

OXFORD CONSTITUTIONAL THEORY



*Constitutional Courts
and Deliberative
Democracy*

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Constitutional Courts Deliberative Democracy Oxford

Johanna Fröhlich



Constitutional Courts Deliberative Democracy Oxford:

Supermajority Voting in Constitutional Courts Cristóbal Caviedes, 2024-08-02 This book challenges the wide use of majority rule in many constitutional courts for declaring statutes unconstitutional and argues that these courts should rather perform constitutional review by using supermajority rules. Considering that constitutional courts often tackle hard moral issues, it is questionable whether a bare majority of judges should suffice for settling them, especially considering these courts' counter-majoritarian nature. Further, the wide use of majority rule for checking the constitutionality of legislation may increasingly risk their reputation. Such a concern is developing in the United States following a series of Supreme Court decisions. This book argues that majority rule is unjustified in constitutional review. This means that in constitutional review, considering majority rule's traits, there are no decisive reasons for using this voting rule over other voting rules. Additionally, the book argues that when checking the constitutionality of legislation, constitutional courts should replace majority rule with supermajority rules. Thus, for declaring statutes unconstitutional, it is argued that more than 50% of the judges present plus one judge present should be needed. This book will be of interest to academics, researchers, and policy makers working in the areas of Constitutional Law and Politics.

Constitutional Courts and Deliberative Democracy Conrado Hübner Mendes, 2013-12-20 Contemporary democracies have granted an expansive amount of power to unelected judges that sit in constitutional or supreme courts. This power shift has never been easily squared with the institutional backbones through which democracy is popularly supposed to be structured. The best institutional translation of a government of the people by the people and for the people is usually expressed through elections and electoral representation in parliaments. Judicial review of legislation has been challenged as bypassing that common sense conception of democratic rule. The alleged democratic deficit behind what courts are legally empowered to do has been met with a variety of justifications in favour of judicial review. One common justification claims that constitutional courts are, in comparison to elected parliaments, much better suited for impartial deliberation and public reason giving. Fundamental rights would thus be better protected by that insulated mode of decision making. This justification has remained largely superficial and sometimes too easily embraced. This book analyses the argument that the legitimacy of courts arises from their deliberative capacity. It examines the theory of political deliberation and its implications for institutional design. Against this background, it turns to constitutional review and asks whether an argument can be made in support of judicial power on the basis of deliberative theory.

Constitutional Courts, Media and Public Opinion Angioletta Sperti, 2023-11-16 This book explores how constitutional courts have transformed communication and overcome their reluctance to engage in direct dialogue with citizens. How has the information revolution affected the relationship of constitutional courts with the public and the media? The book looks in detail at the communication strategies of the US Supreme Court, the Supreme Court of Canada, and in Europe, the German Federal Constitutional Tribunal, the French Conseil Constitutionnel, and the Italian Constitutional Court, arguing that when it

comes to the relationship between courts and the media different jurisdictions share many similarities It focuses on the consequences of the communication revolution of courts both in terms of their relationship with public opinion and of the legitimacy of judicial review of legislation Some constitutional courts have attracted criticism by engaging in proactive communication and therefore arguably yielding to the temptation of public support The book argues that objections to the developing institutional communications employed by courts come from a preconceived notion of public opinion It considers the burden the communication revolution has placed on constitutional courts to achieve a balance between transparency and seclusion proximity and distance from public opinion It puts forward important arguments for how this balance can be achieved The book will interest scholars in constitutional law and public comparative law sociologists historians political scientists and scholars of media law and communication studies

The Cambridge Handbook of Deliberative Constitutionalism Ron Levy, Hoi Kong, Graeme Orr, Jeff King, 2018-04-19 Deliberative democratic theory emphasises the importance of informed and reflective discussion and persuasion in political decision making The theory has important implications for constitutionalism and vice versa as constitutional laws increasingly shape and constrain political decisions The full range of these implications has not been explored in the political and constitutional literatures to date This unique Handbook establishes the parameters of the field of deliberative constitutionalism which bridges deliberative democracy with constitutional theory and practice Drawing on contributions from world leading authors this volume will serve as the international reference point on deliberation as a foundational value in constitutional law and will be an indispensable resource for scholars students and practitioners interested in the vital and complex links between democratic deliberation and constitutionalism

Republican Europe Anna Kocharov, 2017-06-01 Constitutional orders constitute political communities and international orders deriving from them by managing conflicts that threaten peace This book explores how a European political community can be advanced through EU constitutional law The constitutional role of the Union is to ensure peace by addressing two types of conflict The first are static conflicts of interests between the national polities in the EU These are avoided by ensuring reciprocal non interference between Member States in the Union through deregulation in Union law The second are dynamic conflicts of ideas about positive liberty held by the peoples of Europe These can be resolved through regulation in a European political space Here EU law enables a continuous process of re negotiating a shared European idea of positive liberty that can be accepted as its own by each national polity in the EU These solutions to the two types of conflicts correspond to the liberal and republican models for Europe The claim of this book is that the constitutional design of Europe presents both liberal and republican features Taking an innovative approach which draws on arguments from substantive law constitutional theory case law analysis insights from psychology and philosophy it identifies how best to strengthen the Union through constitutional law

Democratic Government and Constitutional Jurisdiction Clèmerson Merlin Clève, Bruno Lorenzetto, 2022-01-24 Democratic Government and Constitutional Jurisdiction brings

together a series of articles produced in recent years and contains elements that can provide a panoramic view of the most prominent discussions in constitutional law in our time The book is divided in five main parts each of them is an article and addresses issues related to constitutional law democracy and institutions It brings about the challenges that Brazil must confront as part of the process of constructing a free just and compassionate society this book is intended to be an additional tool for improving the country s institutions In the inevitable presence of doubts and dreams we seek to offer alternatives in order to ensure that this project continues

Constitutional Reasoning in Latin America and the Caribbean Johanna Fröhlich,2024-09-05 This book examines the reasoning practice of 15 constitutional courts and supreme courts including the Caribbean Commonwealth and the Inter American Court of Human Rights Enriched by empirical data with which it strives to contribute to a constructive and well informed debate the volume analyses how Latin American courts justify their decisions Based on original data and a region specific methodology the book provides a systematic analysis utilising more than 600 leading cases It shows which interpretive methods and concepts are most favoured by Latin American courts and which courts were the most prolific in their reasoning activities The volume traces the features of judicial dialogue on a regional and sub regional level and enables the evaluation and comparison of each country s reasoning culture in different epochs The collection includes several graphs to visualise the changes and tendencies of the reasoning practices throughout time in the region based on information gathered from the dataset To better understand the current functioning and the future tendencies of courts in Latin America and the Caribbean the volume illuminates how constitutional and supreme courts have actually been making their decisions in the selected landmark cases which could also contribute to future successful litigation strategies for both national constitutional courts and the Inter American Court for Human Rights This project was made possible due to the collaboration and funding provided by the Rule of Law Programme for Latin America of the Konrad Adenauer Foundation and the Law School of the University of San Francisco de Quito

Judicial Avoidance Carolina Alves das Chagas,2023-08-24 This book analyses cases of judicial avoidance what happens when courts leave some or all of the merits of a case undecided It explores examples of justiciability assessments and deferential approaches regarding the decision of another authority and examines legitimacy issues involving judicial avoidance The reader is presented with answers to two fundamental questions that guide the development of the book Is it legitimate to practise judicial avoidance How could judicial avoidance be practised legitimately The conflict of competences which often emerges in instances of judicial avoidance is an important book baseline From this conflict the book considers and defends the possibility of applying formal balancing to provide a clearer structure of the exercise of justiciability and judicial deference The formal balancing methodology is based on Alexy s principles theory and its connection with judicial avoidance represents a significant contribution and novel point in constitutional adjudication

The Rule of Law in Brazil Juliano Zaiden Benvindo,2022-07-28 This book provides a broad perspective of the functioning evolution and dynamics of the rule of law in

Brazil It stresses not only how the rule of law has developed in the legal system but also how the political institutions and extra legal organisations have transformed its foundations The rule of law is not a simple concept when it comes to defining the political economic and legal developments of a country like Brazil Similar to many other Latin American countries Brazil is a young democracy struggling with its longstanding extractive institutions and entrenched interests It features however one of Latin America s richest constitutional moments when civil society actively participated in drafting the most democratic constitution in the country s history Brazil has since strengthened its institutions and the rule of law but the road toward consolidating them has been challenged by inequality and the legacies of that authoritarian past The book explores how Brazilian democracy has dealt with the high levels of social inequality and the authoritarian mindset that still play a big role in its fate and asks whether the country s democratic achievements and institutional framework are sufficiently strong to enforce the rule of law as an imperative for Brazil s development especially in times when the country is most in need of them

A Constitutionalist Approach to the European Convention on Human Rights Lisa Sonnleitner, 2022-04-21 This book presents a new constitutional argument for the legitimacy of evolutive interpretation of the ECHR It constructs a model in which evolutive and static constitutional principles are balanced with each other The author argues that there are three possible interpretive approaches in time sensitive interpretations of the ECHR but that only one of them is justifiable by reference to the constitutional principles of the ECHR in every single case The ECHR s constitutional principles either require an evolutive or static interpretation or they do not establish a preference relation at all which leads to a margin of appreciation of the member states in the interpretation of the Convention The balancing model requires the determination of the weights of the competing evolutive and static constitutional principles For this purpose the author defines weighting factors for determining the importance of evolutive or static interpretation in a concrete case

Constitutional Courts Deliberative Democracy Oxford Book Review: Unveiling the Power of Words

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