

STUDIES IN RATIONALITY AND SOCIAL CHANGE

Constitutionalism and Democracy

Edited by
Jon Elster and Rune Slagstad



Constitutionalism And Democracy Studies In Rationality And Social Change

Jon Elster, Rune Slagstad



Constitutionalism And Democracy Studies In Rationality And Social Change:

Constitutionalism and Democracy Jon Elster, Rune Slagstad, 1988 The eleven essays in this volume supplemented by an editorial introduction centre around three overlapping problems First why would a society want to limit its own sovereign power by imposing constitutional constraints on democratic decision making Second what are the contributions of democracy and constitutions to efficient government Third what are the relations among democracy constitutionalism and private property This comprehensive discussion of the problems inherent in constitutional democracy will be of interest to students in a variety of social sciences It illuminates particularly the current efforts of many countries especially in Latin America to establish stable democratic regimes

Constitutionalism and Democracy Jon Elster, Rune Slagstad, 1989 **Democracy and Civil Society in a Global Era** Scott Nicholas Romaniuk, Marguerite Marlin, 2016-03-31 Democracy and Civil Society in a

Global Era addresses challenges to the strengthening of active citizenship In this highly structured work the themes presented are linked to fostering a culture of peace and non violence the lessening of fear and insecurity in political economic social and cultural terms inherently detached from the conceptualization of political delineations and physical boundaries and the ability to live dignified lives The various regions that are represented in the case studies include the Indian sub continent Malaysia Indonesia Turkey Iran China the Middle East Nigeria and the EU The commonality and universality of the topics allows readers from any region of the world to relate to them This book presents a dynamic combination of theory and field research and is an iconoclastic tour de force of studies in democracy Policy makers think tanks and development practitioners may be particularly be interested in this book because it is about action rather than mere ideas and processes It demonstrates how social movements can introduce and strengthen equality inclusion accountability and the free flow of information These elements in turn can contribute to the acculturation of freedom and social justice in the developed world just as much as in the developing world

Dimensions of Constitutional Democracy Anupama Roy, Michael Becker, 2020-06-01 This book examines a selection of themes that have become salient in contemporary debates on constitutional democracies It focuses in particular on the experiences of India and Germany as examples of post war and post colonial constitutional democracies whose trajectories illustrate democratic transitions and transformative constitutionalism While transformative constitutionalism has come to be associated specifically with the post apartheid experience in South Africa this book uses the transformative as an analytical framework to transcend the dichotomy of west and east and explore how temporally coincident constitutions have sought to install constitutional democracies by breaking with the past While the constitution making processes in the two countries were specific to their political contexts the constitutional promises and futures converged In this context the book explores the themes of Constitutionalism Nationalism Secularism Sovereignty and Rule of Law Freedoms and Rights to investigate how the contestations over democratic transitions and democratic futures have unfolded in the two democracies It offers readers

valuable insights into how the normative frameworks of constitutional democracy take concrete form at specific sites of democratic and constitutional imagination in Dalit and Islamic writings as well as the relationship between state and religion in the writings of public intellectuals political and legal philosophers The book also focuses on specific sites of contestation in democracies including the relationship between sovereignty and citizenship in post colonial India free speech and sedition in liberal democracies questions of land rights in connection with economic and political changes in contemporary contexts and the rights of indigenous communities with regard to international conventions and domestic law Given its scope it will be of interest to students and scholars of political theory political philosophy comparative constitutionalism law and human rights

Constituting Economic and Social Rights Katharine G. Young, 2012-08-23 Food water health housing and education are as fundamental to human freedom and dignity as privacy religion or speech Yet only recently have legal systems begun to secure these fundamental individual interests as rights This book looks at the dynamic processes that render economic and social rights in legal form It argues that processes of interpretation enforcement and contestation each reveal how economic and social interests can be protected as human and constitutional rights and how their protection changes public law Drawing on constitutional examples from South Africa Colombia Ghana India the United Kingdom the United States and elsewhere the book examines innovations in the design and role of institutions such as courts legislatures executives and agencies in the organization of social movements and in the links established with market actors This comparative study shows how legal systems protect economic and social rights by shifting the focus from minimum bundles of commodities or entitlements to processes of value based deliberative problem solving Theories of constitutionalism and governance inform the potential of this approach to reconcile economic and social rights with both democratic and market principles while addressing the material inequality poverty and social conflict caused in part by law itself

Beyond Origins Angélica Maria Bernal, 2017-06-30 The foundings of constitutional democracies are commonly traced to singular moments In turn these moments of national origin are characterized as radical political innovations notable for their civic unity perfect legitimacy and binding authority This common view is attractive as it suggests original founding events actors and ideals that can be evoked to legitimize state authority and unify citizens Angélica Maria Bernal challenges this view of foundings however explaining that it is ultimately dangerous misguided and unsustainable *Beyond Origins* argues that the ascription of a universal authority to original founding events is problematic because it limits our understanding of subsequent foundational changes political transformation and innovation This singular view also confounds our ability to account for all of the actors and venues through which foundation building and constitutional transformation occurs Because such understandings of national foundings obscure the many power struggles at work in them these origin stories are troubling and unhelpful In the wake of these limited views of founding Bernal develops an alternate approach founding beyond origins Rather than asserting that founding events are authoritatively settled and relegated to history this framework redefines foundings as

contentious uncertain and incomplete Indeed the book looks at a wide variety of contexts early imperial Rome revolutionary Haiti and France the mid 20th century racially segregated United States and contemporary Latin America to reconsider political foundings as a contestatory and ongoing dimension of political life Bridging classic and contemporary political and constitutional theory with historical readings Bernal reorients approaches to foundings arguing that it is only through context specific and pragmatist understandings of political origins that we can realize the potential for radical democratic change

Constitutions in Crisis John E. Finn, 1991 With special reference to the experience of Britain and Germany this book examines the dilemma faced by constitutional governments in trying to draft anti terrorist laws while preserving civil liberties *Beyond Origins* Angélica Maria Bernal, Angélica Reyna Bernal, 2017 Beyond Origins challenges the common view of foundings as singular extraordinary moments of political origin and creation Engaging with cases of founding across political traditions from classical Greece to contemporary Latin America the book argues that it is only through pragmatist understandings of democratic origins that we can realize the potential for radical democratic change **Research**

Handbook on Soft Law Mariolina Eliantonio, Emilia Korkea-aho, Ulrika Mörtz, 2023-11-03 This pioneering Research Handbook provides an in depth scholarly overview of the field of soft law exploring the scope of current thinking in the field as well as proposing future pathways for soft law research Through theoretical and empirical analyses by established voices in the field the Research Handbook offers important insights and much needed clarity into the dynamic and complex nature of soft law This title contains one or more Open Access chapters **Explicit and Authentic Acts** David E.

Kyvig, 2016-03-14 In time for the 225th anniversary of the Bill of Rights David Kyvig completed an Afterword to his landmark study of the process of amending the US Constitution The Afterword discusses the many amendments such those requiring a balanced federal budget or limiting the terms of members of Congress that have been proposed since the book was originally published and why they failed of passage At a time when prominent scholars and other public figures have called for a constitutional convention to write a new constitution arguing that our current system of governance is unsustainable Kyvig reminds us of the high hurdles the founders created to amending the constitution and how they have served the country well preventing the amendment process from being used by one faction to serve the passions of the moment In his farewell address President Washington reminded his audience that the Constitution till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all He regarded the Constitution as a binding document worthy of devout allegiance but also believed that it contains a clear and appropriate procedure for its own reform David Kyvig s illuminating study provides the most complete and insightful history of that amendment process and its fundamental importance for American political life Over the course of the past two centuries more than 10 000 amendments have been proposed by the method stipulated in Article V of the Constitution Amazingly only 33 have garnered the required two thirds approval from both houses of Congress and only 27 were ultimately ratified into law by the states Despite their small number those amendments

have revolutionized American government while simultaneously legitimizing and preserving its continued existence. Indeed, they have dramatically altered the relationship between state and federal authority as well as between government and private citizens. Kyvig reexamines the creation and operation of Article V, illuminating the process and substance of each major successful and failed effort to change the formal structure, duties, and limits of the federal government. He analyzes in detail the Founders' intentions, the periods of great amendment activity during the 1790s, 1860s, 1910s, and 1960s, and the considerable consequences of amendment failure involving slavery, alcohol prohibition, child labor, New Deal programs, school prayer, equal rights for women, abortion, balanced budgets, term limits, and flag desecration.

The Concert of Civilizations Jeremy Kleidosty, 2016-03-09 Are Western and Islamic political and constitutional ideas truly predestined for civilizational clash? In order to understand this controversy, *The Concert of Civilizations* begins by deriving and redefining a definition of constitutionalism that is suitable for comparative cross-cultural analysis. The rule of law, reflection of national character, and the clear delineation and limitation of governmental power are used as lenses through which thinkers like Cicero, Montesquieu, and the authors of *The Federalist Papers* can be read alongside al-Farabi, Ibn Khaldun, and the Ottoman Tanzimat decrees. Bridging the civilizational divide is a chapter comparing the Magna Carta with Muhammad's Constitution of Medina, as both documents can be seen as foundational within their traditions. For the first time in political theory, this text also provides a sustained, detailed analysis of Khayr al-Din al-Tunisi's book *The Surest Path*, which explains his fusion of Muslim and Western ideas in his writing of Tunisia's first modern constitution, which is also the first constitution for a majority Muslim state. Finally, the book discusses the Arab Spring through a brief overview of the revolutions in Egypt, Libya, and Tunisia, and offers some early thoughts about Tunisia's uniquely successful revolution.

Constitutionalism and Democratic Transitions Veronica Federico, Carlo Fusaro, 2006 The book, as the outcome of a research performed by the University of Florence and the United States Institute of Peace in Washington, explores the role of law in the process of democratic transition in South Africa. More specifically, it emphasizes how constitutional law may contribute to civilize apparently reconcilable conflicts, a part from laying down the foundations of the new legal order and institutions. The book, as the outcome of a research performed by the University of Florence and the United States Institute of Peace in Washington, explores the role of law in the process of democratic transition in South Africa. More specifically, it emphasizes how constitutional law may contribute to civilize apparently reconcilable conflicts, a part from laying down the foundations of the new legal order and institutions.

Symbolic Constitutionalization Marcelo Neves, 2022-03-31 The subject of this book is the social and political meaning of constitutional texts to the detriment of their legal concretization. Focusing on the discrepancy between the hypertrophically symbolic function of constitutions and their insufficient legal concretization, it offers a critical counterpoint to constitutional theory that treats constitutional texts as a panacea to solving political, legal, and social problems. In contrast to the premises of Niklas Luhmann's systems theory regarding law and

constitution in world's society symbolic constitutionalization is approached here in both a comprehensive and far reaching perspective Chapter 1 sets out the debate about symbolic legislation Chapter 2 explains the notion of symbolic constitutionalization as a problem embracing the whole legal system Chapter 3 approaches the issue in terms of allopoiesis of law characterizing it primarily as a problem in peripheral modernity and referring to the Brazilian experience The final chapter discusses the tendency to a symbolic constitutionalization of world society in the scope of a paradoxical peripheralization of the centre

The Constitution of Deliberative Democracy Carlos Santiago Nino, 1996-01-01 In this important and wide ranging book a leading political theorist and activist considers the question What justifies democracy Carlos Santiago Nino critically examines answers others have given and then develops his own distinctive theory of democracy emphasizing its deliberative character In Nino's view democracy resembles a moral conversation and is valued because of its capacity to generate an impartial perspective one that takes into account the interests of all citizens Nino's conception of deliberative democracy bears on the way power is organized under a constitution Drawing on a variety of constitutional traditions he criticizes the presidential system and calls for citizens to participate more directly in the political life of their country He also envisions a revitalized role for political parties Nino shows how deliberative democracy can be combined with and supported by other constitutional practices such as the specific wording of the text and the protection of individual rights The complex constitution that emerges from his analysis consists of a historical constitution an ideal constitution of rights and an ideal constitution of power Nino's goal is to explain how these three dimensions of constitutionalism can reinforce rather than conflict with each other In a final chapter he argues that the deliberative conception of democracy requires a more limited role for judicial review than is usually contemplated

Political Mobilizations and Democratization in Sub-Saharan Africa Wolfgang Stuppert, 2019-06-14 This book explores why democratization processes in Sub-Saharan Africa have made so little progress despite more than two decades of multi party politics on the subcontinent By applying multiple linear regression analyses to a new data set on multi party elections in Sub-Saharan Africa the study investigates the relationship between political mobilizations and electoral competitiveness It finds that the more societal groups engage in political mobilizations such as protests and strikes the more competitive elections become Based on these results the author argues for a change in the policies of international democracy assistance programs The study's findings suggest that efforts to promote democracy would likely be more successful if international donors focused their support on organizations that have active constituencies and are willing to use their mobilization capacity to address ruling elites with political or socio economic grievances

Future(s) of the Revolution and the Reformation Elena Namli, 2019-10-29 This volume brings together philosophers social theorists and theologians in order to investigate the relation between future's of the Revolution and future's of the Reformation It offers reflections on concepts and interpretations of revolution and reformation that are relevant for the analysis of future oriented political practices and

political theologies of the present time 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 regime 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 **Bounded Missions** Craig L. Arceneaux, 2001 Scholars of Latin American politics have been challenged to account for the varied outcomes of the transitions from authoritarian to democratic government that have occurred in many countries south of the border during the past two decades What explains why some transitions were relatively smooth with the military firmly in control of the process while others witnessed substantial concessions by the military to civilian leaders or even total military collapse Rather than focus on causes external to the military such as the previous legacy of democratic rule severe economic crisis or social protest as other scholars have done Craig Arceneaux draws attention to the important variables internal to the military such as its unity or ability to coordinate strategy Using this historical institutionalist approach he compares five different transitions in Brazil and three countries of the Southern Cone Argentina Chile and Uruguay to show what similarities and differences existed and how the differences may be attributed to variations in the internal institutional structure and operation of the military

Constituents Before Assembly Todd A. Eisenstadt, A. Carl LeVan, Tofiq Maboudi, 2017-07-03 Under what circumstances do new constitutions improve a nation's level of democracy Between 1974 and 2014 democracy increased in seventy seven countries following the adoption of a new constitution but it decreased or stayed the same in forty seven others This book demonstrates that increased participation in the forming of constitutions positively impacts levels of democracy It is discovered that the degree of citizen participation at the convening stage of constitution making has a strong effect on levels of democracy This finding defies the common theory that levels of democracy result from the content of constitutions and instead lends support to deliberative theories of democracy Patterns of constitutions are then compared differentiating imposed and popular constitution making processes using case studies from Chile Nigeria Gambia and Venezuela to illustrate the dynamics specific to imposed constitution making and case studies from Colombia Ecuador Egypt and Tunisia to illustrate the specific dynamics of popular constitution making Citizenship Regimes, Law, and Belonging Anupama Roy, 2022-04-04

Successive amendments in the citizenship law in India have spawned distinct regimes of citizenship. The idea of citizenship regimes is crucial for making the argument that law must be seen not simply as bare provisions but also examined for the ideological practices that validate it and lay claims to its enforceability. While citizenship regime in India can be distinguished from one another on the basis of their distinct political and legal rationalities, cumulatively they present a movement from *jus soli* to *jus sanguinis*. The movement towards *jus sanguinis* has been a complex process of entrenchment of exclusionary nationhood under the veneer of liberal citizenship. This work argues that the contemporary landscape of citizenship in India is dominated by the Citizenship Amendment Act (CAA) 2019 and the National Register of Citizens (NRC). The CAA 2019 and the NRC emerged as distinct tendencies from the amendment in the citizenship law in 2003. These tendencies subsequently become conjoined in an ideological alignment to make citizenship dependent on lineage, spelling out ideas of belonging which are tied to descent and blood ties. The NRC has invoked the spectre of crisis in citizenship generated by indiscriminate immigration and the risks presented by illegal migrants to justify an extraordinary regime of citizenship. The CAA provides for the exemption of some migrants from this regime by making religion the criterion of distinguishability. The CAA 2019 and NRC have generated a regime of bounded citizenship based on the assumption that citizenship can be passed on as a legacy of ancestry, making it a natural and constitutive identity. The politics of Hindutva serves as an ideological apparatus buttressing the regime and propelling the movement away from the foundational principles of secular constitutionalism that characterised Indian citizenship in 1949.

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