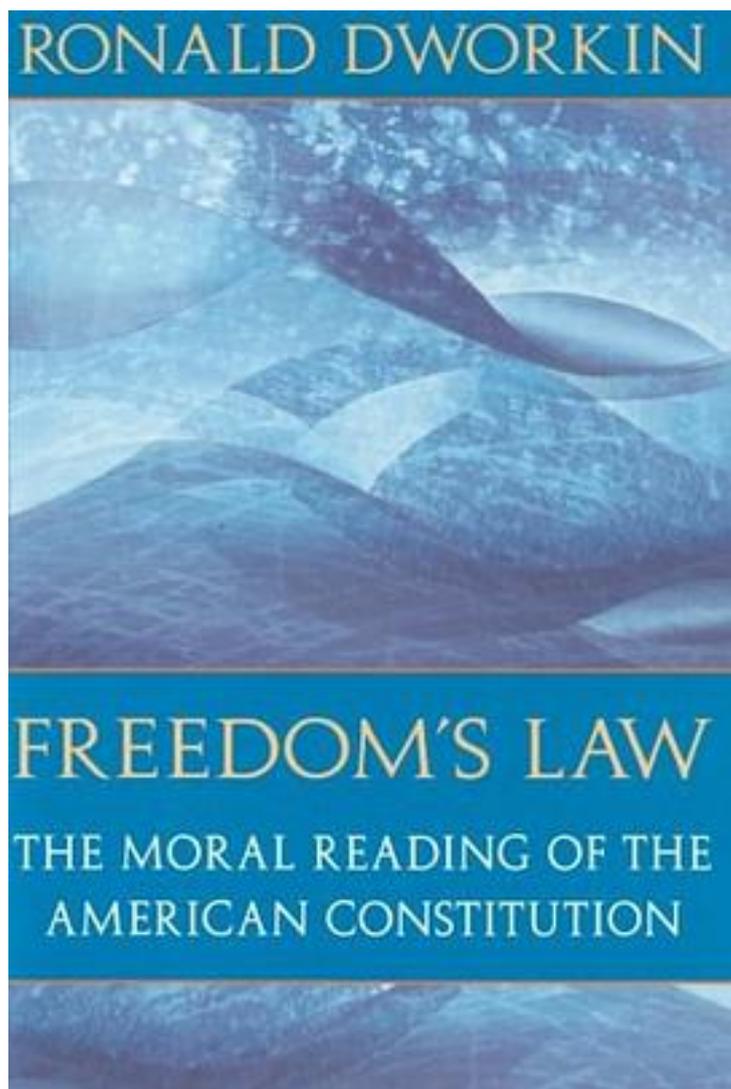


# Freedom's Law



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著者:Ronald Dworkin

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Ronald Dworkin argues that Americans have been systematically misled about what their Constitution is, and how judges decide what it means. The Constitution, he observes, grants individual rights in extremely abstract terms. The First Amendment prohibits the passing of laws that "abridge the freedom of speech"; the Fifth Amendment insists on "due process of law"; and the Fourteenth Amendment demands "equal protection of the laws" for all persons. What does that abstract language mean when it is applied to the political controversies that divide Americans--about affirmative action and racial justice, abortion, euthanasia, capital punishment, censorship, pornography, and homosexuality, for example? Judges, and ultimately the justices of the Supreme Court, must decide for everyone, and that gives them great power. How should they decide? Dworkin defends a particular answer to that question, which he calls the "moral reading" of the Constitution. He argues that the Bill of Rights must be understood as setting out general moral principles about liberty and equality and dignity, and that private citizens, lawyers, and finally judges must interpret and apply those general principles by posing and trying to answer more concrete moral questions. Is freedom to choose abortion really a basic moral right and would curtailing that right be a deep injustice, for example? Why? In the detailed discussions of individual constitutional issues that form the bulk of the book, Dworkin shows that our judges do decide hard constitutional cases by posing and answering such concrete moral questions. Indeed he shows that that is the only way they "can" decide those cases. But most judges--and most politicians and most law professors--pretend otherwise. They say that judges must never treat constitutional issues as moral issues because that would be "undemocratic"--it would mean that judges were substituting their own moral convictions for those of Congressmen and state legislators who had been elected by the people. So they insist that judges can, and should, decide in some more mechanical way which involves no fresh moral judgment on their part. The result, Dworkin shows, has been great constitutional confusion. Is the premise at the core of this confusion really sound? Is the moral reading--the only reading of the American Constitution that makes sense--really undemocratic? In spirited and illuminating discussions both of the great constitutional cases of recent years, and of general constitutional principles, Dworkin argues, to the contrary, that the distinctly American version of government under principle, based on the moral reading of the Constitution, is in fact the best account of what democracy really is.

作者介绍:

Ronald Dworkin was Frank Henry Sommer Professor of Law and Philosophy at New York University.

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标签

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## 评论

最近的天一事件让我想起波sir的课和这本书。波sir和Ronald Dworkin教会我如何理清每条政策背后的逻辑并发现其中矛盾所在。非常非常值得mark一下(´·\_·`)

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## 书评

[按语：没有完整地阅读《自由的法》一书，但Dworkin充沛而健全的常识感和明晰的自由主义立场让我受益匪浅：堕胎权（生育自由权）的确立、有权利决定不接受以医疗技术维持的生命（进一步的安乐死的权利的确立）、言论自由传统的演进和两种证成、色情文艺不应当被民法来禁止（尽...

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前后两月，在行囊里置放良久。不论白天黑夜，休憩以及工作间隙，时时拿出研读。本书又德沃金教授写成，其中涉及到生命、种族、死亡、言论以及立法规则，虽晦涩难懂

，但结合美国宪法进行阅读，感受适佳。德沃金教授是自由主义的斗士，全书虽偏重工  
匠学院派写作，难以避免辩证以...

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写读书笔记有页数限制，所以，我只能先把读书笔记挪到这里啦。 P1-132

导言：道德解读与多数至上主义前提 宪法的困惑

罗伊诉韦德案，联邦最高法院首次认可了堕胎权

克鲁赞案，联邦最高法院在审理该案时不得不考虑人们是否在某些情形下具有选择死亡  
的权利 《纽约时报》诉沙利文...

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