Words That Bind Judicial Review And The Grounds Of Modern Constitutional Theory

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Race, Equality, and the Burdens of History John Arthur 2007-09-17 This book philosophically addresses problems of past racial discrimination in the United States. John Arthur examines the concepts of race and racism and discusses racial equality, poverty and race, reparations and affirmative action, and merit in ways that cut across the usual political lines. A former civil-rights plaintiff and professor at an historically black college in the South, Arthur draws on both personal experience and rigorous philosophical training in this account. His nuanced conclusions about the meaning of merit, the defects of affirmative action, the importance of apology, and the need for true equality illuminate one of America's most vexing problems and offer a way forward. His book is relevant to any society struggling with racial differences and past injustices. John Arthur died of cancer in January 2007, after completing this book. He was professor of philosophy and Director of the Program in Philosophy, Politics and Law at Binghamton University, State University of New York. He is the author of Words That Bind: Judicial Review and the Grounds of Modern Constitutional Theory, The Unfinished Constitution: Philosophy and Constitutional Practice, and Studying Philosophy: A Guide for the Perplexed. From 1979 until the time of his death, Professor Arthur was the editor of one of the most widely used ethics anthologies in the United States, Morality and Moral Controversies, soon to be published in its 8th edition .
The History and Growth of Judicial Review, Volume 2 Steven Gow Calabresi 2021-04-13 This two-volume set examines the origins and growth of judicial review in the key G-20 constitutional democracies, which include the United States, the United Kingdom, France, Germany, Japan, Italy, India, Canada, Australia, South Korea, Brazil, South Africa, Indonesia, Mexico, and the European Union, as well as Israel. The volumes consider five different theories, which help to explain the origins of judicial review, and identify which theories apply best in the various countries discussed. They consider not only what gives rise to judicial review originally, but also what causes of judicial review lead it to become more powerful and prominent over time. Volume Two discusses the G-20 civil law countries.
Indirect Judicial Review in Administrative Law Mariolina Eliantonio 2022-11-11 This book provides a comparative analysis of the concept and concrete application of the system of indirect review of administrative action. The indirect review of administrative action is a judicial review mechanism that permits re-visiting already settled administrative measures. As an indirect way of challenging the validity of a measure or act by attacking the legal basis on which it is founded, it can regard either general acts or individual acts and measures. This book explores whether the system of indirect review is a suitable remedy for modern administrative justice, assessing whether it fairly balances the legality and the legal certainty principles. It examines the tension between the two principles and seeks to establish what the standards of review are and whether a common European trend can be discerned by analysing the theory and practice from jurisdictions in Western and Eastern Europe, as well as the EU legal system. The book will be a valuable resource for academics, researchers and policy-makers working in the areas of Administrative Law, EU law, and Public Administration.
Congress and the Fourteenth Amendment William B. Glidden 2013-08-29 In Congress and the Fourteenth Amendment, William B. Glidden examines the misuse of the fourteenth amendment.
Europeanization of Judicial Review Nicola Ch. Corkin 2014-11-13 Europeanization of Judicial Review argues that the higher complexity of the political framework in which laws are made today leads to less well-designed laws and loop-holes, allowing politicians to leave decisions to the courts. The higher complexity of the political framework is a result of the need in the EU to consider both national and European legal and political rules when phrasing new laws. Both to decrease the complexity in the design of legislation and to preserve the ideal of the rule of law, the courts now are more likely to rule laws unconstitutional. The book employs a wide range of quantitative and qualitative methods to collect new data about the German, Austrian, and Italian constitutional courts over the last four decades. These three courts have a comparable history, theoretical background, and structure while differing in two key components: length of EU membership and legitimacy perception. Corkin employs multi-method research based on over fifty interviews with judges, politicians and civil servants; content analysis of abstract judicial review cases over three decades; and a database of over 300 variables relating to the courts and their surroundings. Her data reveals that in abstract judicial review, and in the wider political arena, political culture has become more confrontational due to attitude changes in politicians and judges. These attitude changes can be directly linked to the EU and have wide-ranging implications for legitimacy, democracy and political methodology. Presenting a bridge between the revitalized realist and legalist debate, Europeanization of Judicial Review will contribute to socio-legal theory, literature on comparative courts, and both new institutionalism and Europeanization theory.
The Doctrine of Judicial Review Edward S. Corwin 2014-07-28 This book, first published in 1914, contains five historical essays. Three of them are on the concept of judicial review, which is defined as the power of a court to review and invalidate unlawful acts by the legislative and executive branches of government. One chapter addresses the historical controversy over states' rights. Another concerns the Pelatiah Webster Myth—the notion that the US Constitution was the work of a single person. In "Marbury v. Madison and the Doctrine of Judicial Review," Edward S. Corwin analyzes the legal source of the power of the Supreme Court to review acts of Congress. "We, the People" examines the rights of states in relation to secession and nullification. "The Pelatiah Webster Myth" demolishes Hannis Taylor's thesis that Webster was the "secret" author of the constitution. "The Dred Scott Decision" considers Chief Justice Taney's argument concerning Scott's title to citizenship under the Constitution. "Some Possibilities in the Way of Treaty-Making" discusses how the US Constitution relates to international treaties. Matthew J. Franck's new introduction to this centennial edition situates Corwin's career in the history of judicial review both as a concept and as a political reality.
The Supreme Court In and Out of the Stream of History Kermit L. Hall 2020-10-12 Available as a single volume or part of the 10 volume set Supreme Court in American Society
American Constitutional Law Donald P. Kommers 2004 Designed for an undergraduate course in US constitutional law, the casebook takes a liberal arts approach, tracing constitutional doctrine and policy back to their foundation in social, moral, and political theory, and prompting students to engage the great questions of political life addressed by the Constitution and its interpretation. Opinions of the US Supreme Court constitute the core of the documents. The first edition was published in 1998; the second adds and updates topics. Annotation : 2004 Book News, Inc., Portland, OR (booknews.com).
Judicial Review in International Perspective Gordon Slynn Baron Slynn of Hadley 2000-01-01 Lord Slynn of Hadley is one of the outstanding judges of his time. He has served as a High Court Judge, as an Advocate General and a Judge of the European Court of Justice, and he has been a Lord of Appeal for ten years. This Liber Amicorum bears testimony to the international reputation that he has achieved for his judgments and for his scholarship. In the many distinguished contributions, judges from international courts and from Supreme Courts and Constitutional Courts, together with academics from leading universities around the world, have taken the opportunity to celebrate the accomplishments of Lord Slynn's legal career thus far, and also to discuss areas of law where Lord Slynn can be expected to give important impulses to further development. `Mr Gordon Slynn was outstanding. The best I have ever known. He will go far.' Lord Denning, Master of the Rolls, 1980.
Arbitration Law of Canada J. Brian Casey 2012-06-01 Arbitration Law of Canada provides the busy lawyer and arbitrator with a handy day to day reference

work. This is a comprehensive treatise on the law and practice of arbitration in Canada. The text covers all aspects of commercial arbitration: when to choose arbitration; how to draft an effective arbitration clause; how to choose an arbitrator; the legal and practical aspects of arbitrating in Canada under both the UNCITRAL Model Law as well as domestic legislation, and enforcing awards in Canada, regardless of the jurisdiction in which they were made. The book covers arbitration law in all the Canadian Provinces. It is not only a definitive legal text, but has been designed and organized to be a handy reference text for arbitration practitioners. The second edition includes a revised and expanded index, a complete index of cases, and a number of additional "practice notes". The chapters dealing with court involvement in arbitration, challenges and recognition of awards, have been extensively revised to take into account the numerous court decisions released since the last edition.

The History and Growth of Judicial Review, Volume 2 Steven Gow Calabresi 2021-04-27 "This book examines the origins and growth of judicial review in the key G-20 constitutional democracies, which include: the United States; the United Kingdom; France; Germany; Japan; Italy; India; Canada; Australia; South Korea; Brazil; South Africa; Indonesia; Mexico; and the European Union. The book considers five different theories, which help to explain the origins of judicial review, and it identifies which theories apply best in the various countries discussed. It considers not on what gives rise to judicial review originally, but also what causes of judicial review lead it to become more powerful and prominent over times. The positive account of what causes the origins and growth of judicial review in so many very different countries over such a long period of time has normative implications"--

Saskatchewan law review 1996

Judges and Unjust Laws Douglas E Edlin 2010-07-22 Are judges legally obligated to enforce an unjust law?

Keeping the Faith John E. Semonche 2000-01-01 This ambitious and accessible history of the nation's highest court contains information important for every American to know.

The Politico-Legal Dynamics of Judicial Review Theunis Roux 2018-09-06 Provides a comparative analysis of the ideational dimension of judicial review and its potential contribution to democratic governance.

Judicial Review in European Union Law:Essays in Honour of Lord Slynn Gordon Slynn Baron Slynn of Hadley 2000-06-14 Paradigm in Judicial Review

Die symbolische Dimension der Verfassung André Brodocz 2013-03-08 Die Differenzierung zwischen einer instrumentellen und einer symbolischen Dimension von Institutionen dient der Institutionentheorie als Leitunterscheidung. Während sich der anglo-amerikanische Neo-Institutionalismus auf die instrumentelle Dimension konzentriert, haben sich im deutschsprachigen Diskurs vor allem G. Göhler, M.R. Lepsius und K.S. Rehberg der symbolischen Dimension angenommen. Im Anschluss an eine kritische Rekonstruktion dieser Ansätze regt diese Studie an, Institutionalität als eine Selbstbeobachtung moderner Gesellschaften zu verstehen. Um die symbolische Dimension der Verfassung zu konzipieren, werden deshalb die gesellschaftstheoretisch eingebetteten Verfassungstheorien von C. Schmitt, J. Habermas, N. Luhmann und G. Frankenberg als verdichtete Selbstbeschreibungen analysiert. Hieraus resultiert der institutionentheoretische Vorschlag, dass die symbolische Dimension der Institution 'Verfassung' auf der Deutungsöffnung ihres Signifikanten im politischen Ordnungsdiskurs der Gesellschaft beruht.

Marbury V. Madison and Judicial Review Robert Lowry Clinton 1989

Judicial Review United States. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights 1966

Judicial Review of National Security David Scharia 2014 Here, David Scharia explains how the Supreme Court of Israel developed unconventional judicial review tools and practices that allowed it to provide judicial guidance to the Executive in real-time. In this book, he argues that courts could play a much more dominant role in reviewing national security, and demonstrates the importance of intensive real-time inter-branch dialogue with the Executive, as a tool used by the Israeli Court to provide such review.

Judicial Review Handbook The Hon Sir Michael Fordham 2021-01-07 "...an institution for those who practise public law...it has the authority that comes from being compiled by an author of singular distinction". (Lord Woolf, from the Foreword to the Fifth Edition) The new edition of this Handbook remains an indispensable source of reference and a guide to the case-law in judicial review. Established as an essential part of the library of any practitioner engaged in public law cases, if offers unrivalled coverage of administrative law, including, but not confined to, the work of the Administrative Court and its procedures. Once again completely revised and up-dated, the seventh edition approximates to a restatement of the law of judicial review, organised around 63 legal principles, each supported by a comprehensive presentation of the sources and an unequalled selection of reported case quotations. It also includes essential procedural rules, forms and guidance issued by the Administrative Court. As in the previous edition, both the Civil Procedure Rules and Human Rights Act 1998 feature prominently as major influences on the shaping of the case-law. Attention is also given to impact of the Supreme Court. Here Michael Fordham casts an experienced eye over the Court's work in the area of judicial review, and assesses the signs from a Court that will be one of the key influences in the development of judicial review in the modern era. The author, a leading member of the English public law bar, and now has been involved in many of the leading judicial review cases in recent years and is the founding editor of the Judicial Review journal.

Constitutional Justice, East and West Wojciech Sadurski 2002-12-31 How can the power of constitutional judges to overturn parliamentary choices on the basis of their own reading of the constitution, be reconciled with fundamental democratic principles which assign the supreme role in the political system to parliaments? This time-honoured question acquired a new significance when the post-commumst countries of Central and Eastern Europe, without exception, adopted constitutional models in which constitutional courts play a very significant role, at least in theory. Can we learn something about the relationship between democracy and constitutionalism in general, from the meteoric rise of constitutional tribunals in the post-communist countries? Can the discussions and controversies relating to constitutional review which have been going on for decades in more established democracies illuminate the sources of the strength of constitutional courts in Central and Eastern Europe? These questions lie at the center of this book, which focuses on the question of constitutional review in postcommunist states, from a theoretical and comparative perspective. The chapters contained in the book outline the conceptual framework for analyzing the sources, the role and the legitimacy of constitutional justice in a system of political democracy. From this perspective, it assesses the experience of constitutional justice in the West (where the model originated) and in Central and Eastern Europe, where the model has been implanted after the fail of Communism.

Judges and Unjust Laws Douglas E. Edlin 2008 "With keen insight into the common law mind, Edlin argues that there are rich resources within the law for judges to ground their opposition to morally outrageous laws, and a legal obligation on them to overturn it, consequent on the general common law obligation to develop the law. Thus, seriously unjust laws pose for common law judges a dilemma within the law, not just a moral challenge to the law, a conflict of obligations, not just a crisis of conscience. While rooted firmly in the history of common law jurisprudence, Edlin offers an entirely fresh perspective on an age-old jurisprudential conundrum. Edlin's case for his thesis is compelling." ---Gerald J. Postema, Cary C. Boshamer Professor of Philosophy and Professor of Law, University of North Carolina at Chapel Hill, and author of Bentham and the Common Law Tradition "Douglas Edlin builds a powerful historical, conceptual, and moral case for the proposition that judges on common law grounds should refuse to enforce unjust legislation. This is sure to be controversial in an age in which critics already excoriate judges for excessive activism when conducting constitutional judicial review. Edlin's challenge to conventional views is bold and compelling." ---Brian Z. Tamanaha, Chief Judge Benjamin N. Cardozo Professor of Law, St. John's University, and author of Law as a Means to an End: Threat to the Rule of Law "Professor Edlin's fascinating and well-researched distinction between constitutional review and common law review should influence substantially both scholarship on the history of judicial power in the United States and contemporary jurisprudential debates on the appropriate use of that power." ---Mark Graber, Professor of Law and Government, University of Maryland, and author of Dred Scott and the Problem of Constitutional Evil Is a judge legally obligated to enforce an unjust law? In Judges and Unjust Laws, Douglas E. Edlin uses case law analysis, legal theory, constitutional history, and political philosophy to examine the power of judicial review in the common law tradition. He finds that common law tradition gives judges a dual mandate: to apply the law and to develop it. There is no conflict between their official duty and their moral responsibility. Consequently, judges have the authority---perhaps even the obligation---to refuse to enforce laws that they determine unjust. As Edlin demonstrates, exploring the problems posed by unjust laws helps to illuminate the institutional role and responsibilities of common law judges. Douglas E. Edlin is Associate Professor of Political Science at Dickinson College.

Judicial Review in the European Banking Union Chiara Zilioli 2021-02-26 This is the first book to offer a profound, practical analysis of the framework for the judicial and pre-judicial protection of rights under the supranational banking supervision and resolution powers in the European Banking Union (EBU). It is also unique in its in-depth commentary on the developing case law from the European Court of Justice in this new field of EU litigation.

Judicial Review of Veterans' Claims United States. Congress. House. Committee on Veterans' Affairs. Subcommittee on Oversight and Investigations 1983

International Studies in Philosophy 1974

Judicial Review of Legislation Gerhard van der Schyff 2010-06-16 Constitutionalism is the permanent quest to control state power, of which the judicial

review of legislation is a prime example. Although the judicial review of legislation is increasingly common in modern societies, it is not a finished project. This device still raises questions as to whether judicial review is justified, and how it may be structured. Yet, judicial review's justification and its scope are seldom addressed in the same study, thereby making for an inconvenient divorce of these two related avenues of study. To narrow the divide, the object of this work is quite straightforward. Namely, is the idea of judicial review defensible, and what influences its design and scope? This book addresses these matters by comparing the judicial review of legislation in the United Kingdom (the Human Rights Act of 1998), the Netherlands (the Halsema Proposal of 2002) and the Constitution of South Africa of 1996. These systems present valuable material to study the issues raised by judicial review. The Netherlands is of particular interest as its Constitution still prohibits the constitutional review of acts of parliament, while allowing treaty review of such acts. The Halsema Proposal wants to even out this difference by allowing the courts also to apply constitutional norms to legislation and not only to international norms. The Human Rights Act and the South African Constitution also present interesting questions that will make their study worthwhile. One can think of the issue of dialogue between the legislature and the judiciary. This topic enjoys increased attention in the United Kingdom but is somewhat underexplored in South African thought on judicial review. These and similar issues are studied in each of the three systems, to not only gain a better understanding of the systems as such, but also of judicial review in general.

Disobeying the Security Council Antonios Tzanakopoulos 2013-02-14 This book examines how the United Nations Security Council, in exercising its power to impose binding non-forcible measures ('sanctions') under Article 41 of the UN Charter, may violate international law. The Council may overstep limits on its power imposed by the UN Charter itself and by general international law, including human rights guarentees. Such acts may engage the international responsibility of the United Nations, the organization of which the Security Council is an organ. Disobeying the Security Council discusses how and by whom the responsibility of the UN for unlawful Security Council sanctions can be determined; in other words, how the UN can be held to account for Security Council excesses. The central thesis of this work is that states can respond to unlawful sanctions imposed by the Security Council, in a decentralized manner, by disobeying the Security Council's command. In international law, this disobedience can be justified as constituting a countermeasure to the Security Council's unlawful act. Recent practice of states, both in the form of executive acts and court decisions, demonstrates an increasing tendency to disobey sanctions that are perceived as unlawful. After discussing other possible qualifications of disobedience under international law, the book concludes that this practice can (and should) be qualified as a countermeasure.

Examining the Proper Role of Judicial Review in the Federal Regulatory Process United States. Congress. Senate. Committee on Homeland Security and Governmental Affairs. Subcommittee on Regulatory Affairs and Federal Management 2015

Moral Puzzles and Legal Perplexities Heidi M. Hurd 2018-11-30 Drawing inspiration from the profoundly influential work of legal theorist Larry Alexander, this volume tackles central questions in criminal law, constitutional law, jurisprudence, and moral philosophy. What are the legitimate conditions of blame and punishment? What values are at the heart of constitutional protections against discrimination or infringements of free speech? Must judges interpret statutes and constitutional provisions in ways that comport with the intentions of those who wrote them? Can the law obligate us to violate the demands of morality, and when can the law allow the rights of the few to be violated for the good of the many? This collection of essays by world-renowned legal theorists is for anyone interested in foundational questions about the law's authority, the conditions of its fair application to citizens, and the moral justifications of the rights, duties, and permissions that it protects.

Bimonthly Review of Law Books 1993

Verfassung und Richterspruch Matthias Eberl 2006-01-01 The study looks at the question of the legitimacy of the constitutional jurisdiction. If the arguments about the constitutional jurisdiction are examined, then it becomes clear that this question not only worries legal philosophers but is also considered necessary to explain in the political sphere. It appears to be present in the political public of many democracies. This definitely holds true of democracies in which the institution of the constitutional jurisdiction is established. It also applies to democracies in which the embodiment of jurisdictional competence and institution profiles are taken into account.

Procedural Rules in Tax Law in the Context of European Union and Domestic Law Michael Lang 2010-10-29 This timely work seeks to identify the differences between the domestic procedural rules and principles of an array of EU and non-EU countries and analyse them in the context of European Union law requirements. Specific attention is paid to the impact of State aid rules on procedural law in tax matters, on constitutional law requirements as well as tax treaty law issues. Since customs law is already harmonized in the form of the Community Customs Code, it serves as a starting point to examine the extent to which harmonized procedural law is possible. Harmonized procedural law is also discussed in the context of a possible future Common Consolidated Corporate Tax Base as well as an EU tax levied at the European Union level.

Michigan Law Review 1996

Words That Bind John Arthur 2018-02-12 Words That Bind presents a careful and nuanced treatment of constitutional interpretation and judicial review. By bringing constitutional theory and contemporary political philosophy to bear on each other, John Arthur illuminates these topics as no other recent author has.

Rights for Others Barbara Oomen 2013-11-28 This is a valuable study of how rights consciousness and human rights consciousness fails to emerge, even in countries that strongly advocate human rights in their external policies, such as the Netherlands. It focuses on this important and widespread paradox about the difficulties of bringing human rights home. A valuable contribution to the global literature on human rights and socio-legal studies.

The Supreme Court in and of the Stream of Power Kermit L. Hall 2000 Available as a single volume or part of the 10 volume set Supreme Court in American Society

The Supreme Court versus Congress: Disrupting the Balance of Power, 1789–2014 William B. Glidden 2015-03-17 A comprehensive and focused review of all of the Supreme Court's overturns of Congress on constitutional grounds from 1789 to the present suited to college-level political science and constitutional law courses as well as law school students. • Supplies a balanced and comprehensive examination of Supreme Court overrides of Congress that recognizes both good and bad decisions but portrays how Congress performs better than the Court in terms of being faithful to the Constitution—and in promoting and protecting the rights of individuals and minorities • Discusses cases in relevant context and focuses on "big picture" themes and concepts, avoiding legal jargon and technicalities to make the text accessible to general readers • Provides a historical and contemporaneous review of Supreme Court-Congress interactions with explanations of future implications • Offers a historical review and indictment of the Supreme Court's overruling of Congress, ultimately taking a position that this has been more detrimental than of benefit to the democratic process in the United States • Enables readers to obtain a richer understanding of the relationship that has pertained between Congress and the Court throughout U.S. history

Comparative Law Uwe Kischel 2019-02-21 Uwe Kischel's comprehensive treatise on comparative law offers a critical introduction to the central tenets of comparative legal scholarship. The first part of the book is dedicated to general aspects of comparative law. The controversial question of methods, in particular, is addressed by explaining and discussing different approaches, and by developing a contextual approach that seeks to engage with real-world issues and takes a practical perspective on contemporary comparative legal scholarship. The second part of the book offers a detailed treatment of the major legal contexts across the globe, including common law, civil law systems (based on Germany and France, and extended to Eastern Europe, Scandinavia, and Latin America, among others), the African context (with an emphasis on customary law), different contexts in Asia, Islamic law and law in Islamic countries (plus a brief treatment of Jewish law and canon law), and transnational contexts (public international law, European Union law, and lex mercatoria). The book offers a coherent treatment of global legal systems that aims not only to describe their varying norms and legal institutions but to propose a better way of seeking to understand how the overall context of legal systems influences legal thinking and legal practice.

Judicial Review Salman Khurshid 2020-06-11 In India, judicial review is not a static phenomenon. It has ensured that the Constitution is the supreme law of the land, and in situations when a law impinges on the rights and the liberties of citizens, it can be pruned or made void. This is a collection of scholarly essays demonstrating the different facets of judicial review based on the vast area of comparative constitutional law. Importantly, it honours the body of work of Upendra Baxi, legal scholar and author, whose contributions have shaped our understanding of legal jurisprudence and expanded the scope of social transformation in India. This volume recognizes his role as an Indian jurist. Various constitutional law experts come together to reflect on his expositions on the role of the apex court, judicial activism, accountability of judiciary, laws on surrogacy and adultery and so on.