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# CONSTITUTION AND CONSTITUTIONALISM

# Constitutionalism Constitutionalism

**George Athan Billias**



## **Constitutionalism Constitutionalism:**

American Constitutionalism Stephen M. Griffin, 1998-07-27 Despite the outpouring of works on constitutional theory in the past several decades no general introduction to the field has been available Stephen Griffin provides here an original contribution to American constitutional theory in the form of a short lucid introduction to the subject for scholars and an informed lay audience He surveys in an unpolemical way the theoretical issues raised by judicial practice in the United States over the past three centuries particularly since the Warren Court and locates both theory and practices that have inspired dispute among jurists and scholars in historical context At the same time he advances an argument about the distinctive nature of our American constitutionalism regarding it as an instance of the interpenetration of law and politics American Constitutionalism is unique in considering the perspectives of both law and political science in relation to constitutional theory Constitutional theories produced by legal scholars do not usually discuss state centered theories of American politics the importance of institutions behaviorist research on judicial decision making or questions of constitutional reform but this book takes into account the political science literature on these and other topics The work also devotes substantial attention to judicial review and its relationship to American democracy and theories of constitutional interpretation The Supreme Court and American Constitutionalism Bradford P. Wilson, Ken Masugi, 1998 In this important book fourteen of America's leading constitutional scholars assess the Supreme Court's performance expounding the animating principles of American constitutionalism Essays devoted to fresh examination of the Supreme Court's jurisprudence with respect to the Necessary and Proper Clause the Commerce Clause federalism the common law international law and national sovereignty separation of powers fundamental rights term limits and constitutional criminal procedure Other essays evaluate the work of the Court as republican school master analyzing how the Court has articulated and affected the American people's capacity for self government the principle of the rule of law the historic burden of racial injustice respect for limited constitutional government and the civilizational distinction between liberty and license The Supreme Court and American Constitutionalism will be of great value to students and scholars of American constitutional studies constitutional law and American government The People Themselves Larry Kramer, 2004 This book makes the radical claim that rather than interpreting the Constitution from on high the Court should be reflecting popular will or the wishes of the people themselves A Living Constitution Or Fundamental Law? Herman Belz, 1998-08-06 In A Living Constitution or Fundamental Law distinguished scholar Herman Belz considers the concept of constitutionalism as the subject matter of constitutional history Belz argues that the study of constitutionalism should be interdisciplinary requiring the insights and methods of history political science and jurisprudence Belz illuminates the evolution of American constitutionalism across the span of American history from the Founding to Reconstruction to the Cold War and the rise of the bureaucratic state in the 1980s **Constitutionalism** Charles Howard McIlwain, 2005 Examines of the rise of constitutionalism from the democratic strands in the works of

Aristotle and Cicero through the transitional moment between the medieval and the modern eras *Common Good Constitutionalism* Adrian Vermeule, 2022-02-08 The way that Americans understand their Constitution and wider legal tradition has been dominated in recent decades by two exhausted approaches the originalism of conservatives and the living constitutionalism of progressives Is it time to look for an alternative Adrian Vermeule argues that the alternative has been there buried in the American legal tradition all along He shows that US law was from the founding subsumed within the broad framework of the classical legal tradition which conceives law as a reasoned ordering to the common good In this view law's purpose is to promote the goods a flourishing political community requires justice peace prosperity and morality He shows how this legacy has been lost despite still being implicit within American public law and convincingly argues for its recovery in the form of common good constitutionalism This erudite and brilliantly original book is a vital intervention in America's most significant contemporary legal debate while also being an enduring account of the true nature of law that will resonate for decades with scholars and students

*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

*A New Constitutionalism* Stephen L. Elkin, Karol Edward Soltan, 1993-06-15 In *The New Constitutionalism* seven distinguished scholars develop an innovative perspective on the power of institutions to shape politics and political life Believing that constitutionalism needs to go beyond the classical goal of limiting the arbitrary exercise of political power the contributors argue that it should and can be designed to achieve economic efficiency informed democratic control and other valued political ends More broadly they believe that political and social theory needs to turn away from the negativism of critical theory to consider how a good society should be constituted and to direct the work of designing institutions that can constitute a good polity in both the economic and civic senses Stephen L. Elkin and Karol Edward Soltan begin with an overview of constitutionalist theory and a discussion of the new constitutionalism within the broader intellectual and historical context of political and social thought Charles Anderson James Ceaser and the editors then offer different interpretations of the central issues regarding institutional design in a constitutionalist social science consider various ways of performing the task and discuss the inadequacy of recent political science to the job it ought to be doing The book concludes with essays by Ted Lowi Cass Sunstein and Edwin Haefele which apply these themes to the American regime

*Constitutionalism* Dieter Grimm, 2016-09-08 *Constitutionalism Past Present and Future* is the definitive collection of Dieter Grimm's most influential writings on constitutional thought and interpretation The essays included in this volume

explore the conditions under which the modern constitution could emerge they treat the characteristics that must be given if the constitution may be called an achievement the appropriate way to understand and interpret constitutional law under current conditions the function of judicial review the remaining role of national constitutions in a changing world as well as the possibility of supra national constitutionalism Many of these essays have influenced the German and European discussion on constitutionalism and for the first time much of the work of one of German s leading scholars of public law will be available in the English language

**Constitutionalism in Context** David S. Law, 2022-02-17 With its emphasis on emerging and cutting edge debates in the study of comparative constitutional law and politics its suitability for both research and teaching use and its distinguished and diverse cast of contributors this handbook is a must have for scholars and instructors alike This versatile volume combines the depth and rigor of a scholarly reference work with features for teaching in law and social science courses Its interdisciplinary case study approach provides political and historical as well as legal context each modular chapter offers an overview of a topic and a jurisdiction followed by a case study that simultaneously contextualizes both Its forward looking and highly diverse selection of topics and jurisdictions fills gaps in the literature on the Global South as well as the West A timely section on challenges to liberal constitutional democracy addresses pressing concerns about democratic backsliding and illiberal and or authoritarian regimes

**Liberalism, Constitutionalism, and Democracy** Russell Hardin, 1999-11-25 In his ground breaking book the leading political philosopher Russell Hardin develops a new theory of liberal constitutional democracy Arguing against the standard consensus theories the author shows how social co ordination on limited sociological mutual advantage lies at the heart of liberal constitutionalism when it works to produce stable government The book argues that liberalism constitutionalism and democracy are co ordination theories They work only in societies in which co ordination of the important power groups for mutual advantage is feasible It then goes on to examine and interpret the US constitution as motivated centrally by the concern with creating a government to enable commerce In addition the book addresses the nature of the problems that the newly democratic newly market oriented states face The analysis of constitutionalism is based on its workability not on its intrinsic normative or universal appeals Hardin argues similarly there are harsh limits on the possibilities of democracy In general democracy works only on the margins of great issues Indeed it is inherently a device for regulating marginal political conflicts

**Constitutionalism, Identity, Difference, and Legitimacy** Michel Rosenfeld, 1994 Interest in constitutionalism and in the relationship among constitutions national identity and ethnic religious and cultural diversity has soared since the collapse of socialist regimes in Eastern Europe and the former Soviet Union Since World War II there has also been a proliferation of new constitutions that differ in several essential respects from the American constitution These two developments raise many important questions concerning the nature and scope of constitutionalism The essays in this volume written by an international group of prominent legal scholars philosophers political scientists and social theorists investigate the theoretical implications of

recent constitutional developments and bring useful new perspectives to bear on some of the longest enduring questions confronting constitutionalism and constitutional theory Sharing a common focus on the interplay between constitutional identity and individual or group diversity these essays offer challenging new insights on subjects ranging from universal constitutional norms and whether constitutional norms can be successfully transplanted between cultures to a consideration of whether constitutionalism affords the means to reconcile a diverse society's quest for identity with its need to properly account for its differences from the relation between constitution making and revolution to that between collective interests and constitutional liberty and equality This collection's broad scope and nontechnical style will engage scholars from the fields of political theory social theory international studies and law Contributors Andrew Arato Aharon Barak Jon Elster George P Fletcher Louis Henkin Arthur J Jacobson Carlos Santiago Nino Ulrich K Preuss David A J Richards Michel Rosenfeld Dominique Rousseau András Sajó Frederick Schauer Bernhard Schlink M M Slaughter Cass R Sunstein Ruti G Teitel Robin West

*The Constitution of Freedom* András Sajó, Renáta Uitz, 2017 Informed by a life lived under the oppressions of communism ECtHR Judge András Sajó examines the fundamentals of constitutional systems of government protection from tyranny and promotion of freedom in this timely and important book

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

**The People Themselves : Popular Constitutionalism and Judicial Review** Larry D. Kramer Dean and Richard E. Lang Professor of Law Stanford Law School, 2004-06-10 The United States Constitution is the foundation of the longest and most successful democratic experiment in modern human history It serves not only as legal bedrock for the world's most powerful nation state but also more broadly it reflects that nation's fundamental aspirations and commitments as a society Who then has the authority to interpret a blueprint of such extraordinary influence Americans have come to treat the Constitution as something beyond their competence something whose meaning should be decided by judges assisted by a cadre of trained lawyers and academics Yet this submission to a lawyerly elite is a radical and troublesome departure from what was originally the case For America's founding generation celebrated the central role of the people in supplying government with its energy and direction In this groundbreaking interpretation of America's founding and its concept of constitutionalism Larry Kramer reveals how the first generations of Americans fought for and gave birth to a very different system from our current one and held a very different understanding of citizenship from that of most Americans today Popular sovereignty

was more than an empty abstraction more than a mythic philosophical justification for government and the idea of the people was more than a flip rhetorical gesture to be used on the campaign trail Ordinary Americans exercised active control and sovereignty over their Constitution The constitutionality of governmental action met with vigorous public debate in struggles whose outcomes might be greeted with celebratory feasts and bonfires or with belligerent resistance The Constitution remained fundamentally an act of popular will the people s charter made by the people And it was the people themselves who were responsible for seeing that it was properly interpreted and implemented With this book Larry Kramer vaults to the forefront of constitutional theory and interpretation In the process he rekindles the original spark of We the People inviting every citizen to join him in reclaiming the Constitution s legacy as in Franklin D Roosevelt s words a layman s instrument of government and not a lawyer s contract

*Controlling the State* Scott GORDON, Scott Gordon, 2009-06-30 This book examines the development of the theory and practice of constitutionalism defined as a political system in which the coercive power of the state is controlled through a pluralistic distribution of political power It explores the main venues of constitutional practice in ancient Athens Republican Rome Renaissance Venice the Dutch Republic seventeenth century England and eighteenth century America From its beginning in Polybius interpretation of the classical concept of mixed government the author traces the theory of constitutionalism through its late medieval appearance in the Conciliar Movement of church reform and in the Huguenot defense of minority rights After noting its suppression with the emergence of the nation state and the Bodinian doctrine of sovereignty the author describes how constitutionalism was revived in the English conflict between king and Parliament in the early Stuart era and how it has developed since then into the modern concept of constitutional democracy

**Against Constitutionalism** Martin Loughlin, 2022-05-17 A critical analysis of the transformation of constitutionalism from an increasingly irrelevant theory of limited government into the most influential philosophy of governance in the world today Constitutionalism is universally commended because it has never been precisely defined Martin Loughlin argues that it is not some vague amalgam of liberal aspirations but a specific and deeply contentious governing philosophy An Enlightenment idea that in the nineteenth century became America s unique contribution to the philosophy of government constitutionalism was by the mid twentieth century widely regarded as an anachronism Advocating separated powers and limited government it was singularly unsuited to the political challenges of the times But constitutionalism has since undergone a remarkable transformation giving the Constitution an unprecedented role in society Once treated as a practical instrument to regulate government the Constitution has been raised to the status of civil religion a symbolic representation of collective unity Against Constitutionalism explains why this has happened and its far reaching consequences Spearheaded by a rights revolution that subjects governmental action to comprehensive review through abstract principles judges acquire greatly enhanced power as oracles of the regime s invisible constitution Constitutionalism is refashioned as a theory maintaining that governmental authority rests not on collective will but on adherence to abstract

standards of public reason And across the world the variable practices of constitutional government have been reshaped by its precepts Constitutionalism Loughlin argues now propagates the widespread belief that social progress is advanced not through politics electoral majorities and legislative action but through innovative judicial interpretation The rise of constitutionalism commonly conflated with constitutional democracy actually contributes to its degradation **American Constitutionalism Abroad** George Athan Billias,1990-05-08 This is a compilation of articles by historians international law experts and political scientists on the influence of American constitutionalism in various regions of the world at different times and within different contexts The ideals and ideas expressed in the U S Constitution have dramatically influenced different peoples and different lands over the past 200 years The authors analyze how the documents procedures and institutions that came into being between 1776 and 1791 were received and perceived by constitution makers in other countries and show how American constitutionalism spread throughout the world over time ISBN 0 313 26757 X 39 95

*Sociological Constitutionalism* Paul Blokker,Chris Thornhill,2017-10-12 This landmark book provides the first systematic overview of key research in the sociology of constitutions Weak Constitutionalism Joel I. Colon-Rios,2012 It has been frequently argued that democracy is protected and realized under constitutions that protect certain rights and establish the conditions for a functioning representative democracy However some democrats still find something profoundly unsettling about contemporary constitutional regimes The participation of ordinary citizens in constitutional change in the world s most advanced democracies such as the United States Canada and the United Kingdom is weak at best the power of constitutional reform usually lies in the exclusive hands of legislatures How can constitutions that can only be altered by those occupying positions of power be considered democratically legitimate This book argues that only a regime that provides an outlet for constituent power to manifest from time to time can ever come to enjoy democratic legitimacy In so doing it advances a democratic constitutional theory one that combines a strong or participatory conception of democracy with a weak form of constitutionalism The author engages with Anglo American constitutional theory as well as examining the theory and practise of constituent power in different constitutional regimes including Latin American countries where constituent power has become an important part of the left s legal and political discourse Weak Constitutionalism Democratic Legitimacy and the Question of Constituent Power will be of particular interest to legal political theorists and comparative constitutional lawyers It also provides an introduction to the theory of constituent power and its relationship to constitutionalism and democracy



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