
RESPONDING TO IMPERFECTION

*The Theory and
Practice of
Constitutional
Amendment*

Sanford Levinson, Editor

Responding To Imperfection By Levinson Sanford

Alan Fenna, Sarah Murray



Responding To Imperfection By Levinson Sanford:

Perfecting the Constitution Darren Patrick Guerra, 2013-06-10 He who can change the Constitution controls the Constitution So who does control the Constitution The answer has always been the people The people control the Constitution via the Article V amending process outlined in the Constitution itself Changes can only be made through Article V and its formal procedures Article V has always provided a means of perfecting the Constitution in an explicit democratically authentic prudent and deliberative manner In addition to changing the Constitution Article V also allowed the people to perfect and preserve their Constitution at the same time In recent years Article V has come under attack by influential legal scholars who criticize it for being too difficult undemocratic and too formal Such scholars advocate for ignoring Article V in favor of elite adaptation of the Constitution or popular amendment through national referendums In making their case critics also assume that Article V is an unimportant and expendable part of the Constitutional structure One notable scholar called the Constitution imbecilic because of Article V This book shows that to the contrary Article V is a unique and powerful extension of the American tradition of written constitutionalism It was a logical extension of American constitutional development and it was a powerful tool used by the Federalists to argue for ratification of the new Constitution Since then it has served as a means of perfecting the US Constitution for over 200 years via a wide range of amendments Contrary to contemporary critics the historical evidence shows Article V to be a vital element in the Constitutional architecture not an expendable or ancillary piece This book defends Article V against critics by showing that it is neither too difficult undemocratic nor too formal Furthermore a positive case is made that Article V remains the most clear and powerful way to register the sovereign desires of the American public with regard to alterations of their fundamental law In the end Article V is an essential bulwark to maintaining a written Constitution that secures the rights of the people against both elites and themselves

Responding to Imperfection Sanford Levinson, 1995-01-24 An increasing number of constitutional theorists within both the legal academy and university departments of government are focusing on the conceptual and political problems attached to the notion of constitutional amendment Amendments are among other things recognitions of the imperfection of existing schemes of government The relative ease or difficulty of amendment has significant implications for the ways that governments respond to problems that call either for new structures of governance or new powers for already established structures This book brings together essays by leading legal authorities and political scientists on a range of questions from whether the U S Constitution is subject to amendment by procedures other than those authorized by Article V to how significant change is conceptualized within classical rabbinic Judaism Though the essays are concerned for the most part with the American experience other constitutional traditions are considered as well The contributors include Bruce Ackerman Akhil Reed Amar Mark E Brandon David R Dow Stephen M Griffin Stephen Holmes and Cass R Sunstein Sanford Levinson Donald Lutz Walter Murphy Frederick Schauer John R Vile and Noam J Zohar

How Failed Attempts to

Amend the Constitution Mobilize Political Change Roger C. Hartley, 2021-04-30 Since the Constitution's ratification members of Congress following Article V have proposed approximately twelve thousand amendments and states have filed several hundred petitions with Congress for the convening of a constitutional convention Only twenty seven amendments have been approved in 225 years Why do members of Congress continue to introduce amendments at a pace of almost two hundred a year This book is a demonstration of how social reformers and politicians have used the amendment process to achieve favorable political results even as their proposed amendments have failed to be adopted For example the ERA failed in the sense that it was never ratified but the mobilization to ratify the ERA helped build the feminist movement and also sparked a countermobilization Similarly the Supreme Court's ban on compulsory school prayer led to a barrage of proposed amendments to reverse the Court They failed to achieve the requisite two thirds support from Congress but nevertheless had an impact on the political landscape The definition of the relationship between Congress and the President in the conduct of foreign policy can also be traced directly to failed efforts to amend the Constitution during the Cold War Roger Hartley examines familiar examples like the ERA balanced budget amendment proposals and pro life attempts to overturn Roe v Wade but also takes the reader on a three century tour of lesser known amendments He explains how often the mere threat of calling a constitutional convention at which anything could happen effected political change [Our Elusive Constitution](#)

Daniel N. Hoffman, 1997-08-14 This volume explores the relationship between religion and politics It brings a varied sample of richly detailed comparative and case studies together with a set of analytical paradigms in an integrated framework It is a major statement on a timely subject and a plea for the acknowledgment of normative pluralism as firmly rooted in the history of religion The editor shows that the fact of political diversity in the history of world religions compels the acceptance of pluralism as a normative principle *Weak Constitutionalism* Joel Colón-Ríos, 2012-06-14 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.

The Wheel of Law Gary Jeffrey Jacobsohn, 2009-01-10. How can religious liberty be guaranteed in societies where religion pervades everyday life? In *The Wheel of Law*, Gary Jacobsohn addresses this dilemma by examining the constitutional development of secularism in India within an unprecedented cross-national framework that includes Israel and the United States. He argues that a country's particular constitutional theory and practice must be understood within its social and political context. The experience of India, where religious life is in profound tension with secular democratic commitment, offers a valuable perspective not only on questions of jurisprudence and political theory arising in countries where religion permeates the fabric of society but also on the broader task of ensuring religious liberty in constitutional polities. India's social structure is so entwined with religion, Jacobsohn emphasizes, that meaningful social reform presupposes state intervention in the spiritual domain. Hence India's ameliorative model of secular constitutionalism, designed to ameliorate the disabling effects of the caste system and other religiously based practices, Jacobsohn contrasts with the visionary secularism of Israel, where the state identifies itself with a particular religion, and with America's assimilative secularism. Constitutional globalization is as much a reality as economic globalization, Jacobsohn concludes, and within this phenomenon the place of religion in liberal democracy is among the most vexing challenges confronting us today. A richly textured account of the Indian experience with secularism, developed in a broad comparative framework, this book is for all those seeking ways to respond to this challenge.

Unconstitutional Constitutional Amendments Yaniv Roznai, 2017-02-23. Can constitutional amendments be unconstitutional? The problem of unconstitutional constitutional amendments has become one of the most widely debated issues in comparative constitutional theory, constitutional design, and constitutional adjudication. This book describes and analyses the increasing tendency in global constitutionalism to substantively limit formal changes to constitutions. The challenges of constitutional unamendability to constitutional theory become even more complex when constitutional courts enforce such limitations through substantive judicial review of amendments, often resulting in the declaration that these constitutional amendments are unconstitutional. Combining historical comparisons, constitutional theory, and a wide comparative study, Yaniv Roznai sets out to explain what the nature of amendment power is, what its limitations are, and what the role of constitutional courts is and should be when enforcing limitations on constitutional amendments.

Rights Before Courts Wojciech Sadurski, 2014-05-26. This is a completely revised and updated second edition of *Rights Before Courts*. 2005 paper edition. 2008. This book carefully examines the most recent wave of the emergence and case law of activist constitutional courts, those that were set up after the fall of communism in Central and Eastern Europe. In contrast to most other analysts and scholars, the study does not take for granted that they are a force for good but rather subjects them to critical scrutiny against a background of wide-ranging comparative and theoretical analysis of

constitutional judicial review in the modern world The new edition takes in new case law and constitutional developments in the decade since the first edition including considering the recent disturbing disempowerment of the Hungarian Constitutional Court which previously was probably the most powerful constitutional court in the world resulting from the fundamental constitutional changes brought about by the Fidesz government *Originalism and the Good Constitution* John O. McGinnis, Michael B. Rappaport, 2013-11-01 John McGinnis and Michael Rappaport argue that the text of the Constitution and its Amendments should be adhered to by the Supreme Court because it was enacted by supermajorities A text approved by supermajorities has special value in a democracy because it has unusually wide support and tends to maximize the welfare of the greatest number **Constitutional Culture and Democratic Rule** John A. Ferejohn, Jack N. Rakove, Jonathan Riley, 2001-10-08 This volume investigates the nature of constitutional democratic government in the United States and elsewhere It provides comprehensive tools for analyzing and comparing different forms of constitutional democracy The collection will be of interest to students and readers in political science law history and political philosophy Constitutional Amendment in Canada Emmett Macfarlane, 2016-01-01 Constitutional Amendment in Canada is the first volume to focus solely on the implications of the amending formula in Canada *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

Rawls and Law Thom Brooks, 2017-07-05 John Rawls 1921 2002 is widely held to be amongst the most important political philosophers for over a century This volume which is the first work of its kind to publish in one place the most influential essays in the field features articles on a wide range of subjects including constitutionalism democratic theory egalitarianism feminism global justice political liberalism the rule of law and public reason The collection informs scholars and students coming to the study of Rawls's work for the first time of the importance and complexity of Rawls's ideas and sheds light on how these ideas might be further improved and applied Guide to Congress CQ Press, 2012-08-10 The new edition of this comprehensive two volume reference has been thoroughly revised and expanded by expert CQ Press writers with years of experience covering Congress to offer a complete institutional history of Congress along with updated insight and analysis on the 2008 and 2010 shifts in power of the U S Senate and House of Representatives The 35 chapters of Guide to Congress Seventh Edition are divided into eight subject areas that cover all aspects of the U S Congress Origins and Development of Congress from the constitutional beginnings of the legislative branch to the histories of the House and Senate and their power shifts eras of partisanship and unity influential leaders and working relationships with presidents

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The Constitution and Economic Regulation Michael Conant,2011-12-31 This study uses basic economic analysis as a technique to comment

critically on the original meaning and the interpretation of those clauses of the Constitution that have particular bearing on the economy Many new conclusions are markedly different from those of the Supreme Court and earlier commentators Conant's view is that the commerce clause and the equal protection clause if they had been construed consistently with their comprehensive original meanings would have given much greater federal protection against state laws that impair free markets Economic policy for the nation was vested in Congress To the extent that special interests could buy congressional favor for their anticompetitive activities free markets were impaired within constraints as interpreted by the court These decisions have been criticized for their failure to incorporate the antimonopoly tradition in the Ninth Amendment and their failure to recognize equal protection of laws incorporated into the Fifth Amendment Conant holds that statutory controls of the economy are justifiable in economic theory if they are designed to remedy market failures and thereby increase efficiency If statutes are passed to interfere with markets and create market inefficiencies for the benefit of special interest groups they should be condemned under the standards of normative microeconomics There are four main classes of market failure monopoly externalities public goods and informational asymmetry This masterful analysis examines all four reasons for market failure in depth Litigation costs are analogous to transaction costs If legal principles and rules are clearly and precisely defined by the Supreme Court when they are first appealed litigation and its costs should be minimized Conant claims that if legal principles or rules are uncertain because they lack definable standards the number of legal actions filed and litigation costs will be much greater This promotes additional litigation challenging the many statutes enacted to remedy asserted market failures in an expanding industrial economy This work brilliantly addresses the danger to the economy in court rulings seeking to legislate standards of reasonableness

Assessing Constitutional Performance Tom

Ginsburg, Aziz Huq, 2016-08-30 From London to Libya from Istanbul to Iceland there is great interest among comparative constitutional scholars and practitioners about when a proposed constitution is likely to succeed But what does it mean for a constitution to succeed Are there universal criteria of success and which apply across the board Or is the choice of criteria entirely idiosyncratic This edited volume takes on the idea of constitutional success and shows the manifold ways in which it can be understood It collects essays from philosophers political scientists empiricists and legal scholars that approach the definition of constitutional success from many different angles It also brings together case studies from Africa Europe Latin America the Middle East and Asia By exploring a varied array of constitutional histories this book shows how complex ideas of constitutional success play out differently in different contexts and provides examples of how success can be differently defined under different circumstances

Political Theory on Death and Dying Erin A. Dolgoy, Kimberly Hurd Hale, Bruce Peabody, 2021-09-14

Political Theory on Death and Dying provides a comprehensive encyclopedic review that compiles and curates the latest scholarship research and debates on the political and social implications of death and dying Adopting an easy to follow chronological and multi disciplinary approach on 45 canonical figures and thinkers leading scholars from a

diverse range of fields including political science philosophy and English discuss each thinker's ethical and philosophical accounts on mortality and death Each chapter focuses on a single established figure in political philosophy as well as religious and literary thinkers covering classical to contemporary thought on death Through this approach the chapters are designed to stand alone allowing the reader to study every entry in isolation and with greater depth as well as trace how thinkers are influenced by their predecessors A key contribution to the field Political Theory on Death and Dying provides an excellent overview for students and researchers who study philosophy of death the history of political thought and political philosophy

Routledge Handbook of Comparative Constitutional Change Xenophon Contiades, Alkmene Fotiadou, 2020-06-11 Comparative constitutional change has recently emerged as a distinct field in the study of constitutional law It is the study of the way constitutions change through formal and informal mechanisms including amendment replacement total and partial revision adaptation interpretation disuse and revolution The shift of focus from constitution making to constitutional change makes sense since amendment power is the means used to refurbish constitutions in established democracies enhance their adaptation capacity and boost their efficacy Adversely constitutional change is also the basic apparatus used to orchestrate constitutional backslide as the erosion of liberal democracies and democratic regression is increasingly affected through legal channels of constitutional change Routledge Handbook of Comparative Constitutional Change provides a comprehensive reference tool for all those working in the field and a thorough landscape of all theoretical and practical aspects of the topic Coherence from this aspect does not suggest a common view as the chapters address different topics but reinforces the establishment of comparative constitutional change as a distinct field The book brings together the most respected scholars working in the field and presents a genuine contribution to comparative constitutional studies comparative public law political science and constitutional history

The Constitution of Western Australia Alan Fenna, Sarah Murray, 2023-06-16 This book provides the first comprehensive introduction to and enquiry into the rules of Western Australia's WA system of government The WA Constitution is not well known or understood or even easy to identify and this book provides an essential guide It brings academic expertise and careful scholarship to the exploration of sometimes complex constitutional issues in a way that will be invaluable for those with specialist interest in constitutional law and government while also being engaging and accessible for a wider audience In doing so it combines authorial expertise from constitutional law and political science something essential to a well rounded understanding of the simultaneously legal and political nature of a Constitution

The American State Constitutional Tradition John J. Dinan, 2006-04-14 For too long the American constitutional tradition has been defined solely by the U S Constitution drafted in 1787 Yet constitutional debates at the state level open a window on how Americans in different places and at different times have chosen to govern themselves From New Hampshire in 1776 to Louisiana in 1992 state constitutional conventions have served not only as instruments of democracy but also as forums for revising federal principles and institutions In The

American State Constitutional Tradition John Dinan shows that state constitutions are much more than mere echoes of the federal document The first comprehensive study of all 114 state constitutional conventions for which there are recorded debates his book shows that state constitutional debates in many ways better reflect the accumulated wisdom of American constitution makers than do the more traditional studies of the federal constitution Wielding extraordinary command over a mass of historical detail Dinan clarifies the alternatives considered by state constitution makers and the reasons for the adoption or rejection of various governing principles and institutions Among other things he shows that the states are nearly universal in their rejection of the rigid federal model of the constitutional amendment process favoring more flexible procedures for constitutional change they often grant citizens greater direct participation in law making they have debated and at times rejected the value of bicameralism and they have altered the veto powers of both the executive and judicial branches Dinan also shows that while the Founders favored a minimalist design and focused exclusively on protecting individuals from government action state constitution makers have often adopted more detailed constitutions sometimes specifying positive rights that depend on government action for their enforcement Moreover unlike the federal constitution state constitutions often contain provisions dedicated to the formation of citizen character ranging from compulsory schooling to the regulation of gambling or liquor By integrating state constitution making with the federal constitutional tradition this path breaking work widens and deepens our understanding of the principles by which we ve chosen to govern ourselves

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