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The public and private sectors partner in a growing number of projects with expressive dimensions, as governments follow marketing trends and also leverage their resources to produce cultural programs. This creates ever more complex First Amendment issues because such joint enterprises exist at the intersection of two overlapping, but contradictory, paradigms: the limited public forum and government speech. Under the limited public forum test, government ostensibly may set reasonable content limitations when it opens up property and programs to private speakers, so long as its selections are viewpoint neutral. There is no clear line between viewpoint and content, however, and courts frequently strike down program guidelines that are infused with government perspective. The government speech approach, in contrast, allows government to promote its own positions in an expressive project, through its selection of private speaker participants. Its contours and relation to forum analysis, however, are not well developed.

This Article addresses two conflicting lines of cases in an effort to create coherent, consistent guidelines. First, in contexts such as city-sponsored special events, decorative street light pole banners, and city web site Internet links, where government has broad, thematic goals and includes private participants, the government speech paradigm should apply. Current application of forum analysis is sometimes confusing and other times frustrates legitimate public policies. Second, this Article agrees with recent cases that government's selection and acknowledgment of sponsors should be deemed government speech. It goes further by proposing use of the endorsement test as a clear rationale for distinguishing this context from the classic limited public forum of transit advertising. These doctrinal clarifications will enhance the speech market overall: allowing governments the discretion to shape their own expressive projects will stimulate more such endeavors.
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The period from 1849 to 1865 was a tumultuous time for the people of California and for its Supreme Court. Consisting at the time of only three justices, the court was called upon to decide claims that went to the heart of the divisions that wrenched the state, over slavery, land ownership, religion, and race. Some of these were constitutional claims that might today be asserted under the federal Bill of Rights, but at the time (since the Bill of Rights was deemed inapplicable to the states) they were considered under the Declaration of Rights, Article I, of the state Constitution. This article examines the California Supreme Court's early decisions under article I, and finds the justices grappling with issues - such as interpretive methodology and the role of courts in a democratic society - remarkably similar to those which confront our courts today.

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The First Amendment not only protects against limitations on one's speech but against governmentally compelled speech as well. Although the Supreme Court afforded increasing protection to commercial speech, a majority later held that an analysis of compelled advertising in this context did not raise First Amendment issues. In United States v. United Foods. No. 00276 (June 25, 2001), the United States Supreme Court revisited this issue, holding that "the mandated support is contrary to the First Amendment principles set forth in cases involving expression by groups which include persons who object to speech, but who, nevertheless, must remain members of the group by law or necessity." Under current doctrinal principles, persuasive arguments may be fashioned to support a finding of unconstitutionality of regulatory schemes outside the agriculture context, yet the Court's inconsistent treatment of compelled commercial speech has left little guidance to scholars, litigators, and lower courts. This Note explores the implications of United Foods and discusses whether the Court's ruling can be extended to prevent government compelled financing of advertisements in the tobacco, alcohol, and wine industries.

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The constitutional law of capital sentencing currently is torn between its past and its future, its inheritance of a utilitarian, offender-based, sentencing theory and the powerful contemporary resurgence of retributivism as the dominant justification for criminal punishment. The basic procedural and jurisprudential structures all originated as the offspring of an explicitly non-retributive penal theory crafted in large part by Herbert Wechsler and codified in the Model Penal Code. To bring death penalty procedure more in line with contemporary understandings of the death penalty’s theoretical and moral justification, the ghost of Herbert Wechsler must be exorcized from the constitutional law of capital sentencing. Abolition of the death penalty is likely the only sure way to root out the myriad sources of discrimination and arbitrariness that currently plague administration of the death penalty. Short of that, rationalization of sentencing procedures so as to make them more consistent with the most commonly recognized justification for keeping the system in place – retributivism – might help ensure that only those fully culpable for the worst crimes are subject to its reach.

OUR CONSTITUTION AS FEDERAL TREATY: A NEW THEORY OF UNITED STATES CONSTITUTIONAL CONSTRUCTION BASED ON AN ORIGINALIST UNDERSTANDING FOR ADDRESSING A NEW WORLD

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This Article argues that the Constitution is a federal treaty based on an originalist understanding. As a treaty, it must be construed in conformity with the U.S.’ customary international legal obligations, according to the international law governing treaties. Furthermore, these customary international legal norms often will take primacy over the major general principles of constitutional construction (viz., the principles of federalism, separation of powers, and the “living Constitution”) because these international legal norms often are more determinate and less judicially-constructed than general principles of constitutional construction yet these norms can still accommodate these general principles. Furthermore, unlike other theories of constitutional interpretation,
this approach provides a mandatory theory of constitutional construction that is deduced from the Constitution's "text" – in both senses of "language" and "legal instrument." This theory of constitutional construction will be called "international legal constructionism." By construing the Constitution in accordance with customary international law, the Constitution can meet the challenges of globalization and secure fundamental rights for the American people.

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The debate surrounding stem cell research, particularly embryonic stem cell research, is one involving much acrimony, both at the research and practical stages. Such research holds the potential for abuse if not responsibly undertaken. This does not mean, however, that embryonic stem cell research should be prohibited subject to the whims of opponents in Congress. Rather, California has taken the proper step by endorsing embryonic stem cell research, while maintaining guidelines to oversee it.

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In 1998, faced with a gang-violence epidemic, California passed the Street Terrorism Enforcement and Prevention Act ("STEP"), becoming the first state to enact a law specifically targeting criminal street gangs. Through STEP, California courts began to gradually expand the scope of evidence admissible to prove gang membership and to loosen restrictions on expert testimony regarding gang behavior. This trend culminated in People v. Gardeley, in which the California Supreme Court upheld an extremely broad view of permissible uses of expert testimony. This note argues that not only did Gardeley go too far, but also that in its Gardeley decision the California Supreme Court missed a critical opportunity to reemphasize California's restrictive view of expert testimony and the importance of judicial gatekeeping.

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