This is easy to establish when the subjective and objective purposes coincide. But when they don't, the relative weight given to each purpose depends on the nature of the text. For example, subjective purpose is given substantial weight in interpreting a will, objective purpose in interpreting a constitution. Barak develops this theory with masterful scholarship and close attention to its practical application. Throughout, he contrasts his approach with that of textualists and neotextualists such as Antonin Scalia, pragmatists such as Richard Posner, and legal philosophers such as Ronald Dworkin. This book represents a profoundly important contribution to legal scholarship and a major alternative to interpretive approaches advanced by other leading figures in the judicial world.

Responsible Government and the Australian Constitution Benjamin B Saunders, 2023-06-15. This book looks at responsible government under the Australian Constitution. It undertakes a detailed examination of the history leading to the incorporation of responsible government into the Constitution, examining the political history and constitutional ideas which informed the framers' views. It draws on this history to develop a theory of responsible government and explore its implications for the interpretation of the Constitution and the structure of modern government in Australia. The book fills a major gap in our knowledge of the intellectual background of the Australian

Constitution by explaining the constitutional ideas that have shaped the text and structure of the Australian Constitution. It contributes to worldwide debates about constitutional interpretation by showing how rigorous use of history can lead to novel interpretations of constitutions without being tied to the dead hands of the founders.

Interpreting the Constitution Kent Greenawalt, 2015. This book uniquely presents a sophisticated account of possible approaches to constitutional interpretation and also examines how major provisions in the U.S. Constitution are and should be interpreted. Together the chapters show why simple straightforward approaches such as textual originalism are insupportable and why even providing a more complex but systematic account of what judges should do is impossible.

Interpreting State Constitutions James A. Gardner, 2005. *Interpreting State Constitutions* examines and proposes a solution to a problem central to contemporary debates over the enforcement of civil liberties: how courts, government officials, and lawyers should go about interpreting the constitutions of the American states. With the Supreme Court's retreat from the aggressive protection of individual rights, state courts have begun to interpret state constitutions to provide broader protection of liberties. This development has reversed the polarity of constitutional politics as liberals advocate unimpeded state power while conservatives lobby for state subordination to a constitutional law controlled centrally by the Supreme Court. James A. Gardner here lays out the first fully developed theory of subnational constitutional interpretation. He argues that states are integral components of a national system of overlapping and mutually checking authority and that the purpose of this system is to protect liberty and defend against federal domination. The resulting account provides valuable prescriptive advice to state courts showing them how to fulfill their responsibilities to the federal system in a way that strengthens American constitutional discourse.

Constitution Jackelyn Haggerty, 2018. While exercising its power to review the constitutionality of governmental action, the Supreme Court has relied on certain methods or modes of interpretation that are ways of figuring out a particular meaning of provision within the Constitution. The first chapter or report broadly describes the most common modes of constitutional interpretation. The next chapters herein examine the Speech or Debate Clause of the U.S. Constitution, provides an overview of Congress's power under the Constitution and Congress's role in interpreting the nation's founding document, and discusses contemporary issues for Congress with regards to Article V of the U.S. Constitution and the two methods by which the nation's founding charter may be amended.

A Manual Relating to the Constitution, the Interpretation of Statutes George Fox Tucker, 1894.

The Journal of Political Economy James Laurence Laughlin, James Alfred Field, 1912. Deals with research and scholarship in economic theory. Presents analytical, interpretive, and empirical studies in the areas of monetary theory, fiscal policy, labor economics, planning and development, micro and macroeconomic theory, international trade and finance, and industrial organization. Also covers interdisciplinary fields such as history of economic thought and social economics.

Interpreting the Constitution Kent Greenawalt, 2015-11-04. This third volume about legal interpretation focuses on the interpretation of a constitution, most specifically that of the United States of

America In what may be unique it combines a generalized account of various claims and possibilities with an examination of major domains of American constitutional law This demonstrates convincingly that the book s major themes not only can be supported by individual examples but are undeniably in accord with the continuing practice of the United States Supreme Court over time and cannot be dismissed as misguided The book s central thesis is that strategies of constitutional interpretation cannot be simple that judges must take account of multiple factors not systematically reducible to any clear ordering For any constitution that lasts over centuries and is hard to amend original understanding cannot be completely determinative To discern what that is both how informed readers grasped a provision and what were the enactors aims matter Indeed distinguishing these is usually extremely difficult and often neither is really discernible As time passes what modern citizens understand becomes important diminishing the significance of original understanding Simple versions of textualist originalism neither reflect what has taken place nor is really supportable The focus on specific provisions shows among other things the obstacles to discerning original understanding and why the original sense of proper interpretation should itself carry importance For applying the Bill of Rights to states conceptions conceived when the Fourteenth Amendment was adopted should take priority over those in 1791 But practically for courts to interpret provisions differently for the federal and state governments would be highly unwise The scope of various provisions such as those regarding free speech and cruel and unusual punishment have expanded hugely since both 1791 and 1865 And questions such as how much deference judges should accord the political branches depend greatly on what provisions and issues are involved Even with respect to single provisions such as the Free Speech Clause interpretive approaches have sensibly varied greatly depending on the more particular subjects involved How much deference judges should accord political actors also depends critically on the kind of issue involved **PAPERS ON APPEAL** ,1909 **Interpreting the Constitution** Harry H.

Wellington,1992-07-29 How does the Supreme Court work Is there something undemocratic about having unelected judges overturn laws passed by elected legislators How can a brief two hundred year old constitution continue to provide the fundamental law for governing the United States In this book a prominent legal scholar explores these questions with unusual clarity Harry H Wellington discusses judicial review the process by which the court decides whether laws are valid and the interpretive role the court plays in constitutional regulation and the resolution of individual disputes Written in an engaging and accessible manner the book offers fascinating examples of the court at work in particular showing how it has addressed one of the most controversial political and judicial issues of our time abortion Harry H Wellington takes a frank and provocative look at the process of adjudication showing how it incorporates and shapes public values and mores as they change from one generation to the next He explains why democracies can tolerate judicial review by nonelected officials and he refutes the politically popular doctrine of original intent and explains why those who interpret the Constitution must be responsive to precedent and process Wellington also shows how the American political system allows the public to respond to

the Court's decisions on such strongly debated issues as abortion. Although he argues for the retention of *Roe v. Wade*, Wellington points out that the Court makes mistakes and he asserts that institutions, groups, and individuals sometimes have an obligation to contest the court's readings and its authority. This often noisy dialogue, says Wellington, is necessary to make judicial regulation compatible with the democratic ideology on which the United States is based. *The Chautauquan*, 1912

Reports of Cases in Law and Equity Determined in the Supreme Court of the State of Iowa Iowa. Supreme Court, 1870

Reports of Cases at Law and in Equity Determined by the Supreme Court of the State of Iowa Iowa. Supreme Court, 1875 **The American Reports**, 1912 Containing all decisions of general interest decided in the courts of last resort of the several states 1869-1887 *Reports of Cases Decided in the Court of Appeals of the State of New York* New York (State). Court of Appeals, George Franklin Comstock, Henry Rogers Selden, Francis Kernan, Edward Jordan Dimock, Erasmus Peshine Smith, Joel Tiffany, Samuel Hand, Louis J. Rezzemini, Hiram Edward Sickels, Edmund Hamilton Smith, Edwin Augustus Bedell, Alvah S. Newcomb, James Newton Fiero, 1886 **George Bryan and the Constitution of Pennsylvania, 1731-1791** Burton Alva Konkle, 1922

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