

Judicial Review In An Objective Legal System

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In Judicial Review in an Objective Legal System, Tara Smith breaks through the false dichotomies inherent in dominant theories - various forms of originalism, While all agree that courts must be objective, people differ sharply over what this demands in practice: fidelity to the text?

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While the full case for objective judicial review is in her book, Smith makes a few specific recommendations that are worth mentioning here: (1) Courts should employ uniform standards of scrutiny (she makes a strong case for rejecting the current three-tiered scrutiny); (2) courts should restore proper presumptions (she rejects the presumption of constitutionality applied to legislation and makes the case for a presumption of liberty); and (3) courts should have the courage of constitutional ...

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In Judicial Review in an Objective Legal System, Tara Smith, philosopher of law and professor at the University of Texas at Austin, provides fresh new answers to these long-standing questions. By cutting straight to the core of objectivity and its place in a legal system, Smith lays fertile ground for assessing the arena's major theories of judicial review, emerging ultimately with a theory of interpretation that solves the problems inherent in the current approaches.

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While Judicial Review in an Objective Legal System offers great positive value, I have two sets of concerns. One pertains to what should be done when moral authority and legal authority come apart. The other has to do with what comprises a legal system and the role of philosophy in that system.

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