

CONSTITUTIONALISM,

IDENTITY, DIFFERENCE,

AND LEGITIMACY

THEORETICAL PERSPECTIVES

MICHEL ROSENFELD, EDITOR

Constitutionalism Identity Difference And Legitimacy Theoretical Perspectives Constitutional Conflicts S

Haider Ala Hamoudi



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 *Constitutional Ratification Without Reason* Jeffrey A. Lenowitz, 2022 This volume analyses constitutional ratification procedures examines their nature origins history and especially the potential justifications for their use The author offers a comprehensive demonstration of how constitution making recommendations can be evaluated and tested from a normative and theoretical perspective **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

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

[Asian Comparative Constitutional Law, Volume 1](#) Ngoc Son Bui, Mara Malagodi, 2023-05-18 This is the first in a 4 volume set that provides the definitive account of the major issues of comparative constitutional law in 19 Asian jurisdictions Volume 1 explores the process and contents in the making of a new constitution The book provides answers to questions on the causes processes substance and implantation involved in making new constitutions such as What are the political social and economic factors that drive the constitution making How are constitutions made and who makes them What are the substantive contents of constitution making What kinds of legislation are enacted to implement constitutions How do courts enforce constitutions The book considers the impact of decolonisation globalisation and social political dynamics which have

led to the enactment of numerous independent constitutions in Asia including Vietnam 2013 Nepal 2015 and Thailand 2017 The jurisdictions covered include Bangladesh Cambodia China Hong Kong India Indonesia Japan Malaysia Mongolia Myanmar Nepal North Korea the Philippines Singapore South Korea Sri Lanka Taiwan Thailand and Vietnam An essential reference for those interested in Asian constitutional law *Sociology of Constitutions* Alberto Febbrajo, Giancarlo Corsi, 2016-05-05 This collection brings together some of the most influential sociologists of law to confront the challenges of current transnational constitutionalism It shows the constitution appearing in a new light no longer as an essential factor of unity and stabilisation but as a potential defence of pluralism and innovation The first part of the book is devoted to the analysis of the concept of constitution highlighting the elements that can contribute from a socio legal perspective to clarifying the principle meanings attributed to the constitution The study goes on to analyse some concrete aspects of the functioning of constitutions in contemporary society In applying Luhmann's General Systems Theory to a comparative analysis of the concept of constitution the work contributes to a better understanding of this traditional concept in both its institutionalised and functional aspects Defining the constitution's contents and functions both at the conceptual level and by taking empirical issues of particular comparative interest into account this study will be of importance to scholars and students of sociology of law sociology of politics and comparative public law **Research Handbook on Law and Marxism** O'Connell, Paul, Özsu, Umut, 2021-12-14 This Research Handbook offers unparalleled insights into the large scale resurgence of interest in Marx and Marxism in recent years with contributions devoted specifically to Marxist critiques of law rights and the state **Religion and the Inculturation of Human Rights in Ghana** Abamfo Ofori Atiemo, 2013-06-13 It has been maintained that the secular nature of modern human rights makes them incompatible with the religious orientation of African and non Western societies However in view of the resilience of religion in the global and local public sphere it is important to explore how religion can contribute to the promotion and enjoyment of human rights Based on fieldwork conducted in Ghana Abamfo Ofori Atiemo here establishes a convergence between human rights and local religious and cultural values in African societies He argues that human rights represent universal dream values This allows for a cultural embedding of human rights in Ghana and other non Western societies He argues that dream values are usually presented in religious language and proclaimed for example by prophets and seers or expressed in certain forms of taboo proverbs or legal norms He employs the concept of inculturation adaptation of the way Church teachings are presented to non Christian cultures as a hermeneutical tool for developing a model to understand the encounter between universal human rights and local cultures Offering a new model for explaining the relation between religion and human rights Religion and the Inculturation of Human Rights in Ghana offers a novel perspective on the links between global trends and local cultures underpinned by strong currents of religious ideas **Constitutionalism in Asia** Wen-Chen Chang, Li-ann Thio, Kevin YL Tan, Jiunn-rong Yeh, 2014-02-19 This book of text cases and materials from Asia is designed for scholars and students of

constitutional law and comparative constitutional law The book is divided into 11 chapters arranged thematically around key ideas and controversies enabling the reader to work through the major facets of constitutionalism in the region The book begins with a lengthy introduction that critically examines the study of constitutional orders in Asia highlighting the histories colonial influences and cultural particularities extant in the region This chapter serves both as a provisional orientation towards the major constitutional developments seen in Asia both unique and shared with other regions and as a guide to the controversies encountered in the study of constitutional law in Asia Each of the following chapters is framed by an introductory essay setting out the issues and succinctly highlighting critical perspectives and themes The approach is one of challenge and response whereby questions of constitutional importance are posed and the reader is then led by engaging with primary and secondary materials through the way the various Asian states respond to these questions and challenges Chapter segments are accompanied by notes comments and questions to facilitate critical and comparative analysis as well as recommendations for further reading The book presents a representative range of Asian materials from jurisdictions including Bangladesh China Hong Kong India Japan Mongolia Nepal Pakistan South Korea Sri Lanka Taiwan Timor Leste and the 10 ASEAN states

Negotiating in Civil Conflict Haider Ala Hamoudi, 2013-11-12 In 2005 Iraq drafted its first constitution and held the country's first democratic election in more than fifty years Even under ideal conditions drafting a constitution can be a prolonged process marked by contentious debate and conditions in Iraq are far from ideal Iraq has long been racked by ethnic and sectarian conflict which intensified following the American invasion and continues today This severe division which often erupted into violence would not seem to bode well for the fate of democracy So how is it that Iraq was able to surmount its sectarianism to draft a constitution that speaks to the conflicting and largely incompatible ideological view of the Sunnis Shi'ah and Kurds Haider Ala Hamoudi served in 2009 as an adviser to Iraq's Constitutional Review Committee and he argues here that the terms of the Iraqi Constitution are sufficiently capacious to be interpreted in a variety of ways allowing it to appeal to the country's three main sects despite their deep disagreements While some say that this ambiguity avoids the challenging compromises that ultimately must be made if the state is to survive Hamoudi maintains that to force these compromises on issues of central importance to ethnic and sectarian identity would almost certainly result in the imposition of one group's views on the others Drawing on the original negotiating documents he shows that this feature of the Constitution was not an act of evasion as is sometimes thought but a mark of its drafters awareness in recognizing the need to permit the groups the time necessary to develop their own methods of working with one another over time

Liberalism, Constitutionalism, and Democracy Russell Hardin, 2003-06-05 In his ground breaking book the leading political philosopher Russell Hardin develops a new theory of liberal constitutional democracy Arguing against the standard consensus theories the author shows how social coordination on limited sociological mutual advantage lies at the heart of liberal constitutionalism when it works to produce stable government The book argues that liberalism

constitutionalism and democracy are coordination theories. They work only in societies in which coordination of the important power groups for mutual advantage is feasible. It then goes on to examine and interpret the US constitution as motivated centrally by the concern with creating a government to enable commerce. In addition, the book addresses the nature of the problems that the newly democratic, newly market-oriented states face. The analysis of constitutionalism is based on its workability, not on its intrinsic normative or universal appeals. Hardin argues similarly: there are harsh limits on the possibilities of democracy. In general, democracy works only on the margins of great issues. Indeed, it is inherently a device for regulating marginal political conflicts. The Ashgate Research Companion to Secession Peter Radan, 2016-03-23

Secession is a detachment of a territory from an existing state with the aim of creating a new state on the detached territory. Secession is usually an outcome of the political mobilization of a population on the territory to be detached and as a political phenomenon is a subject of study in the social sciences. Its impact on inter-state relations is a subject of study in international relations. But secession is also subject to regulation both in the constitutional law of sovereign states and in international law. Following a spate of secessions in the early 1990s, legal scholars have proposed a variety of ways to regulate the international responses to attempts at secessions. Moreover, since the 1980s, normative justification of secession has been subject to an intense debate among political theorists and moral philosophers. This research companion has the following three complementary aims: First, to offer an overview of the current theoretical approaches to secession in the social sciences, international relations, legal theory, political theory, and applied ethics. Second, to outline the current practice of international recognition of secession and current domestic and international laws which regulate secession. Third, to offer an account of major secessionist movements, past and present, from a comparative perspective. In their accounts of past secessions and current secessionist movements, the contributors to this volume focus on the following four components: the nature and source of secessionist grievances; the ideologies and techniques of secessionist mobilization; the responses of the host state or majority parties in the host state; and the international response to attempts at secession. This provides a basis for identification of at least some common patterns in the otherwise highly varied processes of secession. Transitional Justice Ruti G. Teitel, 2002-03-28. At the century's end, societies all over the world are throwing off the yoke of authoritarian rule and beginning to build democracies. At any such time of radical change, the question arises: should a society punish its ancien régime or let bygones be bygones? Transitional Justice takes this question to a new level with an interdisciplinary approach that challenges the very terms of the contemporary debate. Ruti Teitel explores the recurring dilemma of how regimes should respond to evil rule, arguing against the prevailing view favoring punishment yet contending that the law nevertheless plays a profound role in periods of radical change. Pursuing a comparative and historical approach, she presents a compelling analysis of constitutional, legislative, and administrative responses to injustice following political upheaval. She proposes a new normative conception of justice, one that is highly politicized, offering glimmerings of the rule of law that, in her view, have

become symbols of liberal transition Its challenge to the prevailing assumptions about transitional periods makes this timely and provocative book essential reading for policymakers and scholars of revolution and new democracies **Routledge**

Handbook of Democratization in East Asia Tun-jen Cheng, Yun-han Chu, 2017-09-01 This handbook provides a comprehensive analysis of the dynamics and prospects of democratization in East Asia A team of leading experts in the field offers discussion at both the country and regional level including analysis of democratic attitudes and movements in China Japan South Korea and Taiwan Evaluating all the key components of regime evolution from citizen politics to democratic institutions the sections covered include Regional Trends and Country Overviews Institutions Elections and Political Parties Democratic Citizenship Democratic Governance The Political Economy of Democratization Examining the challenges that East Asian emerging democracies still face today as well as the prospects of the region s authoritarian regimes the Routledge Handbook of Democratization in East Asia will be useful for students and scholars of East Asian Politics Comparative Politics and Asian Studies

Constitutionalism Identity Difference And Legitimacy Theoretical Perspectives Constitutional Conflicts S Book Review: Unveiling the Power of Words

In a world driven by information and connectivity, the ability of words has become more evident than ever. They have the ability to inspire, provoke, and ignite change. Such may be the essence of the book **Constitutionalism Identity Difference And Legitimacy Theoretical Perspectives Constitutional Conflicts S**, a literary masterpiece that delves deep to the significance of words and their effect on our lives. Published by a renowned author, this captivating work takes readers on a transformative journey, unraveling the secrets and potential behind every word. In this review, we shall explore the book's key themes, examine its writing style, and analyze its overall affect on readers.

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