



# Constitutional Justice Under Old Constitutions

**Alain-G Gagnon**



## **Constitutional Justice Under Old Constitutions:**

Constitutional Justice Under Old Constitutions Elvind Smith, 1995-09-27 Constitutional Justice under Old Constitutions confronts different national experiences within the framework of a common subject matter viz questions arising from the application of old constitutional texts within one system or another of judicial review Every chapter presents valuable materials and reflections for further exploration on a comparative as well as a national basis The countries covered are the United States Norway Belgium and France all countries having an old constitution The following questions are dealt with the emergence of judicial review of national legislation the interpretation of old constitutional texts complementary sources to old constitutional texts the application of old constitutions in modern societies the legitimacy of judicial review of legislation

**Making Sense of the Constitution** Walter M Frank, 2012-03-22 In Making Sense of the Constitution A Primer on the Supreme Court and Its Struggle to Apply Our Fundamental Law Walter Frank tackles in a comprehensive but lively manner subjects rarely treated in one volume Aiming at both the general reader and students of political science law or history Frank begins with a brief discussion of the nature of constitutional law and why the Court divides so closely on many issues He then proceeds to an analysis of the Constitution and subsequent amendments placing them in their historical context Next Frank shifts to the Supreme Court and its decisions examining among other things doctrinal developments the Court's decision making processes how justices interact with each other and the debate over how the Constitution should be interpreted The work concludes with a close analysis of Court decisions in six major areas of continuing controversy including abortion affirmative action and campaign finance Outstanding by the University Press Books for Public and Secondary Schools

**Purposive Interpretation in Law** Aharon Barak, 2007-09-16 This book presents a comprehensive theory of legal interpretation which allows all legal texts to be approached in a similar manner while remaining sensitive to their important differences Rights-Based Constitutional Review John Bell, Marie-Luce Paris, 2016-04-29 Constitutional review has become an essential feature of modern liberal democratic constitutionalism In particular constitutional review in the context of rights litigation has proved to be most challenging for the courts By offering in depth analyses on changes affecting constitutional design and constitutional adjudication while also engaging with general theories of comparative constitutionalism this book seeks to provide a heightened understanding of the constitutional and political responses to the issue of adaptability and endurance of rights based constitutional review These original contributions written by an array of distinguished experts and illustrated by the most up to date case law cover Australia Belgium Finland France Hungary Ireland Italy Spain the United Kingdom and the United States and include constitutional systems that are not commonly studied in comparative constitutional studies Providing structured analyses the editors combine studies of common law and civil law jurisdictions centralized and decentralized systems of constitutional review and large and small jurisdictions This multi jurisdictional study will appeal to members of the judiciary policymakers and practitioners looking for valuable insights into the case law of

a range of constitutional and supreme courts in this rapidly expanding field of constitutional adjudication It also serves as an excellent resource for academics scholars and advanced students in the fields of law human rights and political science

**Judges as Guardians of Constitutionalism and Human Rights** Martin Scheinin,Helle Krunke,Marina

Aksenova,2016-04-29 There are many challenges that national and supranational judges have to face when fulfilling their roles as guardians of constitutionalism and human rights This book brings together academics and judges from different jurisdictions in an endeavour to uncover the intricacies of the judicial function The contributors discuss several points that each represent contemporary challenges to judging analysis of judicial balancing of conflicting considerations the nature of courts legitimacy and its alleged dependence on public support the role of judges in upholding constitutional values in the times of transition to democracy surveillance and the fight against terrorism and the role of international judges in guaranteeing globally recognized fundamental rights and freedoms This book will be of interest to human rights scholars focusing on the issues of judicial oversight as well as constitutional law scholars interested in comparative perspectives on the role of judges in different contexts It will also be useful to national constitutional court judges and law clerks aiming to familiarise themselves with judicial practices within other jurisdictions The Endurance of National Constitutions Zachary

Elkins,Tom Ginsburg,James Melton,2009-10-19 Based on original historical data this book shows that key changes in design can extend constitutional life *Regulatory Rights* Larry Yackle,2008-09-15 We often hear with particular frequency during recent Supreme Court nomination hearings that justices should not create constitutional rights but should instead enforce the rights that the Constitution enshrines In *Regulatory Rights* Larry Yackle sets out to convince readers that such arguments fundamentally misconceive both the work that justices do and the character of the American Constitution in whose name they do it It matters who sits on the Supreme Court he argues precisely because justices do create individual constitutional rights Traversing a wide range of Supreme Court decisions that established crucial precedents about racial discrimination the death penalty and sexual freedom Yackle contends that the rights we enjoy are neither more nor less than what the justices choose to make of them *Regulatory Rights* is a bracing read that will be heatedly debated by all those interested in constitutional law and the judiciary The Max Planck Handbooks in European Public Law Armin von Bogdandy,Huber

Peter M.,Christoph Grabenwarter,2023-04-13 The Max Planck Handbooks in European Public Law series describes and analyzes the public law of the European legal space an area that encompasses not only the law of the European Union but also the European Convention on Human Rights and importantly the domestic public laws of European states Recognizing that the ongoing vertical and horizontal processes of European integration render legal comparison the task of our time for both scholars and practitioners the project aims to foster a better understanding of the specific European legal pluralism and ultimately to contribute to the legitimacy and efficiency of European public law The first volume of the series began this endeavour with an appraisal of the evolution of the state and its administration offering both cross cutting contributions and

specific country reports The third volume the second in chronological terms continues this approach with an in depth appraisal of constitutional adjudication in various and diverse European countries Fourteen country reports and two cross cutting contributions investigate the antecedents foundations organization procedure and specific approach to constitutional issues throughout the Continent The fourth volume now compares European constitutional jurisdiction in the European legal space It examines the structures of the organization the appointment of judges the procedures and the methods of argumentation and interpretation their impact on state and society their legitimacy as well as their role in the division of powers and thus completes the picture following the country reports in Volume III This comparative perspective is supplemented by an examination that illustrates the relationship with the ECJ the ECtHR and the Venice Commission as well as their constitutional function Finally Constitutional Adjudication Common Themes and Challenges is devoted to the challenges constitutional jurisdiction in the European judicial area is currently facing The historical political and theoretical foundations as well as the basic dogmatic features of constitutional jurisdiction are presented in such a way that the discussion about its role and further development in this legal space is sustainably stimulated **Courts and Political**

**Institutions** Thijmen Koopmans, 2003-09-04 Considers the relation between law and politics including human rights federalism and equal protection *The Influence of American Theories of Judicial Review on Nordic Constitutional Law*

Ragnhildur Helgadóttir, 2006 This study examines the influence of American law and theories of judicial review on the development practice and theorization of judicial review in Norway Denmark and Iceland from the 19th century to the present The study describes how Nordic scholars in the late 19th century rationalized judicial review based on American theory and how American law influenced both their views of the institution and their way of thinking about substantive constitutional rights These views in turn influenced Nordic jurisprudence for decades **Judicial Cosmopolitanism**

Giuseppe Franco Ferrari, 2019-09-24 Judicial Cosmopolitanism The Use of Foreign Law in Contemporary Constitutional Systems offers a detailed account of the use of foreign law by supreme and constitutional Courts of Europe America and East Asia The individual contributions highlight the ways in which the use of foreign law is carried out by the individual courts and the path that led the various Courts to recognize the relevance for the purpose of the decision to foreign law The authors try to highlight reasons and types of the more and more frequent circulation of foreign precedents in the case law of most high courts At the same time they show the importance of this practice in the so called neo constitutionalism The Cambridge Companion to Comparative Constitutional Law

Roger Masterman, Robert Schütze, 2019-10-03 Comparing constitutions allows us to consider the similarities and differences in forms of government as well as the normative philosophies behind constitutional choices The objective behind this Companion is to present the reader with a succinct yet wide ranging companion to a modern comparative constitutional law course **Handbook on Legal Cultures** Sören Koch, Marius Mikkel

Kjølstad, 2023-05-30 Cooperation across borders requires both knowledge of and understanding of different cultures This is

especially true when it comes to the law This handbook is the first to comprehensively present selected legal cultures based on a very specific set of structural elements which can be found in all such cultures Legal cultures are a product of and impacted by certain fundamental and commonly shared ideas on and expectations of the law In all modern societies these ideas are to a certain degree institutionalized or at least embedded in institutionalized practices These practices determine the way lawyers are educated and apply the law how they engage with the ongoing internationalization of law and what kind of values they adhere to Looking at these elements separately enables the reader to identify similarities and differences and to explain them contextually Understanding these general features of legal cultures can help avoid misunderstandings or misinterpretations of foreign law and its application Accordingly this handbook is a necessary starting point for all kinds of legal comparative studies conducted by academics students judges and other legal practitioners

**Unconstitutional Constitutional Amendments** Yaniv Roznai,2017 Can constitutional amendments be unconstitutional Using theoretical and comparative approaches Roznai establishes the nature and scope of constitutional amendment powers by focusing on substantive limitations looking at their prevalence in practice and the conceptual coherence of the very idea of limitations to constitutional amendment powers

*Multinational Federalism* Alain-G Gagnon,2015-12-17 A collection of state of the art reflections by fourteen leading experts in the field of multinational federalism Seymour and Gagnon have gathered contributions from philosophers political scientists and jurists dealing with the accommodation of peoples in countries like Belgium Canada Europe Great Britain India and Spain

The Politics of Human Rights The Belgrade Circle, Obrad Savic,2002-10-17 Original essays on the political and philosophical underpinnings of the idea of human rights by a group of highly distinguished theorists

**Earl Warren and the Warren Court** Harry N. Scheiber,2007-01-01 Earl Warren and the Warren Court comprises essays written by leading experts from the fields of law history and social science on the most important areas of the Warren Court s contributions in American law In addition Scheiber includes appraisals of the Warren Court s influence abroad written by authorities of legal development in Europe Latin America Canada and East Asia This book offers a unique set of analyses that portray how innovations in American law generated by the Warren Court led to a reconsideration of law and the judicial role and in many areas of the world to transformations in judicial procedure and the advancement of substantive human rights Also explored within these pages are the personal role of Earl Warren in the shaping of Warren era law and the ways in which his character and background influenced his role as Chief Justice

**Constitutional Justice under Populism** Fruzsina Gárdos-Orosz,2024-03-19 Features Since the subject matter of the volume is by its approach of constitutional change in populism is an unexamined one neither a monograph nor an edited volume on the effects of populism on a specific legal institution one already facing different external challenges financial crisis migration security crisis Covid 19 etc issues has been published so far The book follows a unique approach in the framework of populist constitutionalism studies because it combines the following features focuses on one of the greatest

contemporary challenges to constitutional democracies is authored by a pre eminent scholar of Hungarian law gives insight into the various problems of constitutional review the transformation of the institution by constitution making and legislation and its legal practice and contributes to the theories of and knowledge on the impacts of external challenges especially those created by political systems on the constitution and law by focusing on studying the transformation of the Hungarian Constitutional Court it provides additional information with high contextual value to the book edited by the author Fruzsina G rdos Orosz together with Kinga Zakari s entitled 30 Years of jurisprudence of the Hungarian Constitutional Court 1990 2020 Nomos Verlag Baden Baden 2022 Benefits Because of the uniqueness of the topic of the book its target group includes scholars and practitioners from all over the world who are interested in populism studies comparative constitutional systems and especially in Hungarian law and jurisprudence as well as constitutional review It will be an important reference as it gives insight into the Hungarian ways of the legal treatment of the most urgent present day challenges in the framework of populist constitutionalism Both the various patterns of responding to the modern challenges and their analyses provided by this book should stimulate intensive academic discussion University students of faculties of law and political science can also be interested in this book Furthermore judges especially judges of constitutional courts and supreme courts could also be a target audience of the proposed book due to the extensive relevance of the judicial dialogue in contemporary jurisprudence Shared knowledge about the new methods of studying populist change legislation and the reaction of the courts to it may be of wide interest Keywords constitutional review constitutional justice in Hungary Hungarian constitutional law populism and courts populism illiberal democracy Hungarian Constitutional Court comparative constitutional review Author Fruzsina G RDOS OROSZ Fruzsina G rdos Orosz is director and research professor of the Institute for Legal Studies Centre for Social Sciences and also professor of public law at the ELTE Law School in Budapest She worked at the Hungarian Constitutional Court between 2003 2007 and 2010 2014 as law clerk in different positions She has published extensively on the development of the Hungarian constitutional system the constitutional complaint procedure and on the competence of the Constitutional Court She has over 150 publications in Hungarian English and French on the rule of law and the separation of powers with regard to judicial review and the protection of human rights <https://jogtk.hu/kutato/gardosoroszfruzsina>

**Deliberative Democracy** Jon Elster, 1998-03-28 This volume assesses the strengths and weaknesses of deliberative democracy

**JUDICIAL REVIEW OF LEGISLATIVE ACTIONS IN INDIA** Dr Sanjay S Bang, 2020-07-29 Generally people organize themselves into a political society and adopt the basic law for their governance The first principle to which they cling is the principle of democracy By definition democracy means a form of government i e a government by the people of the people and for the people But even a little consideration tells us that nearly all those who use the word democracy today understand that it means more than a mere form of government Democracy can better be defined as an absence of class government as the indication of social condition where a political privilege belongs to no one class as opposed to the whole

community While the idea of democracy is relevant to the idea of government by the people the concept includes in the context of the present day affairs a notion of justice and equality of rights for all members of the community Once such an idea is accepted and Democracy is to be the form of government there will be equality of all before the law and equal protection before the law The resulting concept from such an approach of society would be the Rule of Law When people take the decision of having a government by the people and having a Rule of Law for themselves the understanding is reduced by them in a document which is known as the Constitution of the country



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