

OXFORD CONSTITUTIONAL THEORY



*Constitutional Courts
and Deliberative
Democracy*

CONRADO HÜBNER MENDES

Constitutional Courts And Deliberative Democracy

Oxford Constitutional Theory

Conrado Mendes



Constitutional Courts And Deliberative Democracy Oxford Constitutional Theory:

Constitutional Courts and Deliberative Democracy Conrado Mendes, 2013-12 It is often argued that courts are better suited for impartial deliberation than partisan legislatures and that this capacity justifies handing them substantial powers of judicial review This book provides a thorough analysis of those claims introducing the theory of deliberative capacity and its implications for institutional design Constitutional Courts and Deliberative Democracy Conrado Hübner

Mendes, 2013-12-19 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 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 **Constituent Power and the Law** Joel Colón-Ríos, 2020-03-26 Constituent power is the power to create new constitutions Frequently exercised during political revolutions it has been historically associated with extra legality and

violations of the established legal order This book examines the relationship between constituent power and the law It considers the place of constituent power in constitutional history focusing on the legal and institutional implications that theorists politicians and judges have derived from it Commentators and citizens have relied on the concept of constituent power to defend the idea that electors have the right to instruct representatives to negate the doctrine of parliamentary sovereignty and to argue that the creation of new constitutions must take place through extra legislative processes including primary assemblies open to all citizens More recently several Latin American constitutions explicitly incorporate the theory of constituent power and allow citizens acting through popular initiative to trigger constitution making episodes that may result in the replacement of the entire constitutional order Constitutional courts have also at times employed constituent power to justify their jurisdiction to invalidate constitutional amendments that alter the fundamental structure of the constitution and thus amount to a constitution making exercise Some governments have used it to defend the legality of attempts to transform the constitutional order through procedures not contemplated in the constitution s amendment rule but considered participatory enough to be equivalent to the people in action sometimes sanctioned by courts Building on these findings **Constituent Power and the Law** argues that constituent power unlike sovereignty should be understood as ultimately based on a legal mandate to produce a particular type of juridical content In practice this makes it possible for a constitution making body to be understood as legally subject to popularly ratified substantive limits

Constituent Power in the European Union Markus Patberg, 2020 Oxford Constitutional Theory has rapidly established itself as the primary point of reference for theoretical reflections on the growing interest in constitutions and constitutional law in domestic regional and global contexts The majority of the works published in the series are monographs that advance new understandings of their subject But the series aims to provide a forum for further innovation in the field by also including well conceived edited collections that bring a variety of perspectives and disciplinary approaches to bear on specific themes in constitutional thought and by publishing English translations of leading monographs in constitutional theory that have originally been written in languages other than English Book jacket

Beyond the People Zoran Oklopcic, 2018-05-31 Beyond the People develops a provocative interdisciplinary and meta theoretical critique of the idea of popular sovereignty It asks simple but far reaching questions Can imagined communities or invented peoples ever be theorized without at the same time being re imagined and re invented anew Can polemical concepts such as popular sovereignty or constituent power be theorized objectively If as this book argues the answer to these questions is no theorists who approach the figure of a sovereign people must acknowledge that their activity is inseparable from the practice of constituent imagination Though widely accepted as important even vital for the development of political concepts the social practice of imagination is almost always presumed to operate either historically or impersonally but seldom individually Those who theorize the figures of popular sovereignty do not see that they are in effect conjurors of peoplehood This book invites constitutional international

normative and other political and legal theorists of sovereign peoplehood to embrace the conjuring side of their professional identities as a way of exploring the possibility of moving beyond eternally recurring insolvable and increasingly irrelevant questions Instead of asking Who is the people What is the function of constituent power Where may the people exercise its right to self determination Beyond the People asks the reader to consider the prospect of a riskier and more adventurous theoretical road that opens with the question What do I as a theorist imaginer or conjuror of peoplehood assume anticipate and aspire to as I theorize the vehicles that mediate the assumptions anticipations and aspirations of others This question is examined throughout the book as it interrogates the idea of peoplehood beyond disciplinary boundaries showing how polemical visual affective conceptual and allegorical language critically shapes our idea of peoplehood It offers a nuanced account of the contested relationship between the social imaginary of peoplehood on the ground and the imaginative practices of the professional conjurors of peoplehood in the academy

Constitutionalism and the Paradox of Principles and Rules Marcelo Neves, 2021 Oxford Constitutional Theory has rapidly established itself as the primary point of reference for theoretical reflections on the growing interest in constitutions and constitutional law in domestic regional and global contexts The majority of the works published in the series are monographs that advance new understandings of their subject But the series aims to provide a forum for further innovation in the field by also including well conceived edited collections that bring a variety of perspectives and disciplinary approaches to bear on specific themes in constitutional thought and by publishing English translations of leading monographs in constitutional theory that have originally been written in languages other than English Book jacket

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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 **The Cultural Defense of Nations**
Li'av Orgad, 2015 Addressing one of the greatest challenges facing liberalism today this book asks if it is legally and morally
defensible for a liberal state to restrict immigration in order to preserve the cultural rights of majority groups Orgad
proposes a liberal approach to this dilemma and explores its dimensions justifications and limitations

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