

CONSTITUTIONALISM

Philosophical Foundations

Edited by
LARRY ALEXANDER

CAMBRIDGE STUDIES IN
PHILOSOPHY AND LAW

Constitutionalism Philosophical Foundations

Alan D. P. Brady



Constitutionalism Philosophical Foundations:

Constitutionalism Larry Alexander, 2001-02-26 A distinguished international team of legal theorists examine the issue of constitutionalism and pose such foundational questions as Why have a constitution How do we know what the constitution of a country really is How should a constitution be interpreted Why should one generation feel bound by the constitution of an earlier one The volume will be of particular importance to those in philosophy law political science and international relations interested in whether and what kinds of constitutions should be adopted in countries without them and involved in debates about constitutional interpretation Philosophical Foundations of Constitutional Law David Dyzenhaus, Malcolm Thorburn, 2016-02-05 Constitutional law has been and remains an area of intense philosophical interest and yet the debate has taken place in a variety of different fields with very little to connect them In a collection of essays bringing together scholars from several constitutional systems and disciplines Philosophical Foundations of Constitutional Law unites the debate in a study of the philosophical issues at the very foundations of the idea of a constitution why one might be necessary what problems it must address what problems constitutions usually address and some of the issues raised by the administration of a constitutional regime Although these issues of institutional design are of abiding importance many of them have taken on new significance in the last few years as law makers have been forced to return to first principles in order to justify novel practices and arrangements in their constitutional orders Thus questions of constitutional revolutions challenges to the demands of the rule of law and the separation of powers have taken on new and pressing importance The essays in this volume address these questions filling the gap in the philosophical analysis of constitutional law The volume will provoke specialists in philosophy politics and law to develop new philosophically grounded analyses of constitutional law and will be a valuable resource for graduate students in law politics and philosophy **Philosophical Foundations of Constitutional Law** David Dyzenhaus, Malcolm Thorburn, 2016 Constitutional law has been and remains an area of intense philosophical interest and yet the debate has taken place in a variety of different fields with very little to connect them In a collection of essays bringing together scholars from several constitutional systems and disciplines Philosophical Foundations of Constitutional Law unites the debate in a study of the philosophical issues at the very foundations of the idea of a constitution why one might be necessary what problems it must address what problems constitutions usually address and some of the issues raised by the administration of a constitutional regime Although these issues of institutional design are of abiding importance many of them have taken on new significance in the last few years as law makers have been forced to return to first principles in order to justify novel practices and arrangements in their constitutional orders Thus questions of constitutional revolutions challenges to the demands of the rule of law and the separation of powers have taken on new and pressing importance The essays in this volume address these questions filling the gap in the philosophical analysis of constitutional law The volume will provoke specialists in philosophy politics and law to develop new philosophically grounded

analyses of constitutional law and will be a valuable resource for graduate students in law politics and philosophy *The Global Model of Constitutional Rights* Kai Möller, 2012-10-25 Since the end of the Second World War and the subsequent success of constitutional judicial review one particular model of constitutional rights has had remarkable success first in Europe and now globally This global model of constitutional rights is characterized by an extremely broad approach to the scope of rights sometimes referred to as rights inflation the acceptance of horizontal effect of rights positive obligations and increasingly also socio economic rights and the use of the doctrines of balancing and proportionality to determine the permissible limitations of rights Drawing on analyses of a broad range of cases from the UK the European Court of Human Rights Germany Canada the US and South Africa this book provides the first substantive moral reconstructive theory of the global model It shows that it is based on a coherent conception of constitutional rights which connects to attractive accounts of judicial review democracy and the separation of powers The first part of the book develops a theory of the scope of rights under the global model It defends the idea of a general right to personal autonomy a right to everything which according to the agent s self conception is in his or her interest The function of this right is to acknowledge that every act by a public authority which places a burden on a person s autonomy requires justification The second part of the book proposes a theory of the structure of this justification which offers original and useful accounts of the important doctrines of balancing and proportionality

The Blackwell Guide to the Philosophy of Law and Legal Theory Martin P. Golding, William A. Edmundson, 2008-04-15 The Blackwell Guide to the Philosophy of Law and Legal Theory is a handy guide to the state of play in contemporary philosophy of law and legal theory Comprises 23 essays critical essays on the central themes and issues of the philosophy of law today written by an international assembly of distinguished philosophers and legal theorists Each essay incorporates essential background material on the history and logic of the topic as well as advancing the arguments Represents a wide variety of perspectives on current legal theory

The Routledge Companion to Philosophy of Law Andrei Marmor, 2012 The Routledge Companion to the Philosophy of Law provides a comprehensive non technical philosophical treatment of the fundamental questions about the nature of law Its coverage includes law s relation to morality and the moral obligations to obey the law the main philosophical debates about particular legal areas such as criminal responsibility property contracts family law law and justice in the international domain legal paternalism and the rule of law The entirely new content has been written specifically for newcomers to the field making the volume particularly useful for undergraduate and graduate courses in philosophy of law and related areas All 39 chapters written by the world s leading researchers and edited by an internationally distinguished scholar bring a focused philosophical perspective to their subjects The Routledge Companion to the Philosophy of Law promises to be a valuable and much consulted student resource for many years

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 *Constitutional Identity* Gary Jeffrey Jacobsohn, 2010-10-29 Jacobsohn argues that a constitution acquires an identity through experience from a mix of the political aspirations and commitments that express a nation's past and the desire to transcend that past. It is changeable but resistant to its own destruction and manifests itself in various ways.

Constitutional Life and Europe's Area of Freedom, Security and Justice Alun Howard Gibbs, 2016-05-23 The challenge of thinking about the place of constitutionalism beyond the conventional categories of the nation state has become a principal concern for legal and political scholars. This book casts this issue in a different light by exploring the implications for the constitutionalism of legal integration in the European Union's area of freedom, security and justice. In doing so, it makes a novel contribution to an understanding of the European Union as a political community beyond the state but in addition explores how this entails thinking differently about what is essential concerning constitutionalism. The book argues that instead of seeking to theorise constitutional foundations, we actually begin to encounter the constitutional life implied by political and legal practices in the European Union and as exemplified here by the area of freedom, security and justice.

The Autonomy of Community Law R. Barents, 2004-01-01 This book is the English version of my *De communautaire rechtsorde* which was published by Kluwer Deventer, the Netherlands in 2000. Where necessary, I have updated the text by taking account of developments until the beginning of 2003.

Making a 21st Century Constitution Frank Vibert, 2018-06-29 Democratic constitutions are increasingly unfit for purpose with governments facing increased pressures from populists and distrust from citizens. The only way to truly solve these problems is through reform. Within this important book, Frank Vibert sets out the key challenges to reform the ways in which constitutions should be revitalised and provides the standards against which reform should be measured.

The Confucian Misgivings--Liang Shu-ming's Narrative About Law Zhangrun Xu, 2017-06-23 The major intellectual interest throughout this book is to offer a study on China's legal legacy through Liang Shu-ming's eyes. The book follows the formula of the parallel between *Life* and *Mind*, *Physis* and *Nomos*, and compares Liang Shu-ming's narrative with his own practical orientation and with the theories of other interlocutors. The book puts Liang Shu-ming into the social context of modern Chinese history, in particular the context of the unprecedented crisis of meaning in the legal realm and the collapse of a transcendental source for Chinese cultural identity in the light of modernity. The evaluation provided by this narrative could be helpful in clarifying the deep structures and significance of the present Chinese legal system through historically exploring Liang Shu-ming's misgivings. The book is intended for academics of legal history and cultural studies. The book is unique in that it is the first book to explore New Confucian's considerations on reconstruction of Chinese legal system in the modern era. It presents a comprehensive systematical comparison of Liang Shu-ming's narrative about constitutional government in China against other schools of thought.

The Constitutional Corporation Stephen

Bottomley,2007 Corporate laws are based on the idea that the interests of shareholders should be the primary concern of company directors However some argue that the proper role for shareholders is to sit back and let the corporation s managers do their job or that the pursuit of shareholders interests detracts from the concerns of employees or victims of corporate wrongdoing or other stakeholders Stephen Bottomley argues that instead of consigning shareholders to this passive role they should be given opportunities to be active members of corporations Corporations are constitutional arrangements rather than mere contractual agreements They are decision making organizations in which questions of process and structure are important Thus instead of using economic criteria such as efficiency as the sole measure for deciding what constitutes good corporate governance this book examines whether ideas of accountability deliberation and contestability provide a valuable framework for assessing corporate structures and process and for encouraging greater shareholder participation

A Matter of Dispute Christopher J. Peters,2011 This work canvasses fundamental problems within the diverse disciplines of legal philosophy democratic theory philosophy of adjudication and public law theory and suggests a unified approach to unraveling them It also addresses practical questions of law and government in a way that should appeal to anyone interested in the complex and often troubled relationship among morality democracy and the rule of law

Comparative Constitutional Studies Günter Frankenberg,2018-03-30 Comparative Constitutional Studies takes a rich area of research and teaching and makes it attractive for the classroom setting and beyond Every constitution has an interesting story to tell and for this book G nter Frankenberg has selected vibrant examples that encourage readers to practice realism demonstrate critical spirit and examine the dark side of framers reports and normative theories

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

Encyclopedia of Political Theory Mark Bevir,2010-03-18 Looking at the roots of contemporary political theory this three volume set examines the global landscape of all the key theories and the theorists behind them and provides concise to the point definitions of key concepts ideas schools and figures

Proportionality and Deference Under the UK Human Rights Act Alan D. P. Brady,2012-05-03 A rigorous analysis of the relationship between proportionality and deference under the Human Rights Act

Fundamental Rights and Democratic Governance Simeon C. R. McIntosh,2005 The Caribbean Community CARICOM has assumed a greater role in guiding and coordinating the affairs of its member states The introduction of the CARICOM Single Market and Economy CSME and the Caribbean Court of Justice CCJ bring the quest for democratic governance into sharp relief Using Caribbean cases Simeon McIntosh discusses the fundamental rights and freedoms of speech and of the press freedom of religion and freedom from inhuman and degrading punishment He examines the protection of these rights and freedoms in the light of changes in society social progress and other developments in the Commonwealth Caribbean within the context of the CSME and the CCJ

Fundamental Rights and Democratic Governance is the first body of work to give serious philosophical treatment to the question of fundamental rights in the Caribbean In this second instalment on Caribbean Constitutionalism McIntosh builds on his earlier work Caribbean Constitutional Reform Rethinking the West Indian Polity in laying the theoretical justification for the Caribbean Court of Justice The Abuse of Constitutional Identity in the European Union Julian Scholtes, 2023-08-08

The idea of constitutional identity has been central to the negotiation of authority between EU and national constitutional orders Many national constitutional courts have declared that the reach of EU law is limited by certain core elements of the national constitution often labelled constitutional identity With the rise of illiberal democracies within the EU the idea of constitutional identity has increasingly come under criticism being seen as easily embedded in authoritarian nativist rhetoric and vulnerable to being abused In The Abuse of Constitutional Identity in the European Union Julian Scholtes provides novel insights into how European authoritarians have utilised the concept of constitutional identity to further their illiberal goals Employing a comparative theoretical perspective his book identifies the factors behind legitimate constitutional identity claims and critically analyses the ways in which these claims can be abused Scholtes examines abuses of constitutional identity in three distinct theoretical dimensions generative substantive and relational The generative dimension looks at how constitutional identity claims come about while the substantive dimension examines a claim s broader relation to a normative theory of constitutionalism The relational dimension on the other hand considers how constitutional identity claims are advanced and whether they are employed as a means of constitutional dialogue or constitutional disengagement

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Table of Contents **Constitutionalism Philosophical Foundations**

1. Understanding the eBook **Constitutionalism Philosophical Foundations**
 - The Rise of Digital Reading **Constitutionalism Philosophical Foundations**
 - Advantages of eBooks Over Traditional Books
2. Identifying **Constitutionalism Philosophical Foundations**
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in a **Constitutionalism Philosophical Foundations**
 - User-Friendly Interface
4. Exploring eBook Recommendations from **Constitutionalism Philosophical Foundations**
 - Personalized Recommendations
 - **Constitutionalism Philosophical Foundations** User Reviews and Ratings
 - **Constitutionalism Philosophical Foundations** and Bestseller Lists

5. Accessing Constitutionalism Philosophical Foundations Free and Paid eBooks
 - Constitutionalism Philosophical Foundations Public Domain eBooks
 - Constitutionalism Philosophical Foundations eBook Subscription Services
 - Constitutionalism Philosophical Foundations Budget-Friendly Options
6. Navigating Constitutionalism Philosophical Foundations eBook Formats
 - ePub, PDF, MOBI, and More
 - Constitutionalism Philosophical Foundations Compatibility with Devices
 - Constitutionalism Philosophical Foundations Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Constitutionalism Philosophical Foundations
 - Highlighting and Note-Taking Constitutionalism Philosophical Foundations
 - Interactive Elements Constitutionalism Philosophical Foundations
8. Staying Engaged with Constitutionalism Philosophical Foundations
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Constitutionalism Philosophical Foundations
9. Balancing eBooks and Physical Books Constitutionalism Philosophical Foundations
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Constitutionalism Philosophical Foundations
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Constitutionalism Philosophical Foundations
 - Setting Reading Goals Constitutionalism Philosophical Foundations
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Constitutionalism Philosophical Foundations
 - Fact-Checking eBook Content of Constitutionalism Philosophical Foundations
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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