

Marco Bünte, Björn Dressel

Constitutional Review and Democracy Miodrag A. Jovanović, 2015 This volume is a follow up to the conference Constitutional Review and Democracy organized in November 2013 at the Faculty of Law University of Belgrade The conference was convened as part of the ongoing project Constitutionalism and Rule of Law in the Nation State Building The Case of Serbia The book sheds new light on the complex relation between democracy and judicial review of constitutionality It starts off with some general and theoretical aspects of the debate Then the second section discusses constitutional review in the European transnational setting while the third part explores the dynamics between parliaments and highest courts in constitutional democracies without the formalized constitutional review Finally the book addresses the role of constitutional review in the processes of democratic transition and consolidation Contents include Part I General Aspects and Theoretical Problems Establishing Effective Constitutional Review The Theory of Constitutional Review Always above the Law Justification of Constitutional Review Revisited On the Abstract Case against Constitutional Review Part II Constitutional Review beyond the Nation State Constitutional Review in a Democratic Deficit Setting The Case of the European Union Authority of European Human Rights Law Lessons for Constitutional Law Ban on Political Parties in a Dialogue of Jurisdictions Cases against Turkey Bulgaria and Spain Part III Constitutionalism and Democracy without Review Lingering with Intent The UK Constitutional Review Constitutional Review and Democracy in the Netherlands Balancing Legislative and Judicial Powers in an Internationalized Legal Order Part IV Constitutional Review and Democratic Transition Constitutional Justice and the Rule of Law The Contribution of the Spanish Constitutional Court to the Consolidation of Democracy The Romanian Constitutional Judge Lost in Transition Finding Ways through the Clouds of Uncertainty Searching for Paths in the Desert of Sorrow The Functioning of Constitutional Justice in a Non Consolidated Democracy Constitutional Review and the Parliamentary Supermajority The Hungarian Example The Role of the Constitutional Court of Serbia in Developing Constitutional Democracy The Example of a Dispute on the Legal Nature of Representative Mandate Series Democracy and the Rule of Law Vol 5 Subject Constitutional Law International Law The United States Supreme Court's Assault on the Constitution, Democracy, and the Rule of Law Adam Lamparello, Cynthia Swann, 2016-12-01 This book argues that the judiciary particularly the Supreme Court should embrace an interpretive framework that promotes equal participation in the democratic process fosters accountability and facilitates robust public discourse among citizens of all backgrounds The authors propose a solution that strives to restore integrity to the Court's decision making process by eschewing ideology and a focus on the utility of outcomes in favor of an intellectually honest jurisprudence that gives all citizens a meaningful voice in governance The work is divided into seven parts Parts I V identify the worst decisions in the Court history and the common themes that helped produce them The chapters within each part are dedicated to a single Supreme Court decision in which the authors analyze the Court's reasoning and explain why it undermined federalism

separation of powers and democratic governance Additionally the authors explain why these decisions compromised the relationship between the Court and coordinate branches the federal government and the states and citizens and their elected representatives Part VI identifies several of the best Supreme Court decisions and explains why they provide a principled framework that can be applied in other cases and result in a pro democracy jurisprudence Finally in Part VII the authors propose a comprehensive solution that should inform the Justices judicial philosophies regardless of ideology and strive to promote an equal and participatory democracy The final chapter offers concluding thoughts and argues that a healthy democracy is the foundation upon which equality rests and that a collective view of rights is the path by which to restore liberty for all citizens 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 The Language of Constitutional Comparison Venter, Francois, 2022-03-04 In this incisive and thought provoking book Francois Venter illuminates the issues arising from the fact that the current language of constitutional law is strongly premised on a particular worldview rooted in the history of the states around the North Atlantic Ocean Highlighting how this terminological hegemony is being challenged from various directions Venter explores the problem that all constitutional comparatists face that they all must use the same words to express different meanings

Constitutionality of Law without a Constitutional Court Mirosław Granat, 2023-09-01 This book analyses the problem of the possibility of guaranteeing the constitutionality of law in cases when a constitutional court either has been weakened or does not exist A starting point of the research is the emergence of the so called illiberal constitutionalism in several states namely Poland Hungary and Turkey as this phenomenon gravely affects the functioning of constitutional courts The work is divided into three parts The first contains contributions of a theoretical nature dedicated to the current shape of constitutional review in particular in the light of the emergence of illiberal constitutionalism. This part of the book also deals with the collapse of the centralised constitutional review in Poland and the attempts to resolve the constitutional crisis The second is focused on discussing specific current problems with constitutional review on the basis of states such as Hungary Romania Turkey and Poland The third relates to other forms of constitutional review that is the so called dispersed model and the parliamentary one executed in the course of the legislative process The contributions discuss such forms of constitutional review in the Netherlands and Finland The book will be a valuable resource for students academics and policy makers working in the areas of constitutional law and politics Rule of Law, Human Rights and Judicial Control of Power Rainer Arnold, José Ignacio Martínez-Estay, 2017-05-16 Judicial control of public power ensures a guarantee of the rule of law This book addresses the scope and limits of judicial control at the national level i e the control of public authorities and at the supranational level i e the control of States It explores the risk of judicial review leading to judicial activism that can threaten the principle of the separation of powers or the legitimate exercise of state powers It analyzes how national and supranational legal systems have embodied certain mechanisms such as the principles of reasonableness proportionality deference and margin of appreciation as well as the horizontal effects of human rights that help to determine how far a judge can go Taking a theoretical and comparative view the book first examines the conceptual bases of the various control systems and then studies the models structural elements and functions of the control instruments in selected countries and regions It uses country and regional reports as the basis for the comparison of the convergences and divergences of the implementation of control in certain countries of Europe Latin America and Africa The book s theoretical reflections and comparative investigations provide answers to important questions such as whether or not there are nascent universal principles concerning the control of public power how strong the impact of particular legal traditions is and to what extent international *Principles of French* law concepts have had harmonizing and strengthening effects on internal public power control Constitutional Law Marie-Luce Paris, 2024-12-11 Principles of French Constitutional Law offers a concise and accessible account of the key principles and rules of constitutional law in the French legal system presenting a muchneeded up to date overview of this rapidly changing subject The textbook explores the five essential pillars that underpin the teaching of constitutional law namely the institutions legal history case law comparative law and current affairs and developments It is split into two core sections Part I examines the basis of French constitutional law the theoretical developments about key

notions of constitutional law such as the state and the constitution as well as the historical background to French constitutional law Part II provides students with an understanding of the current Fifth Republic and how constitutional rules are adopted and applied and how they affect other areas of law and politics It offers a critical account of the 1958 Constitution's past present and future by placing it in its political and socio historical contexts and critically assessing contemporary developments and constitutional reforms Given the growing expansion of this branch of law in the French legal system this book will be essential reading for anyone studying French Law Law with French Comparative Constitutional Law The Law and Politics of Unconstitutional Constitutional Amendments in Asia Rehan and European Legal Studies Abeyratne, Ngoc Son Bui, 2021-11-29 This book explains how the idea and practice of UCA are shaped by and inform constitutional politics through various social and political actors and in both formal and informal amendment processes across Asia This is the first book length study of the law and politics of unconstitutional constitutional amendments in Asia Comprising ten case studies from across the continent and four broader theoretical chapters the volume provides an interdisciplinary comparative perspective on the rising phenomenon of unconstitutional constitutional amendments UCA across a range of political legal and institutional contexts The volume breaks new ground by venturing beyond the courts to consider UCA not only as a judicial doctrine but also as a significant feature of political and intellectual discourse The book will be a valuable reference for law and political science researchers as well as for policymakers and NGOs working in related fields Offering broad coverage of jurisdictions in East Asia Southeast Asia and South Asia it will be useful to scholars and practitioners within Asia as well as to those seeking to better understand the law and politics of the region

Constitutional Review and Democracy Miodrag A. Jovanović, 2015 This volume is a follow up to the conference Constitutional Review and Democracy organized in November 2013 at the Faculty of Law University of Belgrade The conference was convened as part of the ongoing project Constitutionalism and Rule of Law in the Nation State Building The Case of Serbia The book sheds new light on the complex relation between democracy and judicial review of constitutionality It starts off with some general and theoretical aspects of the debate Then the second section discusses constitutional review in the European transnational setting while the third part explores the dynamics between parliaments and highest courts in constitutional democracies without the formalized constitutional review Finally the book addresses the role of constitutional review in the processes of democratic transition and consolidation Contents include Part I General Aspects and Theoretical Problems Establishing Effective Constitutional Review The Theory of Constitutional Review Always above the Law Justification of Constitutional Review Revisited On the Abstract Case against Constitutional Review Part II Constitutional Review beyond the Nation State Constitutional Review in a Democratic Deficit Setting The Case of the European Union Authority of European Human Rights Law Lessons for Constitutional Law Ban on Political Parties in a Dialogue of Jurisdictions Cases against Turkey Bulgaria and Spain Part III Constitutionalism and Democracy without Review Lingering

with Intent The UK Constitutional Review Constitutional Review and Democracy in the Netherlands Balancing Legislative and Judicial Powers in an Internationalized Legal Order Part IV Constitutional Review and Democratic Transition Constitutional Justice and the Rule of Law The Contribution of the Spanish Constitutional Court to the Consolidation of Democracy The Romanian Constitutional Judge Lost in Transition Finding Ways through the Clouds of Uncertainty Searching for Paths in the Desert of Sorrow The Functioning of Constitutional Justice in a Non Consolidated Democracy Constitutional Review and the Parliamentary Supermajority The Hungarian Example The Role of the Constitutional Court of Serbia in Developing Constitutional Democracy The Example of a Dispute on the Legal Nature of Representative Mandate Series Democracy and the Rule of Law Vol 5 Subject Constitutional Law International Law The Cambridge Companion to Comparative Constitutional Law Roger Masterman, Robert Schütze, 2019-10-03 What is the purpose of comparative constitutional law Comparing constitutions allows us to consider the similarities and differences in forms of government and the normative philosophies behind constitutional choices Constitutional comparisons offer hermeneutic help they enable us to see our own constitution with different eyes and to locate its structural and normative choices by references to alternatives evident in other constitutional orders This Cambridge Companion presents readers with a succinct yet wide ranging companion to a modern comparative constitutional law course offering a wide ranging yet concise introduction to the subject Its twenty two chapters are arranged into five thematic parts starting with an exploration of the theoretical foundations Part I and some important historical experiences Part II it moves on to a discussion of the core constitutional principles Part III and state institutions Part IV finally it analyses forms of transnational constitutionalism Part V that have emerged in our global times The Judicial Construction of Hong Kong's Basic Law Lo Pui Yin, 2014-02-13 China has granted Hong Kong a high degree of autonomy through the Basic Law under the principle of one country two systems Hong Kong s legal system under the Basic Law is based on the common law and is administered by independent courts By interpreting the Basic Law Hong Kong's courts have reviewed legislation and executive decisions and have achieved a second founding of the Basic Law as an enforceable constitution This book is the first comprehensive account of how the Hong Kong courts gained this vital power of judicial review Through an analysis of important court cases since 1997 the book also examines how the Hong Kong courts maintain their relationships with the executive and legislature and with China's Central Authorities which have been sceptical of these achievements Hong Kong s unique status as a common law jurisdiction within socialist China poses risks of integration this book concludes that the best choice lies in maintaining and developing a cosmopolitan judicial outlook This book will become the definitive account of the judicial role in Hong Kong after 1997 Writing with great flair Dr Lo provides a richly contextual story of judges making great use of a novel legal arrangement to tread new ground This thorough work of scholarship is a must read for students of Hong Kong law as well as those interested in China and comparative judicial politics more broadly Tom Ginsburg Leo Spitz Professor of International Law University of

Chicago Law School Lo Pui Yin has written a comprehensive and sophisticated introduction to the major cases and jurisprudence of the Hong Kong courts Engaging important current controversies he offers a powerful defence of the present system of constitutional review resting on Hong Kong s common law tradition Mark Tushnet William Nelson Cromwell Professor of Law Harvard Law School This is a thoughtful and scholarly account of an important topic the construction of the Basic Law by the HKSAR courts This is a question of vital importance to Hong Kong but it should also be of interest and importance to Mainland legal scholarship Moreover the comparative constitutional lawyers across the world will be intrigued by this rigorous and perceptive account of the bridge between the common law of Hong Kong and the legal system of the PRC Christopher Forsyth Professor of Public Law and Private International Law University of Cambridge Lo Pui Yin has produced a monumental book of great learning profound research and insightful reflections on the efforts of Hong Kong s judiciary in maintaining the rule of law within the framework of the Basic Law developing its jurisdiction and jurisprudence with great skill learning and now a bit of tact Lo s mastery of the case law is unrivalled and his legal and political analysis masterly Yash Ghai Emeritus Professor University of Hong Kong and author of Hong Kong s New Constitutional Order

The Ultimate Rule of Law David M. Beatty, 2004 This book examines judgments of leading courts around the world on issues such as religious freedom sex discrimination and social and economic rights Beatty develops a radical alternative to the conventional view that in deciding these cases judges engage in an essentially interpretative and thus subjective act relying ultimately on their personal beliefs and political opinions Beatty's analysis shows that it is possible to apply an impartial and objective method of judicial review based on the principle of proportionality which acts as an ultimate rule of law and is fully compatible with the ideals of democracy and popular sovereignty Constitutional Evolution in Central and Eastern Europe Alexander H.E. Morawa, 2016-12-14 This book examines EU enlargement by studying how domestic constitutional evolution in the new member states contributes to European integration In contrast to the usual top down analytical pattern it reverses the paradigm by looking at constitutional developments and dynamics from the bottom up studying how domestic constitutional evolution contributes to European integration The authors analyze constitutional trends from the perspective of new Member States as policy makers and not strictly as policy takers. The issue of conditionality is also explored in a discussion of the extent to which pre 2004 and 2007 conditionality has had lasting effects at the level of constitutionalization of different areas and norms and if so of what kind The exploration of Europeanization effects in recent Member States substantiates and demonstrates how enlargement has been an important driving force for the effective export of EU legal rules in this region The book utilizes a comparative approach to highlight the merits and obstacles created by the growing diversity in the constitutional rules and patterns of the new Member States It also contains a section that places the CEE constitutionalizing map in a broader comparative European and global context establishing links with similar transitional regimes in the continent and elsewhere Politics and Constitutions in Southeast Asia Marco Bünte, Björn

Dressel,2016-07-15 In recent years the constitutional landscape of Southeast Asia has changed tremendously Against a worldwide background of liberalization globalization and democratization states in the region have begun to alter their constitutions reinforcing human rights provisions and putting in place institutional safeguards such as constitutional courts and human rights commissions On closer examination however the picture is very complex with constitutional developments differing greatly between states This book explores a range of current constitutional developments in the different states of Southeast Asia through a distinct political lens Drawing on comparative and single case studies it considers various constitutional areas including constitution drafting human rights legal safeguards and the continuing role of the military sets constitutional developments in the wider political and historical context of each country and makes comparisons both with Western democracies and with other developing regions The book concludes by assessing overall how far constitutional practices and trajectories are converging towards a liberal Western model or towards a distinctly Southeast Asian model

Judges and Democratization B. C. Smith, 2017-02-24 Judiciaries must be politically impartial and immune from political interference if democracy is to be consolidated in countries in transition from authoritarian rule Without an independent judiciary there can be no rule of law and without the rule of law there can be no democracy Judges and Democratization is based on the premise that democracy cannot be consolidated without the rule of law of which judicial independence is an indispensable part It pays particular attention to the restraints placed upon judicial independence and the reforms which are being applied or remain to be adopted in order to guard against the different kinds of interference which prevent judicial decisions being taken in a wholly impartial way It examines the paradox of judicial activism arising from the independence endowed upon the judiciary by post authoritarian constitutions. The book asks how in the context of this endowed authority such accountability can be made compatible with the preservation of judicial independence when the concept of an accountable independent judiciary appears to be a contradiction in terms This text will be of key interest to teachers and students of politics comparative government politics combined politics and law democracy and governance human rights and democratization and democratic development UGC NET Law Unit-10 COMPARATIVE PUBLIC LAW AND SYSTEMS OF GOVERNANCE book theory + 400 Question Answer as per Syllabus DIWAKAR EDUCATION HUB, 2022-08-18 theory MCQ of UGC NET Law Unit 10 COMPARATIVE PUBLIC LAW AND SYSTEMS OF GOVERNANCE Constitutional **Adjudication in Africa** Charles Manga Fombad, 2017 Providing the first comparative analysis of African attempts to promote respect for rule of law and constitutional justice this book examines the diverse and distinctive approaches to constitutional adjudication taken It captures positive and negative developments and future prospects for the different models of constitutional review Hans Kelsen's Pure Theory of Law Lars Vinx, 2007 By showing how Kelsen's theory of law works alongside his political philosophy the book shows the Pure Theory to be part of a wider attempt to understand how political power can be legitimately exercised in pluralist societies Central European Constitutional Courts in the Face of

EU Membership Allan F. Tatham, 2013-03-27 Central European Constitutional Courts in the Face of EU Membership explores the enduring German legal influence on other systems of constitutional justice concentrating on the impact of the Federal Constitutional Court's approach to EU integration on its counterparts in Hungary and Poland Such a model aims to protect Germany's constitutional identity or essential core of sovereignty the contents of which are not susceptible to transfer or limitation in the face of the requirements of the Union's constitutional legal order. The influence of this model on the two Central European courts has encouraged them to take an active part in negotiating the new multilayered judicial construct of Europe Tatham thus firmly places the Hungarian and Polish constitutional courts within the overall context of the continuing dialogue between national courts and the Court of Justice in the evolution of the European constitutional space Human Rights in International Investment Law and Arbitration Pierre-Marie Dupuy, Francesco Francioni, Ernst-Ulrich Petersmann, 2009 This book offers a systematic analysis of the interaction between international investment law investment arbitration and human rights including the role of national and international courts investor state arbitral tribunals and alternative jurisdictions the risks of legal and jurisdictional fragmentation the human rights dimensions of investment law and arbitration and the relationships of substantive and procedural principles of justice to international investment law Part I summarizes the main conclusions of the 24 book chapters and places them into the broader context of the principles of justice global administrative law and multilevel constitutionalism that may be relevant for the administration of justice in international economic law and investor state arbitration Part II includes contributions clarifying the constitutional dimensions of transnational investment disputes and investor state arbitration as reflected in the increasing number of arbitral awards and amicus curiae submissions addressing human rights concerns Part III addresses the need for principle oriented ordering and the normative congruence of diverse national regional and worldwide legal regimes focusing on the pertinent dispute settlement practices and legal interpretation methods of regional economic courts and human rights courts which increasingly interpret international economic law with due regard to human rights obligations of the governments concerned Part IV includes twelve case studies on the potential human rights dimensions of specific protection standards e g fair and equitable treatment non discrimination applicable law e g national and international human rights law rules on corporate social accountability procedural law issues e g amicus curiae submissions and specific fundamental rights e g the protection of human health access to water and protection of the environment These case studies discuss not only the still limited examples of human rights discourse in investor state arbitral awards they also probe the potential legal relevance of investor state arbitration for the judicial recognition interpretation and balancing of primary rules such as of investment law and human rights law in the light of the principles of justice as defined by national and international law

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