

What Should Constitutions Do?

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What Should Constitutions Do Social Philosophy And Policy

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What Should Constitutions Do Social Philosophy And Policy:

What Should Constitutions Do? Ellen Frankel Paul, Fred D. Miller, Jr, Jeffrey Paul, 2011-01-31 The essays in this volume written by prominent philosophers political scientists and legal scholars address the basic purposes of constitutions and their status as fundamental law Some deal with specific constitutional provisions they ask for example which branches of government should have the authority to conduct foreign policy or how the judiciary should be organized or what role a preamble should play in a nation s founding document Other essays explore questions of constitutional design they consider the advantages of a federal system of government or the challenges of designing a constitution for a pluralistic society or they ask what form of constitution best promotes personal liberty and economic prosperity *Social and Political*

Foundations of Constitutions Denis J. Galligan, Mila Versteeg, 2013-10-14 This volume explores the social and political forces behind constitution making from a global perspective It combines leading theoretical perspectives on the social and political foundations of constitutions with a range of in depth case studies on constitution making in nineteen countries The result is an examination of constitutions as social phenomena and their interaction with other social phenomena from various perspectives in the social sciences A Distinct Judicial Power Scott Douglas Gerber, 2011-01-10 A Distinct Judicial Power

The Origins of an Independent Judiciary 1606 1787 by Scott Douglas Gerber provides the first comprehensive critical analysis of the origins of judicial independence in the United States Part I examines the political theory of an independent judiciary Gerber begins chapter 1 by tracing the intellectual origins of a distinct judicial power from Aristotle s theory of a mixed constitution to John Adams s modifications of Montesquieu Chapter 2 describes the debates during the framing and ratification of the federal Constitution regarding the independence of the federal judiciary Part II the bulk of the book chronicles how each of the original thirteen states and their colonial antecedents treated their respective judiciaries This portion presented in thirteen separate chapters brings together a wealth of information charters instructions statutes etc about the judicial power between 1606 and 1787 and sometimes beyond Part III the concluding segment explores the influence the colonial and early state experiences had on the federal model that followed and on the nature of the regime itself It explains how the political theory of an independent judiciary examined in Part I and the various experiences of the original thirteen states and their colonial antecedents chronicled in Part II culminated in Article III of the U S Constitution It also explains how the principle of judicial independence embodied by Article III made the doctrine of judicial review possible and committed that doctrine to the protection of individual rights **Exploring the Political Economy and Social**

Philosophy of James M. Buchanan Paul Dragos Aligica, Christopher J. Coyne, Stefanie Haeffele, 2018-05-22 James M Buchanan winner of the Nobel Prize in Economics in 1986 was a pioneer of public choice and constitutional political economy as well as contributing to many fields of study including philosophy political science and public finance Each chapter in this volume seeks to explore critique and emphasize the continuing relevance of the vast contributions of Buchanan to our

understanding of political economy and social philosophy The diversity in topics and approaches will make the volume of interest to readers in a variety of fields and accessible to scholars from a variety of backgrounds providing the opportunity to further a cross disciplinary exploration and discussion on market process theory *Moral Puzzles and Legal Perplexities*

Heidi M. Hurd, 2019 Engages with the life and work of Larry Alexander to explore puzzles and paradoxes in legal and moral theory **Peace, Discontent and Constitutional Law** Martin Belov, 2021-05-24 This book offers a multi discursive

analysis of the constitutional foundations for peaceful coexistence the constitutional background for discontent and the impact of discontent and the consequences of conflict and revolution on the constitutional order of a democratic society which may lead to its implosion It explores the capacity of the constitutional order to serve as a reliable framework for peaceful co existence while allowing for reasonable and legitimate discontent It outlines the main factors contributing to rising pressure on constitutional order which may produce an implosion of constitutionalism and constitutional democracy as we have come to know it The collection presents a wide range of views on the ongoing implosion of the liberal democratic constitutional consensus which predetermined the constitutional axiology the institutional design the constitutional mythology and the functioning of the constitutional orders since the last decades of the 20th century The constitutional perspective is supplemented with perspectives from financial EU labour and social security law administrative law migration and religious law Liberal viewpoints encounter radical democratic and critical legal viewpoints The work thus allows for a plurality of viewpoints theoretical preferences and thematic discourses offering a pluralist scientific account of the key challenges to peaceful coexistence within the current constitutional framework The book provides a valuable resource for academics researchers and policymakers working in the areas of constitutional law and politics **Constitutional**

Preambles Wim Voermans, Maarten Stremmer, 2017-06-30 While their use and significance have increased in recent decades constitutional preambles have received only scant attention in academic literature This presents a uniquely quantitative and qualitative analysis of all the preambles currently in force around the world and addresses fascinating questions concerning their occurrence content style function and legal status Studying preambles not only helps us understand the phenomenon itself but also teaches us more about constitutions and the constitutional systems in which they are situated

Philosophical Foundations of Constitutional Law David Dyzenhaus, Malcolm Thorburn, 2016-02-04 Constitutional law has been and remains an area of intense philosophical interest and yet the debate has taken place in a variety of different fields with very little to connect them In a collection of essays bringing together scholars from several constitutional systems and disciplines Philosophical Foundations of Constitutional Law unites the debate in a study of the philosophical issues at the very foundations of the idea of a constitution why one might be necessary what problems it must address what problems constitutions usually address and some of the issues raised by the administration of a constitutional regime Although these issues of institutional design are of abiding importance many of them have taken on new significance in the last few years as

law makers have been forced to return to first principles in order to justify novel practices and arrangements in their constitutional orders. Thus questions of constitutional revolutions challenges to the demands of the rule of law and the separation of powers have taken on new and pressing importance. The essays in this volume address these questions filling the gap in the philosophical analysis of constitutional law. The volume will provoke specialists in philosophy politics and law to develop new philosophically grounded analyses of constitutional law and will be a valuable resource for graduate students in law politics and philosophy.

Framed Sanford Levinson, 2012-03-01 In his widely acclaimed volume *Our Undemocratic Constitution* Sanford Levinson boldly argued that our Constitution should not be treated with sanctimonious reverence but as a badly flawed document deserving revision. Now Levinson takes us deeper asking what were the original assumptions underlying our institutions and whether we accept those assumptions 225 years later. In *Framed* Levinson challenges our belief that the most important features of our constitutions concern what rights they protect. Instead he focuses on the fundamental procedures of governance such as congressional bicameralism the selection of the President by the electoral college or the dimensions of the President's veto power not to mention the near impossibility of amending the United States Constitution. These seemingly settled and hardwired structures contribute to the now almost universally recognized dysfunctionality of American politics. Levinson argues that we should stop treating the United States Constitution as uniquely exemplifying the American constitutional tradition. We should be aware of the 50 state constitutions often interestingly different and perhaps better than the national model. Many states have updated their constitutions by frequent amendment or by complete replacement via state constitutional conventions. California's ungovernable condition has prompted serious calls for a constitutional convention. This constant churn indicates that basic law often reaches the point where it fails and becomes obsolete. Given the experience of so many states he writes surely it is reasonable to believe that the U.S. Constitution merits its own updating. Whether we are concerned about making America more genuinely democratic or only about creating a system of government that can more effectively respond to contemporary challenges we must confront the ways our constitutions especially the United States Constitution must be changed in fundamental ways.

From Parchment to Practice Tom Ginsburg, Aziz Z. Huq, 2020-04-30 Asks how the parchment promises of a written constitution are translated into political practice working through the many problems of constitutional implementation after adoption.

Why the Russian Constitution Matters William Partlett, 2024-09-19 This book challenges the common view that the Russian Constitution is a sham or a reflection of Russia's authoritarian past. It instead shows that the Russian Constitution was a product of the constitutional dark arts an increasingly common constitutional practice that seeks to guarantee liberal democracy and individual rights in a system of highly centralised power. Over time in Russia the centralisation of power in the president has undermined the constitution's democratic and rights protections. This Russian experience matters for three reasons. First it shows that Russian authoritarianism is neither the personal creation of Vladimir Putin nor a natural reflection of Russian

history It is instead the product of a centralised constitutional system A democratic Russia is possible but requires more than just Putin leaving office it also requires breaking with Russia's constitutional commitment to centralisation Second it demonstrates the role that the constitutional dark arts play in populist authoritarianism around the world In these contexts centralisation allows one office to claim popular legitimacy and dominate politics while generally falsely also claiming to respect individual rights and democracy Third it reveals that democratic constitutions are more than legal texts enforced in court They are more fundamentally political texts that create a balanced state with political checks on the centralisation of political power These checks and balances do not just limit state power and protect rights they also enable the state to better understand and advance the general well being of its citizens This book therefore provides critical guidance to those involved in building democracy in a post Putin Russia It is also important to those seeking to better understand the role that constitutions play in shaping both authoritarian and democratic politics

Judicial Review in an Objective Legal System Tara Smith, 2015-08-07 How should courts interpret the law While all agree that courts must be objective people differ sharply over what this demands in practice fidelity to the text To the will of the people To certain moral ideals In *Judicial Review in an Objective Legal System* Tara Smith breaks through the false dichotomies inherent in dominant theories various forms of originalism living constitutionalism and minimalism to present a new approach to judicial review She contends that we cannot assess judicial review in isolation from the larger enterprise of which it is a part By providing careful clarification of both the function of the legal system as well as of objectivity itself she produces a compelling firmly grounded account of genuinely objective judicial review Smith's innovative approach marks a welcome advance for anyone interested in legal objectivity and individual rights

Making a 21st Century Constitution Frank Vibert, 2018-06-29 Democratic constitutions are increasingly unfit for purpose with governments facing increased pressures from populists and distrust from citizens The only way to truly solve these problems is through reform Within this important book Frank Vibert sets out the key challenges to reform the ways in which constitutions should be revitalised and provides the standards against which reform should be measured

Constitutions in the Global Financial Crisis Xenophon Contiades, 2016-05-23 This book is the first to address the multi faceted influence of the global financial crisis on the national constitutions of the countries most affected By tracing the impact of the crisis on formal and informal constitutional change sovereignty issues fundamental rights protection regulatory reforms jurisprudence the augmentation of executive power and changes in the party system it addresses all areas of the current constitutional law dialogue and aims to become a reference book with regard to the interaction between financial crises and constitutions The book includes contributions from prominent experts on Greece Hungary Iceland Ireland Italy Latvia Portugal Spain the UK and the USA providing a critical analysis of the effects of the financial crisis on the constitution The volume's extensive comparative chapter pins down distinct constitutional reactions towards the financial crisis building an explanatory theory that accounts for the different ways constitutions responded to the

crisis How and why constitutions formed their reactions in the face of the financial crisis unravels throughout the book

Annual Review of Constitution-Building: 2018 Adem Abebe, Elliot Bulmer, Amanda Cats-Baril, Roberto Gargarella, Erin Houlihan, Dian Shah, 2020-03-20 International IDEA's Annual Review of Constitution Building provides a retrospective account of constitutional transitions the issues that drive them and their implications for national and international politics This sixth edition covers events in 2018 and includes articles on constitutional events in several regions of the world where International IDEA is active These are loosely themed around the challenges of cooperation and coordination in constitutional politics between majorities and minorities in Burundi and Comoros in Bolivia and Colombia and in the Commonwealth Caribbean between coalition partners in constitutional change processes in Malaysia the Maldives and Sri Lanka and between external actors in Libya South Sudan and Yemen Writing at the mid way point between the instant reactions of the blogosphere and academic analyses that follow several years later the authors provide accounts of ongoing political transitions the major constitutional issues they give rise to and the implications of these processes for democracy the rule of law and peace

The First American Constitutions Willi Paul Adams, 2001-12-11 For the last twenty years this book has been cited by every serious writer on early American constitutional development Any constitutional history of the independent United States must begin with this comprehensive study Professor Adams combines a European perspective and a thorough knowledge of the antecedents of 1787 to create an insightful analysis of the replacement by the revolutionary generation of one government by another by they thought constitutional means Acting for the people in 11 of the 13 rebelling states various kinds of self empowered committees congresses or conventions created new constitutions and a system in which the states dominated over the weaker Confederation government This volume contains two new chapters one demonstrating precedents in the state constitutions for the U S Constitution and another chapter critically testing the republicanism over liberalism thesis against political ideas and institutional arrangements that constitute the first state constitutions The bibliography has been updated to include the rich body of work written during the last two decades much of it indebted to this pioneering study

Proceedings and Addresses of the American Philosophical Association American Philosophical Association, 2011 List of members in v 1

What Should Constitutions Do? Ellen Frankel Paul, Professor of Philosophy and Executive Director Social Philosophy and Policy Center Fred D Miller, Jr., Jeffrey Paul, 2014-05-14 In framing a government which is to be administered by men over men James Madison wrote the great difficulty lies in this you must first enable the government to control the governed and in the next place oblige it to control itself 1 The task of a constitution is to solve this difficulty by setting out the structure of the government and establishing its powers and limits But how extensive should those powers be and where should their limits lie What are the legitimate functions of government and what is their proper justification Should a nation's constitution aim at securing the general welfare of its citizens and if so how is the general welfare to be defined What protections should a constitution afford to individual rights and how should these rights

be specified The essays in this volume written by prominent philosophers political scientists and legal scholars address these questions and explore related issues Some essays examine the basic purposes of constitutions and their status as fundamental law Some deal with specific constitutional provisions they ask for example which branches of government should have the authority to conduct foreign policy or how the judiciary should be organized or what role a preamble should play in a nation s founding document Other essays explore questions of constitutional design they consider the advantages of a federal system of government or the challenges of designing a constitution for a pluralistic society or they ask what form of constitution best promotes personal liberty and economic prosperity *Post-Communist Ukraine* Bohdan

Harasymiw, 2002-02-20 Analysis of successes of Ukraine and its more frequent failures during its transition from authoritarianism to democracy

Constitutional Referendums Stephen Tierney, 2012-04-05 The use of referendums around the world has grown remarkably in the past thirty years and in particular referendums are today deployed more than ever in the settlement of constitutional questions even in countries with little or no tradition of direct democracy This is the first book by a constitutional theorist to address the implications of this development for constitutional democracy in a globalizing age when many of the older certainties surrounding sovereignty and constitutional authority are coming under scrutiny The book identifies four substantive constitutional processes where the referendum is regularly used today the founding of new states the creation or amendment of constitutions the establishment of complex new models of sub state autonomy particularly in multinational states and the transfer of sovereign powers from European states to the European Union The book as a study in constitutional theory addresses the challenges this phenomenon poses not only for particular constitutional orders which are typically structured around a representative model of democracy but for constitutional theory more broadly The main theoretical focus of the book is the relationship between the referendum and democracy It addresses the standard criticisms which the referendum is subjected to by democratic theorists and deploys both civic republican theory and the recent turn in deliberative democracy to ask whether by good process design the constitutional referendum is capable of facilitating the engagement of citizens in deliberative acts of constitution making With the referendum firmly established as a fixture of contemporary constitutionalism the book addresses the key question for constitutional theorists and practitioners of how might its operation be made more democratic in age of constitutional transformation

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