

CONSTITUTIONAL DOMAINS

DEMOCRACY, COMMUNITY, MANAGEMENT

ROBERT C. POST

Constitutional Domains Democracy Community Management

Jed Rubenfeld



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Constitutional Domains Robert C. Post, 2022 In a series of remarkable forays Robert Post develops an original account of how law functions in a democratic society His work offers a radically new perspective on some of the most pressing constitutional issues of our day such as the regulation of racist speech pornography and privacy Drawing on work in sociology philosophy and political theory Post demonstrates that the law establishes distinct and competing forms of social order democracy in which the law embodies the possibilities of collective self determination community in which the law articulates and enforces a common social identity and management in which the law creates the conditions for accomplishing specific goals Debates over the boundaries between these distinct domains Post argues are central to some of the most intractable problems of modern constitutional law Here we see for instance how the controversy over the regulation of racist speech negotiates the boundary between communitarian and democratic forms of social ordering We see how public forum doctrine a crucial but notoriously mysterious component of First Amendment jurisprudence arbitrates distinctions between the social domains of democracy and management Taking up specific court cases such as that against Hustler magazine and that allowing prayers before state legislatures Post shows us what is actually at stake in these constitutional struggles A highly complex and sophisticated account of the operation of constitutional law in modern society *Constitutional Domains* is essential reading for lawyers social theorists and makers of public policy

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Extreme Speech and Democracy Ivan Hare, James Weinstein, 2009 This book considers the constitutionality of hate speech regulation and examines how liberal democracies have adopted fundamental differences in the way they respond to racist or extreme expressions

Constitutional Violence Antoni Abat i Ninet, 2014-08-20 Western political systems tend to be constitutional democracies dividing the system into a domain of politics where the people rule and a domain of law set aside for a trained elite Antoni Abat i Ninet strives to resolve these apparently exclusive

The Cambridge Companion to the United States Constitution Karen Orren, John W. Compton, 2018-03-22 Offers an accessible interdisciplinary and historically informed introduction to the study of American constitutionalism

Free Speech After 9/11 Katharine Gelber, 2016 The relationship between counter terrorism policy in liberal democratic countries and freedom of speech has never been more prominent than it is today Since the terrorist attacks of 2001 Western governments have made a distinct and deliberate move towards prevention as opposed to purely prosecution of terrorist crimes However in doing so they have reached far into the freedom of speech and as Katharine Gelber argues far further than many commentators have recognized Examining the United States the United Kingdom and Australia the book traces the significant shift in understandings of the appropriate

parameters of freedom of speech and speech practices in the counter terrorism context which has been seen both in policy change and in the discursive justification for that change The book argues that this change has to some extent taken different forms in each jurisdiction which reflect the pre existing institutions within which the principle of freedom of speech was mediated in each country prior to 9 11 *Freedom and Time* Jed Rubenfeld, 2008-10-01 Should we try to live in the present Such is the imperative of modernity Jed Rubenfeld writes in this important and original work of political theory Since Jefferson proclaimed that the earth belongs to the living since Freud announced that mental health requires people to get free of their past since Nietzsche declared that the happy man is the man who leaps into the moment modernity has directed its inhabitants to live in the present as if there alone could they find happiness authenticity and above all freedom But this imperative Rubenfeld argues rests on a profoundly inadequate deforming picture of the relationship between freedom and time Instead Rubenfeld suggests human freedom human being itself necessarily extends into both past and future self government consists of giving our lives meaning and purpose over time From this conception of self government Rubenfeld derives a new theory of constitutional law's place in democracy Democracy he writes is not a matter of governance by the present will of the people it is a matter of a nation's laying down and living up to enduring political and legal commitments Constitutionalism is not counter to democracy as many believe or a pre condition of democracy it is or should be democracy itself over time On this basis Rubenfeld offers a new understanding of constitutional interpretation and of the fundamental right of privacy **Free Speech in the Balance** Alexander Tsesis, 2020-11-12 A comprehensive study of proportional analysis in free speech theory this book challenges US Supreme Court's categorical approach and helps readers understand the breadth of concerns arising from regulations impacting expression **Executive Dominance in Times of Crisis** Camila Almeida Porfiro, 2025-06-04 In recent times there has been a growing dominance of executives centered on the figure of a central leader while parliaments which should be the focus of political power are being marginalized This development reflects a historical process that has only worsened with the COVID 19 emergency This book argues that the frequent use of unilateral acts by the executive exacerbated in times of emergency can lead to a process of serious democratic erosion It holds that the unlimited expansion of unilateral action is incompatible with the principle of separation of powers and the basic elements of a constitutional democracy The judicial and legislative branches especially in times of crisis must exercise firm control over executive acts It puts forward the case that they should limit abuses and risks to democracy based on parameters that are attentive to democratic principles institutional capacities and the protection of fundamental rights In this scenario the book offers a contemporary analysis of executive dominance in Brazil Italy and Germany particularly in the context of the COVID 19 pandemic It engages with traditional literature on the subject while providing a novel perspective particularly in relation to the Global South The book will be of interest to academics and researchers working in the areas of constitutional law and politics administrative law and international and comparative law *Constitutional Secularism in an*

Age of Religious Revival Susanna Mancini, Michel Rosenfeld, 2014 Traditional models of constitutional secularism have struggled to accommodate the modern revival of religious politics The concept has been criticised as empty or illegitimate while political and legal struggles have contested its meaning This book gathers leading experts to examine the scope and substance of constitutional secularism today Discrimination at Work Marie Mercat-Bruns, 2016-02-22 Consists of interviews with American professors Constitutionalism and American Culture Sandra F. VanBurkleo, Kermit L. Hall, Robert J. Kaczorowski, 2002 Cultural history and the end of *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 realist narratives of Henry Fonda Norman L. Rosenberg Contributors **Religious Lawfare** Andrés Constantín, 2025-03-24 This book explores the influence of religious lawfare through the use of conscience based claims assertions rooted in individual or group religious or moral convictions on shaping public policy and law and their repercussions for democracy and human rights It unveils a framework that not only defines but also systematizes uses of conscience based claims challenging prevalent notions about the motivations and actors behind religious lawfare By contextualizing this expansion historically it identifies new uses of these claims as undemocratic and explores global efforts to regulate them through international human rights and comparative law Ultimately the book offers a normative guide for handling conscience based claims in liberal democracies *The Myth of Judicial Activism* Kermit Roosevelt, 2008-01-01 Constitutional scholar Kermit Roosevelt uses plain language and compelling examples to explain how the Constitution can be both a constant and an organic document and takes a balanced look at controversial decisions through a compelling new lens of constitutional interpretation **The Harm in Hate Speech** Jeremy Waldron, 2012-06-04 Every liberal democracy has laws or codes against hate speech except the United States For constitutionalists regulation of hate speech violates the First Amendment and damages a free society Against this absolutist view Jeremy Waldron argues powerfully that hate speech should be regulated as part of our commitment to human dignity and to inclusion and respect for members of vulnerable minorities Causing offense by depicting a religious leader as a terrorist in a newspaper cartoon for example is not the same as launching a libelous attack on a group's dignity according to Waldron and it lies outside the reach of law But defamation of a minority group through hate speech undermines a public good that can and should be protected the basic assurance of inclusion in society for all members A social environment polluted by anti gay leaflets Nazi banners and burning crosses sends an implicit message to the targets of such hatred your security is uncertain and you can expect to face humiliation and discrimination when you leave your home Free speech advocates boast of despising what racists say but defending to the death their right to say it Waldron finds this emphasis on intellectual resilience misguided and points instead to the threat hate speech poses to the lives dignity and reputations of

minority members Finding support for his view among philosophers of the Enlightenment Waldron asks us to move beyond knee jerk American exceptionalism in our debates over the serious consequences of hateful speech *Against Constitutionalism* Martin Loughlin,2022-05-17 Tracing constitutional thought from the Enlightenment to the present Martin Loughlin shows how a tool for the protection of self government has become a means for subverting popular will Across the globe constitutions now displace democratic decision making as courts interpret values in the law that ultimately trump legislative action The Time of Popular Sovereignty Paulina Ochoa Espejo,2015-09-10 Democracy is usually conceived as based on self rule or rule by the people and it is this which is taken to ground the legitimacy of the democratic form of government But who constitutes the people Democratic political theory has a potentially fatal weakness at its core unless it can answer this question satisfactorily In *The Time of Popular Sovereignty* Paulina Ochoa Espejo examines the problems the concept of the people raises for liberal democratic theory constitutional theory and critical theory She argues that to solve these problems the people cannot be conceived as simply a collection of individuals Rather the people should be seen as a series of events an ongoing process unfolding in time She then offers a new theory of democratic peoplehood laying the foundations for a new theory of democratic legitimacy **Code** Lawrence Lessig,2006-12-05 Code counters the common belief that cyberspace cannot be controlled or censored To the contrary under the influence of commerce cyberspace is becoming a highly regulable world where behavior will be much more tightly controlled than in real space Cover

Postcolonial Liberalism Duncan Ivison,2002-11-26 This book presents an account of postcolonial liberalism and argues the case for its sustainability **Speech and Harm** Ishani Maitra,Mary Kathryn McGowan,2012-05-31 Most liberal societies are deeply committed to free speech but there is evidence that some kinds of speech can be harmful in ways that are detrimental to important liberal values such as social inequality This volume draws on a range of approaches in order to explore the problem and determine what ought to be done about allegedly harmful speech

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