



The Legitimacy of Constitutionally Conforming Interpretation

Abstract

Constitutionally conforming interpretation is archetypal for many other instances of system-conforming interpretation, both within and beyond the state. In this talk, I will analyze the legitimacy of this canon by highlighting normative questions regarding the role of the judiciary. I trace this canon back to its German origins, compare it to the US avoidance canon, and elaborate on four conditions for its use. I then discuss three arguments that can be made in support of this canon and examine the principal objections that have been raised against it. I intend to dispel these objections by arguing for a broad concept of legal argumentation in combination with my theory of practical institutional concordance. By balancing the competences of the state authorities involved, the conditions and limits of this canon can be reconstructed. I conclude that constitutionally conforming interpretation is not only an essential but also a legitimate canon of generic constitutional law.

In the course of my talk, I will also address how a major two-volume international editorial project on CCI developed.