legislature on the legislation's moral propriety might be a better design than judicial enforcement of the judicial view of that propriety.) Moreover, judicial moral oversight can vary from de novo consideration to highly deferential review. Once more, the issue for me is not one of democratic right but rather one of wise political design.

An issue of great importance, not to my knowledge discussed anywhere in the literature, is how to constrain courts from crafting implementing doctrines that undermine constitutional rules with which they disagree. For if courts must resort to moral reasoning in crafting implementing doctrines, and if courts believe the constitutional rules they are implementing offend morality, then they will be prone to craft doctrines that make application of such rules extremely difficult. For example, they may impose a very high burden of proof on litigants claiming that those constitutional rules have been violated. The lesson here is that constitutional authors would do well to protect their constitutional rules by also authoring implementing doctrines, thereby giving unfriendly courts less room to maneuver.

6. Constitutional Change, Organic or Otherwise Constitutions usually provide for their own amendment. When they are amended, we can describe that as an organic change in the constitution, a change authorized by the constitution itself.

Constitutions change in ways other than organic ones. One of the most obvious of these is through decisions by the highest legal authority —in the United States, the U.S. Supreme Court—that misinterpret some constitutional provisions. Because law's function is to settle what we are obligated to do —or so I have claimed —when there is disagreement over the law's meaning, it is important that the law provide a means of settling that dispute. So any constitution whose provisions' intended meanings are at all disputable should designate some institution as having the authority to settle disputes over those meanings.

When the highest legal authority misinterprets the intended meaning of a constitutional provision, we now have a conflict between the constitution itself and the authoritative interpretation of it. Which is the "supreme law"? Although some disagree, the better view is that the authoritative interpreter's interpretation settles what we are obligated to do. What is more vexing, however, is what the authoritative interpreter should do when it comes to believe its interpretation of the constitution was mistaken. This is the issue in U.S. constitutional law of whether the Supreme Court should always, never, or sometimes follow its own constitutional precedents that it now regards as mistaken. My own opinion is that "sometimes" is the correct answer, and that the Court should overrule its own constitutional precedents only if (1) it believes them to be erroneous and (2) it believes that overruling them will not create a great deal more mischief than leaving the incorrect precedent intact. (Overruling a mistaken decision upholding the constitutionality of paper money would produce disastrous consequences; overruling Roe v. Wade would not, the plurality in Casey notwithstanding.)

It is also possible that the highest legal authority's mistakes regarding the constitution's intended meaning —or the authority's deliberate refusal to seek the intended meaning and its substitution of a "meaning" it prefers for the intended meaning—will meet with public approval and will be accepted by the public as fundamental law, much in the way the public accepts the constitution qua the originally intended meaning. The public's acceptance as fundamental law of those deviations