

CONSTITUTIONALISM,

IDENTITY, DIFFERENCE,

AND LEGITIMACY

THEORETICAL PERSPECTIVES

MICHEL ROSENFELD, EDITOR

Constitutionalism Identity Difference And Legitimacy Theoretical Perspectives Constitutional Conflicts S

Jaclyn L Neo,Ngoc Son Bui



Constitutionalism Identity Difference And Legitimacy Theoretical Perspectives Constitutional Conflicts S:

Constitutionalism, Identity, Difference, and Legitimacy Michel Rosenfeld, 1994 Interest in constitutionalism and in the relationship among constitutions national identity and ethnic religious and cultural diversity has soared since the collapse of socialist regimes in Eastern Europe and the former Soviet Union Since World War II there has also been a proliferation of new constitutions that differ in several essential respects from the American constitution These two developments raise many important questions concerning the nature and scope of constitutionalism The essays in this volume written by an international group of prominent legal scholars philosophers political scientists and social theorists investigate the theoretical implications of recent constitutional developments and bring useful new perspectives to bear on some of the longest enduring questions confronting constitutionalism and constitutional theory Sharing a common focus on the interplay between constitutional identity and individual or group diversity these essays offer challenging new insights on subjects ranging from universal constitutional norms and whether constitutional norms can be successfully transplanted between cultures to a consideration of whether constitutionalism affords the means to reconcile a diverse society's quest for identity with its need to properly account for its differences from the relation between constitution making and revolution to that between collective interests and constitutional liberty and equality This collection's broad scope and nontechnical style will engage scholars from the fields of political theory social theory international studies and law Contributors Andrew Arato Aharon Barak Jon Elster George P Fletcher Louis Henkin Arthur J Jacobson Carlos Santiago Nino Ulrich K Preuss David A J Richards Michel Rosenfeld Dominique Rousseau Andr s Saj Frederick Schauer Bernhard Schlink M M Slaughter Cass R Sunstein Ruti G Teitel Robin West

Pluralist Constitutions in Southeast Asia Jaclyn L Neo, Ngoc Son Bui, 2019-04-04 This book examines the presence of ethnic religious political and ideational pluralities in Southeast Asian societies and how their respective constitutions respond to these pluralities Countries covered in this book are Brunei Cambodia Indonesia Laos Malaysia Myanmar the Philippines Singapore Thailand and Vietnam The chapters examine first the range of pluralist constitutional values and ideas embodied in the constitutions secondly the pluralist sources of constitutional norms thirdly the design of constitutional structures responding to various pluralities and fourthly the construction and interpretation of bills of rights in response to existing pluralities The pluralist constitution is thus one that recognises internal pluralities within society and makes arrangements to accommodate rather than eliminate these pluralities

Constitutional Identity and Constitutionalism in Africa Charles Manga Fombad, Nico Steytler, 2024 This book in the Stellenbosch Handbooks in African Constitutional Law series provides a critical analysis of existing paradigms concepts and normative ideologies of modern African constitutional identity

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.

Peacebuilding, Constitutionalism and the Global South Kajit Bagu (John Paul), 2019-07-05. This book presents the case that liberal constitutionalism in the global South is a legacy of colonialism and is inappropriate as a means of securing effective peace in regions that have been subject to recurrent conflict. The work demonstrates the failure of liberal constitutionalism in guaranteeing peace in the postcolonial global South. It develops an alternative, more compelling constitutionalism for peacebuilding in conflicted regions. This is based on constitutionalism that recognises plurality as a major feature in the global South. Drawing on events in Nigeria, it develops a constitutional model based on Cognitive Justice, which could deliver peace by addressing historic conceptual, legal, institutional and structural issues that have created social inequality and injustice. The study also incorporates insights from the development of plurinational constitutions in South America. The book will be an invaluable resource for researchers, academics and policy makers with an interest in constitutional legal theory, peacebuilding and postcolonial studies.

Constitutional Ratification without Reason Jeffrey A. Lenowitz, 2022-03-10. This volume focuses on constitutional ratification, the procedure in which a draft constitution is submitted by its creators to the people or their representatives in an up or down vote determining implementation. Ratification is increasingly common and routinely recommended by experts. Nonetheless, it is neither neutral nor inevitable. Constitutions can be made without it, and when it is used, it has significant effects. This raises the central question of the book: should ratification be recommended? Put another way, is there a reason for treating the procedure as a default for the constitution-making process? Surprisingly, these questions are rarely asked. The procedure's worth is assumed, not demonstrated, while ratification is generally overlooked in the literature. In fact, this is the first sustained study of ratification. To address these oversights, this book defines ratification and its types, explains the procedure's effects, conceptual origins and history, and then concentrates on finding reasons for its use. Specifically, it builds up and analyzes the three most likely normative justifications. These urge the implementation of ratification because the procedure enables the constituent power to make its constitution, fosters representation during constitution-making, or helps create a legitimate constitution. Ultimately, these justifications are found wanting, leading to the conclusion that ratification lacks a convincing, context-independent justification. Thus, until new arguments are developed, experts should not give recommendations for ratification as a matter of course; practitioners should not reach for it uncritically, and more generally, one should avoid the blanket application of

concepts from democratic theory to extraordinary contexts such as constitution making **Making We the People**
Chae-hak Ham, Sung Ho Kim, 2015-12-10 This book examines Japan and Korea's post World War II constitutional history to
challenge enduring assumptions about the nature of constitution making The Oxford Handbook of Comparative
Constitutional Law Michel Rosenfeld, András Sajó, 2012-05-17 The field of comparative constitutional law has grown
immensely over the past couple of decades Once a minor and obscure adjunct to the field of domestic constitutional law
comparative constitutional law has now moved front and centre Driven by the global spread of democratic government and
the expansion of international human rights law the prominence and visibility of the field among judges politicians and
scholars has grown exponentially Even in the United States where domestic constitutional exclusivism has traditionally held
a firm grip use of comparative constitutional materials has become the subject of a lively and much publicized controversy
among various justices of the U S Supreme Court The trend towards harmonization and international borrowing has been
controversial Whereas it seems fair to assume that there ought to be great convergence among industrialized democracies
over the uses and functions of commercial contracts that seems far from the case in constitutional law Can a parliamentary
democracy be compared to a presidential one A federal republic to a unitary one Moreover what about differences in
ideology or national identity Can constitutional rights deployed in a libertarian context be profitably compared to those at
work in a social welfare context Is it perilous to compare minority rights in a multi ethnic state to those in its ethnically
homogeneous counterparts These controversies form the background to the field of comparative constitutional law
challenging not only legal scholars but also those in other fields such as philosophy and political theory Providing the first
single volume comprehensive reference resource the Oxford Handbook of Comparative Constitutional Law will be an
essential road map to the field for all those working within it or encountering it for the first time Leading experts in the field
examine the history and methodology of the discipline the central concepts of constitutional law constitutional processes and
institutions from legislative reform to judicial interpretation rights and emerging trends *Constitutionalizing Secession in
Federalized States* Miodrag A. Jovanović, 2007 This book is a thorough and professional study about secession Starting from
the perspective of contemporary political philosophy the book explores the relevance of this issue for the theory and practice
of federalism as well as its status under current public international law and concludes with a comparative constitutional
analysis of the subject matter In the final chapter it provides a constitutionalized procedure of secession based on
fundamental liberal democratic values The book argues that a liberal democratic response to the secession controversy might
consist of the constitutionalization of a right to secession While a number of recent works in political theory point to the fact
that under certain circumstances the moral right of a group to secession should be recognized only a few of them are ready
to defend the institutionalization of that right through the instruments of constitutional law This topical and thought
provoking book is a welcome contribution to the ongoing debate on secession and will be of interest to academics in a variety

of disciplines such as law history politics international relations philosophy and applied ethics and to politicians and constitution drafters A Pluralist Theory of Constitutional Justice Michel Rosenfeld, 2022 This book provides a systematic account of the role of distributive justice in the normative legitimation of liberal constitutions The requirements of distributive justice are highly contested and constitutions are susceptible to influencing those they govern Rosenfeld suggests that liberal constitutions must incorporate justice essentials

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