



Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review

Keith E. Whittington

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Constitutional scholarship has deteriorated into a set of armed camps, with defenders of different theories of judicial review too often talking to their own supporters but not engaging their opponents. This book breaks free of the stalemate and reinvigorates the debate over how the judiciary should interpret the Constitution.

Keith Whittington reconsiders the implications of the fundamental legal commitment to faithfully interpret our written Constitution. Making use of arguments drawn from American history, political philosophy, and literary theory, he examines what it means to interpret a written constitution and how the courts should go about that task. He concludes that when interpreting the Constitution, the judiciary should adhere to the discoverable intentions of the Founders.

Other originalists have also asserted that their approach is required by the Constitution but have neither defended that claim nor effectively responded to critics of their assumptions or their method. This book sympathetically examines the most sophisticated critiques of originalism based on postmodern, hermeneutic, and literary theory, as well as the most common legal arguments against originalists. Whittington explores these criticisms, their potential threat to originalism, and how originalist theory might be reconstructed to address their concerns. In a non-dogmatic and readily understandable way, he explains how originalist methods can be reconciled with an appropriate understanding of legal interpretation and why originalism has much to teach all constitutional theorists. He also shows how originalism helps realize the democratic promise of the Constitution without relying on assumptions of judicial restraint.

This book carefully examines both the possibilities and the limitations of constitutional interpretation and judicial review. It shows us not only what the judiciary ought to do, but what the limits of appropriate judicial review are and how judicial review fits into a larger system of constitutional government. With its detailed and wide-ranging explorations in history, philosophy, and law, this book is essential reading for anyone interested in how the Constitution ought to be interpreted and what it means to live under a constitutional government.

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