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A THEORY OF CONSTITUTIONAL RIGHTS

Robert Alexy

Translated by Julian Rivers

A Theory Of Constitutional Rights

Jack M. Balkin, Reva B. Siegel



A Theory Of Constitutional Rights:

A Theory of Constitutional Rights Robert Alexy, 2010 In any country where there is a Bill of Rights constitutional rights reasoning is an important part of the legal process As more and more countries adopt Human Rights legislation and accede to international human rights agreements and as the European Union introduces its own Bill of Rights judges struggle to implement these rights consistently and sometimes the reasoning behind them is lost Examining the practice in other jurisdictions can be a valuable guide Robert Alexy's classic work reconstructs the reasoning behind the jurisprudence of the German Basic Law and in doing so provides a theory of general application to all jurisdictions where judges wrestle with rights adjudication In considering the features of constitutional rights reasoning the author moves from the doctrine of proportionality procedural rights and the structure and scope of constitutional rights to general rights of liberty and equality and the problem of horizontal effect A postscript written for the English edition considers critiques of the Theory since it first appeared in 1985 focusing in particular on the discretion left to legislatures and in an extended introduction the translator argues that the theory may be used to clarify the nature of legal reasoning in the context of rights under the British Constitution This book will be of central interest to all legal and constitutional theorists and human rights scholars

Proportionality, Balancing, and Rights Jan-R. Sieckmann, 2021 The book focuses on Robert Alexy's theory of constitutional rights Alexy systematically presented the theory in his seminal book *Theorie der Grundrechte* 1985 Engl translation *Theory of Constitutional Rights* 2002 and continued to develop it in numerous subsequent articles Arguably still the most influential theory of constitutional rights it has found widespread academic support as well as recognition in several constitutional jurisdictions On the other hand it has also been the object of considerable criticism The aim of this book is to outline the central aspects of Alexy's theory as he sees them and to further develop the principles of constitutional fundamental and human rights by applying a constructive criticism of his theory

The Constitutional Rights, Privileges, and Immunities of the American People Arnold T. Gumsinski, 2009 The *Constitutional Rights Privileges and Immunities of the American People* explores the idea that the Supreme Court should radically revise its general theory of constitutional rights and discusses various aspects of some special theories of constitutional rights in order to ensure a sufficient universe of discourse As a former deputy district attorney for Los Angeles County Gumsinski gained a wealth of experience in preparing arguments for appellate courts Based on his experience and careful research he proposes a persuasive theory that explains why some but not all rights secured against infringement by the United States are also secured against infringement by the states by both the privileges or immunities and the due process clauses of the fourteenth amendment adopted in 1868 He examines whether national citizenship before the Civil War was paramount and superior addresses the procedural and substantive aspects of the due process clause and recites the reasons supporting his general theory In presenting the essentials of his theory about how the Constitution should be judicially construed Gumsinski thereby encourages other citizens to express their own

opinions about constitutional law with the hope that these views may one day have an impact on the way the Supreme Court interprets the Constitution

The Global Model of Constitutional Rights Kai Möller, 2012-10-25 Since the end of the Second World War and the subsequent success of constitutional judicial review one particular model of constitutional rights has had remarkable success first in Europe and now globally This global model of constitutional rights is characterized by an extremely broad approach to the scope of rights sometimes referred to as rights inflation the acceptance of horizontal effect of rights positive obligations and increasingly also socio economic rights and the use of the doctrines of balancing and proportionality to determine the permissible limitations of rights Drawing on analyses of a broad range of cases from the UK the European Court of Human Rights Germany Canada the US and South Africa this book provides the first substantive moral reconstructive theory of the global model It shows that it is based on a coherent conception of constitutional rights which connects to attractive accounts of judicial review democracy and the separation of powers The first part of the book develops a theory of the scope of rights under the global model It defends the idea of a general right to personal autonomy a right to everything which according to the agent's self conception is in his or her interest The function of this right is to acknowledge that every act by a public authority which places a burden on a person's autonomy requires justification The second part of the book proposes a theory of the structure of this justification which offers original and useful accounts of the important doctrines of balancing and proportionality

Institutionalized Reason Matthias Klatt, 2012-02-23 Matthias Klatt is Professor for Public Law EU Law Public International Law and Jurisprudence at the University of Hamburg Book Jacket

The Constitutional Structure of Proportionality Matthias Klatt, Moritz Meister, 2012-07-19 Proportionality is one of the most important principles in constitutional law relevant throughout the law and in jurisdictions worldwide Setting out the state of the art in proportionality doctrine this book combines theoretical reconstruction with case law examples defending and developing the dominant model of proportionality

Children's Constitutional Rights in the Nordic Countries Trude Haugli, Anna Nylund, Randi Sigurdson, Lena R.L. Bendiksen, 2019-12-02 The book presents a comparative study of children's constitutional rights in Denmark Finland Iceland Norway and Sweden The authors discuss the value of enshrining children's rights in national constitutions in addition to implementing the Convention on the Rights of the Child CRC Central issues are whether enshrining children's rights in the Constitution improves implementation and enforcement of those rights by providing advocacy tools and by mandating courts legislators policy makers and practitioners to take children's rights seriously The study assesses whether the Nordic constitutions are in line with the child rights approach of the CRC both on a general level and in detail in three domains the best interests of the child participation rights and the right to respect for family life

How Constitutional Rights Matter Adam S. Chilton, Mila Versteeg, 2020 Do countries that add rights to their constitutions actually do better at protecting those rights This study draws on global statistical analyses and survey experiments to answer this question It explores whether constitutionalizing rights improves respect for those rights in

practice **Balancing Constitutional Rights** Jacco Bomhoff, 2013-12-19 A comparative and historical account of the origins and meanings of the discourse of judicial balancing in constitutional rights law **Research Handbook on European Union Citizenship Law and Policy** Kostakopoulou, Dora, Thym, Daniel, 2022-03-17 This Research Handbook provides a panoramic guide to the study and research of EU citizenship and its development within a challenging environment characterised by restrictive access to social benefits Brexit Euroscepticism and Covid 19 It combines theoretical perspectives with analyses of both the existing and future rights duties and social protection that EU citizens ought to enjoy in a democratic and principled European Union **Law's Ideal Dimension** Robert Alexy, 2021 Law's Ideal Dimension provides a comprehensive account in English of renowned legal theorist Robert Alexy's understanding of jurisprudence as expanded upon from his publications *A Theory of Legal Argumentation* OUP 1989 *A Theory of Constitutional Rights* OUP 1985 and *The Argument from Injustice* OUP 1992 The collection is divided into three parts Part One concerns the nature of law it explores its real and ideal dimensions and how the ideal dimension of law is sometimes employed but does not play a systematically important role Part Two discusses constitutional rights human rights and proportionality It defends the construction of constitutional rights as principles against objections raised by the rule construction and elaborates on the nature of constitutional rights as well as the mathematical balancing of those rights Part Three concerns the relation between argumentation correctness and law The author concludes this volume with a biographical reflection **Caribbean Integration Law** David S. Berry, 2014 Two key regional organisations in the Caribbean the Caribbean Community and the Organisation of Eastern Caribbean States had their roles fundamentally expanded in 2001 by treaties that developed a single market and a regional court This book sets out the new roles of these organisations and their impact on regional integration in the Caribbean *Citizenship in the European Union* Anne Wesemann, 2020-10-30 The book proposes a new approach to constitutional analysis of the EU and its legal framework arguing that the existence of constitutional rights norms within EU law enables this particular legal order to respond effectively to societal and political challenges within the rigidity of constitutionalism Providing new perspectives on constitutionalism in the EU this book considers the way the Court of Justice of the European Union CJEU discusses and applies the EU citizenship Treaty norms by analysing the courts approach to decision making which resembles the balancing and weighing of conflicting principles **Constitutional Development in China, 1982-2012** Lin Li, Jihong Mo, Guoqiang Zhai, 2019-11-29 This volume presents an overview of the evolution of the current Chinese Constitution 1982 and the characteristics of constitutional studies since 1978 Readers are introduced to the basic principles of constitutional system in China and gain insights into the real state of Chinese law allowing them to form their own opinions It will also aid commercial communications with Chinese legal professionals as well as enterprises The book covers a number of topics including the history of constitutional communication between Chinese constitutionalists and the International Association of Constitutional Law since 1981 the most important academic contributions to international

conferences concerning constitutional law by Chinese constitutionalists the main characteristics of the current Chinese Constitution in the field of constitutional studies in China the key issues of constitutional practice and implementation in China the challenges of running the fundamental political system of the People's Representative Congress and the characteristics of rule of law specific to China *The Logic of Constitutional Rights* Eric Heinze, 2017-09-08 Individual rights raise endless conflicts and spawn intricate standards and policies Increasing involvement by courts has added still greater complexity It would seem that few meaningful principles can unite an area of law plagued by such uncertainty In this book the author argues that a fixed structure underlies that complexity determining the kinds of arguments that can be made about individual rights Examples are drawn from the world's oldest and most intricate body of law on civil rights and liberties the case law of the United States Supreme Court Yet the model is designed to account for any legal system that recognizes civil rights and liberties The author applies techniques of logical analysis although no prior knowledge of logic is required to identify a deeper discursive structure He shows how simple concepts of harm and consent which do not ordinarily appear to be relevant in all cases provide unity within and across regimes of individual rights *The Nature of Constitutional Rights* Richard H. Fallon Jr., 2019-03-14 Explains constitutional rights how courts must identify them and why their protections are more limited than most people think Constitutional Rights, Moral Controversy, and the Supreme Court Michael J. Perry, 2009 This book examines the Supreme Court's proper role in adjudicating moral controversies that implicate constitutional rights **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 *A History of Political Thought in the 16th Century (Routledge Library Editions: Political Science Volume 16)* J. W. Allen, 2013-09-05 This presentation of the main phases and features of political thought in the sixteenth century is based on an exhaustive study of contemporary writings in Latin English French German and Italian The book is divided into four parts The first part deals with the new thought of Protestantism The rest describes special ideas that emerged in England France and Italy **The**

^A Constitution in 2020 Jack M. Balkin, Reva B. Siegel, 2009-05-26 Edited by two of America's leading constitutional scholars the book provides a new framework for addressing the most important constitutional issues of the future in clear accessible language Featuring some of America's finest legal minds Cass Sunstein Bruce Ackerman Robert Post Harold Koh Larry Kramer Noah Feldman Pam Karlan William Eskridge Mark Tushnet Yochai Benkler and Richard Ford among others the book tackles a wide range of issues including the challenge of new technologies presidential power international human rights and religious liberty

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