



COSMIC CONSTITUTIONAL THEORY

Why Americans Are Losing
Their Inalienable Right
to Self-Governance

J. HARVIE WILKINSON, III

Cosmic Constitutional Theory Why Americans Are Losing Their Inalienable Right To Self Governance Inalienable Rights

Laurence H. Tribe



Cosmic Constitutional Theory Why Americans Are Losing Their Inalienable Right To Self Governance Inalienable Rights:

Cosmic Constitutional Theory J. Harvie Wilkinson III, 2012-03-12 American constitutional law has undergone a transformation Issues once left to the people have increasingly become the province of the courts Subjects as diverse as abortion rights and firearms regulations health care reform and counterterrorism efforts not to mention a millennial presidential election are more and more the domain of judges What sparked this development In this engaging volume Judge 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 Thinkers as diverse as Justices William Brennan and Antonin Scalia Professor John Hart Ely Judges Robert Bork and Richard Posner have all produced seminal interpretations of our Founding document but ones that promise to imbue courts with unprecedented powers While crediting the theorists for the sparkling quality of their thoughts Judge Wilkinson argues they will slowly erode the role of representative institutions in America and leave our children bereft of democratic liberty The loser in all the theoretical fireworks is the old and honorable tradition of judicial restraint The judicial modesty once practiced by Learned Hand John Harlan and Oliver Wendell Holmes has given way to competing schools of liberal and conservative activism seeking sanctuary in Living Constitutionalism Originalism Process Theory or the supposedly anti theoretical creed of Pragmatism Each of these seemingly disparate theories promises their followers an intellectually respectable route to congenial political outcomes from the bench Judge Wilkinson calls for a plainer simpler self disciplined commitment to judicial restraint and democratic governance a course that alas may be impossible so long as the cosmic constitutionalists so dominate contemporary legal thought *Cosmic Constitutional Theory* J. Harvie Wilkinson (III), 2012 What underlies this development Federal Appeals Court Judge and noted author 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 **The Collapse of Constitutional Remedies** Aziz Z. Huq, 2021-11-05 In *The Collapse of Constitutional Remedies* Aziz Z Huq examines what happens when our constitutional rights are violated Many people think that federal courts will step in then and provide a remedy But for most people and especially for the vulnerable in our society they won t lift a finger As Huq argues the powerful often get quicker access to the courts and more fulsome judicial review which shows a break from the way in which the courts were originally designed This book shows the deep ironies of judicial independence and charts a part of getting free of its most baleful effects The Constitution of the War on Drugs David Pozen, 2024 In *The Constitution of the War on Drugs* David Pozen provides an authoritative critical constitutional history of the drug war casting new light on both drug prohibition and U S constitutional development Pozen shows the plausibility of a constitutional path not taken in the 1960s and 1970s a path that would have led to a less punitive approach to drug control He explains how and why constitutional resistance to drug prohibition collapsed And he offers a

roadmap to constitutional reform options available today The ^ATwilight of Human Rights Law Eric Posner,2014-10-01
Nearly all countries have ratified nearly all the major human rights treaties and all governments profess support for human rights yet most countries flagrantly violate the human rights of their citizens This book argues that the reason why is that there is a contradiction between the goal of enforcing human rights which requires simple rules and the realities of governance which require flexibility and discretion **Agreeing to Disagree** Nathan S. Chapman,Michael W.

McConnell,2023-06-02 In Agreeing to Disagree Michael W McConnell and Nathan S Chapman detail the theological political and philosophical underpinnings of religious disestablishment in the United States and how they relate to modern controversies over school funding accommodation public prayer and public religious symbols They argue that the clause is not a thumb on the scale for secularism in public matters let alone the opposite but a constitutional commitment for Americans of all religious commitments and none to agree to disagree about matters of faith **The ^AAge of Deference**

David Rudenstine,2016-07-20 The Age of Deference traces the Court s role in the rise of judicial deference to executive power since the end of World War II **Saving the News** Martha Minow,2021-06-15 In Saving the News Martha Minow takes stock of the new media landscape She focuses on the extent to which our constitutional system is to blame for the current parlous state of affairs and on our government s responsibilities for alleviating the problem She further outlines an array of necessary reforms including a new fairness doctrine regulating digital platforms as public utilities using antitrust authority to regulate the media policing fraud and more robust funding of public media *Michigan Law Review* ,2018

The Cosmic Mystery of Judicial Restraint Nelson Lund,2012 All Falling Faiths J. Harvie Wilkinson III,2017-02-07
In this warm and intimate memoir Judge Wilkinson delivers a chilling message The 1960s inflicted enormous damage on our country even at this very hour we see the decade s imprint in so much of what we say and do The chapters reveal the harm done to the true meaning of education to our capacity for lasting personal commitments to our respect for the rule of law to our sense of rootedness and home to our desire for service to our capacity for national unity to our need for the sustenance of faith Judge Wilkinson does not seek to lecture but to share in the most personal sense what life was like in the 1960s and to describe the influence of those frighteningly eventful years upon the present day Judge Wilkinson acknowledges the good things accomplished by the Sixties and nourishes the belief that we can learn from that decade ways to build a better future But he asks his own generation to recognize its youthful mistakes and pleads with future generations not to repeat them The author s voice is one of love and hope for America But our national prospects depend on facing honestly the full magnitude of all we lost during one momentous decade and of all we must now recover *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 resolve this paradox On Constitutional Disobedience Louis Michael

Seidman,2013-01-02 What would the Framers of the Constitution make of multinational corporations Nuclear weapons Gay marriage They led a preindustrial country much of it dependent on slave labor huddled on the Atlantic seaboard The Founders saw society as essentially hierarchical led naturally by landed gentry like themselves Yet we still obey their commands two centuries and one civil war later According to Louis Michael Seidman it s time to stop In On Constitutional Disobedience Seidman argues that in order to bring our basic law up to date it needs benign neglect This is a highly controversial assertion The doctrine of original intent may be found on the far right but the entire political spectrum left and right shares a deep reverence for the Constitution And yet Seidman reminds us disobedience is the original intent of the Constitution The Philadelphia convention had gathered to amend the Articles of Confederation not toss them out and start afresh The living Constitution school tries to bridge the gap between the framers and ourselves by reinterpreting the text in light of modern society s demands But this attempt is doomed Seidman argues One might stretch due process of law to protect an act of same sex sodomy yet a loyal but contemporary reading cannot erase the fact that the Constitution allows a candidate who lost the popular election to be seated as president And that is only one of the gross violations of popular will enshrined in the document Seidman systematically addresses and refutes the arguments in favor of Constitutional fealty proposing instead that it be treated as inspiration not a set of commands The Constitution is at its best a piece of poetry to liberty and self government If we treat it as such the author argues we will make better progress in achieving both

Recent Changes in American Constitutional Theory John William Burgess,1923 Examines the changes in American constitutional theory from the Spanish American War to the 1920s It argues that contemporary developments in constitutional theory and law could be troubling for the country and offers suggestions on how America can correct its course

Constitutional Self-Government Christopher L. Eisgruber,2001-09-30 Eisgruber focuses directly on the Constitution s seemingly undemocratic features locating the Constitution s value in its capacity to sustain an array of institutions that render self government meaningful for a large and diverse people Freedom and Time Jed Rubenfeld,2008-10-01 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 live 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

The Invisible Constitution Laurence H. Tribe, 2008 Renowned legal scholar Tribe argues that there is an unseen constitution impalpable but powerful that accompanies the parchment version in the latest volume in Oxford's Inalienable Rights series

Unalienable Rights Michael E. Lemieux, 2007-12 The America of our forefathers the ideals of liberty established in a republic protected by a constitution and government does not exist today We have progressed in nearly every area of our human existence except we seem to have forgotten or lost the true meaning of our country's freedom In an effort to help spark a renewed understanding of what we have lost this book discusses the following concepts Federal jurisdiction Federal welfare schemes a Federal citizenship Presidential decrees Judicial legislation Federal monetary failure Unconstitutional tax enforcement Unconstitutional emergency powers acts The demonization of America's militia Usurping the people's right to keep and bear arms Why the government won't stop illegal immigration Property rights stolen from all Americans Excessive limitations on free speech Curtailment of your Fourth Amendment rights Misapplication of emergency powers The missing common law The missing rights of the citizens The fraud of the Sixteenth Amendment

The Shape of Citizenship David N. McNeill, Emily Tucker, 2023 The United States it is widely believed is at a moment of constitutional crisis At no time since the Civil War era has it seemed more likely that what James Madison called the experiment entrusted to the hands of the American people the experiment in democratic constitutional self governance will fail This article argues that one reason for this state of affairs is that the people sense that they are no longer active participants in the experiment While the historical etiology of this crisis is complex and the forces involved not confined to the US this article focuses on the crisis in the legitimacy of the Federal Judiciary and the role that current orthodoxies in constitutional interpretation have played in fomenting that crisis The immediate critical target of this article is contemporary jurisprudential uses of what is called public meaning originalism specifically and textualist originalism more broadly as a theory for the interpretation of those clauses in the US Constitution that refer to fundamental rights and freedoms This concern with textualism however is primarily diagnostic For despite its relative unpopularity among most contemporary legal theorists the application of public meaning originalism by the US Supreme Court is perfectly consistent with the dominant legal theoretical approach in the English speaking world The extremity of the Court's recent textualist jurisprudence provides an excellent illustration or reminder of the dangers of legal positivist jurisprudence In arguing against textualist originalism this article defends a version of the anti positivist distinction between legal rules and legal principles most famously associated with the work of Ronald Dworkin It argues however that this distinction cannot be captured by understanding constitutional principles in terms of moral principles as Dworkin suggests Instead constitutional principles must be understood as deliberative principles of political association and communal self determination The

primary subject of this article then is the character of fundamental constitutional law our hope is that the current crises in democratic constitutional legitimacy can help make salient certain aspects of the relation between popular sovereignty and constitutional legitimacy that are harder to discern in less fractured political climates This article begins in Part One with a consideration of the Roberts Court s recent jurisprudence focusing on three landmark opinions issued in June of 2022 *Dobbs v Jackson Women s Health Organization* *Kennedy v Bremerton School Dist* and *West Virginia v EPA* The point of revisiting this recent history will not be or will not only be to decry these rulings as anti democratic and constitutionally ill founded The point rather will be 1 to see these rulings as consolidations of the Court s newly asserted constitutional authority and 2 show how contemporary positivist constitutional theory has helped prepare the way for the Court s manipulation of the constitutional order Part Two begins to elaborate an anti positivist alternative both to legal positivism and to natural law legal theory In agreement with traditional natural law theorists it is argued that the distinction between illegitimate and legitimate expressions of political authority depends on the degree to which a system of authority is directed toward a common good In disagreement with those theorists however this article contends that the common good of a political community is determined by the communal deliberative activity of a political community and that the deliberative determination of a common good is the normative foundation of that community Part Three focuses on the First Amendment of the US Constitution with two aims in mind First to illustrate the account of constitutional law here advocated it offers a reading of the First Amendment as an attempt to put into words a shared understanding among the ratifiers of the Bill of Rights of what this article calls the shape of citizenship in our constitutional democracy Second it shows how the Court s recent opinions have radically subverted the last vestiges of this original connection between constitutional rights and the foundational principles of constitutional self government In *Dobbs v Jackson* in particular the Court asserts an understanding of constitutional rights as merely a particular structural variant of positive law and in so doing effectively makes the legal order a sovereign power over the people rather than an expression of and vehicle for their common self determination

Whispering the Techniques of Language: An Mental Journey through **Cosmic Constitutional Theory Why Americans Are Losing Their Inalienable Right To Self Governance Inalienable Rights**

In a digitally-driven earth where screens reign great and quick connection drowns out the subtleties of language, the profound strategies and mental subtleties concealed within phrases usually move unheard. However, set within the pages of **Cosmic Constitutional Theory Why Americans Are Losing Their Inalienable Right To Self Governance Inalienable Rights** a charming literary value sporting with organic thoughts, lies an extraordinary quest waiting to be undertaken. Published by a skilled wordsmith, this wonderful opus encourages viewers on an introspective journey, gently unraveling the veiled truths and profound influence resonating within ab muscles cloth of each and every word. Within the emotional depths with this emotional evaluation, we will embark upon a sincere exploration of the book is core subjects, dissect their captivating publishing type, and succumb to the effective resonance it evokes heavy within the recesses of readers hearts.

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