



THE SUPREME COURT AND THE IDEA OF CONSTITUTIONALISM

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The Supreme Court And The Idea Of Constitutionalism

Democracy Citizenship And Constitutionalism

Yaniv Roznai



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The Supreme Court and the Idea of Constitutionalism Steven Kautz, Arthur Melzer, Jerry Weinberger, M. Richard Zinman, 2011-11-29 From *Brown v Board of Education* to *Roe v Wade* to *Bush v Gore* the Supreme Court has over the past fifty years assumed an increasingly controversial place in American national political life As the recurring struggles over nominations to the Court illustrate few questions today divide our political community more profoundly than those concerning the Court's proper role as protector of liberties and guardian of the Constitution If the nation is today in the midst of a culture war the contest over the Supreme Court is certainly one of its principal battlefields In this volume distinguished constitutional scholars aim to move debate beyond the sound bites that divide the opposing parties to more fundamental discussions about the nature of constitutionalism Toward this end the volume includes chapters on the philosophical and historical origins of the idea of constitutionalism on theories of constitutionalism in American history in particular on the practices of constitutionalism around the globe and on the parallel emergence of and the persistent tensions between constitutionalism and democracy throughout the modern world In democracies the primary point of having a constitution is to place some matters beyond politics and partisan contest And yet it seems equally clear that constitutionalism of this kind results in a struggle over the meaning or proper interpretation of the constitution a struggle that is itself deeply political Although the volume represents a variety of viewpoints and approaches this struggle which is the central paradox of constitutionalism is the ultimate theme of all the essays

The Oxford Handbook of the U.S. Constitution Mark V. Tushnet, Mark A. Graber, Sanford Levinson, 2015 The *Oxford Handbook of the U S Constitution* offers a comprehensive overview and introduction to the U S Constitution from the perspectives of history political science law rights and constitutional themes while focusing on its development structures rights and role in the U S political system and culture This Handbook enables readers within and beyond the U S to develop a critical comprehension of the literature on the Constitution along with accessible and up to date analysis Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U S constitutionalism today

American Citizenship and Constitutionalism in Principle and Practice Steven F. Pittz, Joseph Postell, 2022-01-13 Questions at the very heart of the American experiment about what the nation is and who its people are have lately assumed a new even violent urgency As the most fundamental aspects of American citizenship and constitutionalism come under ever more powerful pressure and as the nation's politics increasingly give way to divisive partisan extremes this book responds to the critical political challenge of our time the need to return to some conception of shared principles as a basis for citizenship and a foundation for orderly governance In various ways and from various perspectives this volume's authors locate these principles in the American practice of citizenship and constitutionalism Chapters in the book's first part address critical questions about the nature of U S citizenship subsequent essays propose a

rethinking of traditional notions of citizenship in light of the new challenges facing the country With historical and theoretical insights drawn from a variety of sources ranging from Montesquieu John Adams and Henry Clay to the transcendentalists Cherokee freedmen and modern identitarians American Citizenship and Constitutionalism in Principle and Practice makes the case that American constitutionalism as shaped by several centuries of experience can ground a shared notion of American citizenship To achieve widespread agreement in our fractured polity this notion may have to be based on thin political principles the authors concede yet this does not rule out the possibility of political community By articulating notions of citizenship and constitutionalism that are both achievable and capable of fostering solidarity and a common sense of purpose this timely volume drafts a blueprint for the building of a genuinely shared political future **Constitutionalism**

and a Right to Effective Government? Vicki C. Jackson, Yasmin Dawood, 2022-10-27 This interdisciplinary volume highlights the crucial role of effective government in sustaining democratic constitutionalism In each chapter leaders in the fields of constitutional law and politics provide innovative analyses of the relationships between effective government and democratic constitutionalism its principles and its institutions **The Dynamics of Exclusionary Constitutionalism**

Mazen Masri, 2017-02-09 What does Israel's definition as a Jewish and democratic state mean How does it affect constitutional law How does it play out in the daily life of the people living in Israel This book provides a unique and detailed examination of the consequences of the Jewish and democratic definition It explores how the definition affects the internal ordering of the state the operation of the law and the ways it is used to justify protect and regenerate certain features of Israeli constitutional law It also considers the relationship between law and settler colonialism and how this relationship manifests itself in the constitutional order The Dynamics of Exclusionary Constitutionalism offers a novel perspective on the Jewish and democratic definition rooted in constitutional theory and informed by a socio legal approach Relying on a wide range of court cases and statutes as well as secondary sources the book shows how the definition is deeply embedded in the constitutional structure and operates as a matter of law in a manner that concentrates political power in the hands of the Jewish citizens and excludes the Palestinian Arab citizens in Israel from the political process Mazen Masri's study is a timely intervention in an increasingly important question and is essential reading for those who want to understand Israel's character its relationship with the constitutional order and its impact on society Constitutionalism and the Rule of Law

Maurice Adams, Anne Meuwese, Ernst Hirsch Ballin, 2017-02-02 Rule of law and constitutionalist ideals are understood by many if not most as necessary to create a just political order Defying the traditional division between normative and positive theoretical approaches this book explores how political reality on the one hand and constitutional ideals on the other mutually inform and influence each other Seventeen chapters from leading international scholars cover a diverse range of topics and case studies to test the hypothesis that the best normative theories including those regarding the role of constitutions constitutionalism and the rule of law conceive of the ideal and the real as mutually regulating **The**

Cambridge Handbook of Deliberative Constitutionalism Ron Levy, Hoi Kong, Graeme Orr, Jeff King, 2018-04-19

Deliberative democratic theory emphasises the importance of informed and reflective discussion and persuasion in political decision making. The theory has important implications for constitutionalism and vice versa as constitutional laws increasingly shape and constrain political decisions. The full range of these implications has not been explored in the political and constitutional literatures to date. This unique Handbook establishes the parameters of the field of deliberative constitutionalism which bridges deliberative democracy with constitutional theory and practice. Drawing on contributions from world leading authors, this volume will serve as the international reference point on deliberation as a foundational value in constitutional law and will be an indispensable resource for scholars, students and practitioners interested in the vital and complex links between democratic deliberation and constitutionalism.

Constitutional Resilience in South Asia Swati Jhaveri, Tarunabh Khaitan, Dinesha Samararatne, 2023-06-01 South Asia has had a tumultuous and varied experience with constitutional democracy that predates the recent rise in populism and its study in established democracies. And yet this region has remained largely ignored by constitutional studies and democracy scholars. This book addresses this gap and presents a contribution to the South Asia centric literature on the topic of the stability and resilience of constitutional democracies. Chapters deal not only with relatively well known South Asian countries such as India, Bangladesh, Pakistan and Sri Lanka but also with countries often ignored by scholars such as Bhutan, Nepal, Maldives and Afghanistan. The contributions consider the design and functioning of an array of institutions and actors including political parties, legislatures, the political executive, the bureaucracy, courts, fourth branch guarantor institutions such as electoral commissions, the people and the military to examine their roles in strengthening or undermining constitutional democracy across South Asia. Each chapter offers a contextual and jurisdictionally tethered account of the causes behind the erosion of constitutional democracy and some examine the resilience of constitutional institutions against democratic erosion.

Constitutionalism in Islamic Countries: Between Upheaval and Continuity Rainer Grote, Tilmann Röder, 2012-01-11 Constitutionalism in Islamic Countries: Between Upheaval and Continuity examines the question of whether something similar to an Islamic constitutionalism has emerged out of the political and constitutional upheaval witnessed in many parts of North Africa, the Middle East and Central and Southern Asia. In order to identify its defining features and to assess the challenges that Islamic constitutionalism poses to established concepts of constitutionalism, this book offers an integrated analysis of the complex frameworks in Islamic countries drawing on the methods and insights of comparative constitutional law, Islamic law, international law and legal history. European and North American experiences are used as points of reference against which the peculiar challenges and the specific answers given to those challenges in the countries surveyed can be assessed. The book also examines ways in which the key concepts of constitutionalism including fundamental rights, separation of powers, democracy and rule of law may be adapted to an Islamic context, thus providing valuable new insights on the prospects for a genuine renaissance of

constitutionalism in the Islamic world in the wake of the Arab spring Unconstitutional Constitutional Amendments Yaniv Roznai, 2017-02-23 Can constitutional amendments be unconstitutional The problem of unconstitutional constitutional amendments has become one of the most widely debated issues in comparative constitutional theory constitutional design and constitutional adjudication This book describes and analyses the increasing tendency in global constitutionalism to substantively limit formal changes to constitutions The challenges of constitutional unamendability to constitutional theory become even more complex when constitutional courts enforce such limitations through substantive judicial review of amendments often resulting in the declaration that these constitutional amendments are unconstitutional Combining historical comparisons constitutional theory and a wide comparative study Yaniv Roznai sets out to explain what the nature of amendment power is what its limitations are and what the role of constitutional courts is and should be when enforcing limitations on constitutional amendments Judges as Guardians of Constitutionalism and Human Rights Martin Scheinin, Helle Krunke, Marina Aksenova, 2016-04-29 There are many challenges that national and supranational judges have to face when fulfilling their roles as guardians of constitutionalism and human rights This book brings together academics and judges from different jurisdictions in an endeavour to uncover the intricacies of the judicial function The contributors discuss several points that each represent contemporary challenges to judging analysis of judicial balancing of conflicting considerations the nature of courts legitimacy and its alleged dependence on public support the role of judges in upholding constitutional values in the times of transition to democracy surveillance and the fight against terrorism and the role of international judges in guaranteeing globally recognized fundamental rights and freedoms This book will be of interest to human rights scholars focusing on the issues of judicial oversight as well as constitutional law scholars interested in comparative perspectives on the role of judges in different contexts It will also be useful to national constitutional court judges and law clerks aiming to familiarise themselves with judicial practices within other jurisdictions **Using Human Rights Law in English Courts** Murray Hunt, 1997-03-01 The primary purpose of this book is to demonstrate the scope that already exists for using international human rights law in English courts regardless of its status as incorporated or unincorporated Murray Hunt addresses directly what are commonly supposed to be the theoretical obstacles to using human rights law in English courts and aims to raise awareness of the extent to which these have now fallen away in light of recent developments in English judicial practice The book was first published in hardback in March 1997 **Israeli Constitutional Law in the Making** Gideon Sapir, Daphne Barak-Erez, Aharon Barak, 2013-10-31 In the domain of comparative constitutionalism Israeli constitutional law is a fascinating case study constituted of many dilemmas It is moving from the old British tradition of an unwritten constitution and no judicial review of legislation to fully fledged constitutionalism endorsing judicial review and based on the text of a series of basic laws At the same time it is struggling with major questions of identity in the context of Israel's constitutional vision of a Jewish and Democratic state Israeli

Constitutional Law in the Making offers a comprehensive study of Israeli constitutional law in a systematic manner that moves from constitution making to specific areas of contestation including state religion relations national security social rights as well as structural questions of judicial review It features contributions by leading scholars of Israeli constitutional law with comparative comments by leading scholars of constitutional law from Europe and the United States **Canada and the Ethics of Constitutionalism** Samuel V. Laselva, 2018-12-30 A new perspective on the Canadian Constitution that focuses on Canada's distinctive contribution to constitutional ethics *Constitutionalism 2030* Christoph Bezemek, 2022-08-25 Constitutionalism is in crisis And the crisis unfolds not only on a national or a regional level It is a global phenomenon Democracy is no longer on the rise the Rule of Law appears weakened political cohesion seems to erode Human Rights Protection finds itself questioned International Criminal Law struggles for broad recognition international trade may have lost some of its appeal Institutional actors find their authority questioned established political parties are threatened by ever changing popular movements But where to does the charted road lead How will the Crisis of Constitutionalism unfold in the years to come Nobody knows of course But at the same time Nobody is too keen to make an educated guess either This volume remedies that By giving nine eminent scholars in law and political science the opportunity to make their predictions where the constitutionalist project will stand ten years from now it creates a forum of deliberation that will not only aim at anticipating the developments in question but at the same time shape academic discourse on constitutionalism alongside it The Complete American Constitutionalism Mark A. Graber, Howard Gillman, 2015 The Complete American Constitutionalism is designed to be the comprehensive treatment and source for debates on the American constitutional experience It provides the analysis resources and materials both domestic and foreign readers must understand with regards to the practice of constitutionalism in the United States This first volume of a projected eight volume set is entitled Introduction and The Colonial Era Here the authors provide the building blocks for constitutional analysis with an in depth exploration of the constitutional conflicts in the seventeenth and eighteenth centuries that formed the overall American constitutional experience This is the first collection of materials that focuses on the crucial constitutional documents and debates that structured American constitutional understandings at the time of the American Revolution It details the roots of the common law rights that Americans demanded be respected and the different interpretations of the English constitutional experience that increasingly divided Members of Parliament from American Revolutionaries **The Federal Contract** Stephen Tierney, 2022-05-26 Federalism is a very familiar form of government It characterises the first modern constitution that of the United States and has been deployed by constitution makers to manage large and internally diverse polities at various key stages in the history of the modern state Despite its pervasiveness in practice this book argues that federalism has been strangely neglected by constitutional theory It has tended either to be subsumed within one default account of modern constitutionalism or it has been treated as an exotic outlier a sui generis

model of the state rather than a form of constitutional ordering for the state This neglect is both unsatisfactory in conceptual terms and problematic for constitutional practitioners obscuring as it does the core meaning purpose and applicability of federalism as a specific model of constitutionalism with which to organise territorially pluralised and demotically complex states In fact the federal contract represents a highly distinctive order of rule which in turn requires a particular territorialised approach to many of the fundamental concepts with which constitutionalists and political actors operate constituent power the nature of sovereignty subjecthood and citizenship the relationship between institutions and constitutional authority patterns of constitutional change and ultimately the legitimacy link between constitutionalism and democracy In rethinking the idea and practice of federalism this book adopts a root and branch recalibration of the federal contract It does so by analysing federalism through the conceptual categories that characterise the nature of modern constitutionalism foundations authority subjecthood purpose design and dynamics This approach seeks to explain and in so doing revitalise federalism as a discrete capacious and adaptable concept of rule that can be deployed imaginatively to facilitate the deep territorial variety that characterises so many states in the 21st century *American Constitutionalism*

Stephen M. Griffin, 1998-07-27 Despite the outpouring of works on constitutional theory in the past several decades no general introduction to the field has been available Stephen Griffin provides here an original contribution to American constitutional theory in the form of a short lucid introduction to the subject for scholars and an informed lay audience He surveys in an unpolemical way the theoretical issues raised by judicial practice in the United States over the past three centuries particularly since the Warren Court and locates both theory and practices that have inspired dispute among jurists and scholars in historical context At the same time he advances an argument about the distinctive nature of our American constitutionalism regarding it as an instance of the interpenetration of law and politics American Constitutionalism is unique in considering the perspectives of both law and political science in relation to constitutional theory Constitutional theories produced by legal scholars do not usually discuss state centered theories of American politics the importance of institutions behaviorist research on judicial decision making or questions of constitutional reform but this book takes into account the political science literature on these and other topics The work also devotes substantial attention to judicial review and its relationship to American democracy and theories of constitutional interpretation **Constitutionalism and American Culture**

Sandra F. VanBurkleo, Kermit L. Hall, Robert J. Kaczorowski, 2002 Cultural history and themendment New York Times v Sullivan and its times Kermit L Hall New directions in American constitutional history Words as hard as cannon balls women s rights agitation And liberty of speech in nineteenth century America Sandra F VanBurkleo Race state market and civil society in constitutional history Mark Tushnet Constitutional history and the cultural turn cross Examining the legal reelist narratives of Henry Fonda Norman L Rosenberg Contributors *Constitutionalism and Society in Africa* Okon Akiba, 2017-03-02 The issues addressed in this rewarding book provide new insight into the way we conceive reflect and

study the problems of political transformation and constitution making in Africa The study provides a refreshingly in depth analysis of the strengths and weaknesses of constitutional provisions for managing the challenges of race religion ethnicity citizenship civil liberties and civil military relations in Africa s transitional democracies Tracing emerging trends in constitution making it blends the theory of constitutional democracy with case studies and defines the imperative of social justice

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