

# CONSTITUTIONAL PRINCIPLES

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1. Canada's internal constitutional order
  - *BNA Act of 1867*
  - *Constitution Act, 1982*
2. Federalism and constitutional supremacy (*Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 72)
3. Fiduciary duty
4. Cooperative federalism

# Principles Of The Constitutional Order

**Alexander Misic, Nicole Töpperwien**



## Principles Of The Constitutional Order:

**Principles of the Constitutional Order** Robert L. Utley, 1989 The essays in this volume consider the writings of those who drafted the Constitution as well as the arguments pro and con presented during the ratification debates The first of these essays examine the founding principles from historical political and philosophical perspectives The second group outlines the main Anti Federalist arguments A discussion of the nature and implications of the doctrine of separated powers follows and the volume closes with psycho historical portraits of Thomas Jefferson and John Adams The volume focuses attention on the Founding period so that the original character and principles of our political order may be seen clearly in spite of the glory and veneration with which age and custom have draped our constitution *The Constitutional Protection and Regulation of Property and Its Influence on the Reform of Private Law and Landownership in South Africa and Germany* Hanri Mostert, 2002 One Research Question Terminology and Methodology 1 Introduction 1 An Introduction to the Basic Problems 2 Objectives of Research 2 1 Motivation 2 2 Legal Comparison 2 3 Delimitation 3 Practical Significance of Research 4 Inquiry Outline 2 Terminology 1 Possible Terminological Difficulties 2 Ownership and Property 2 1 Ideological Concept 2 2 Legal Concept 2 2 1 Private Law Terminology 2 2 2 Terminology of the Constitution 2 2 3 Terminology of Reform 2 2 4 Polarisation of the Private Law Property and Constitutional Property 3 Public Interest Common Weal and Public Purposes 3 1 Public Interest and Common Weal in the Constitutional Context 3 2 Public Interest Public Purposes and the Property Clauses 3 2 1 Public Interest Public Purposes and Expropriation 3 2 2 Public Interest Public Purposes and Land Reform 4 The Relationship between Property and Public Interest 3 Legal Comparison and the Course of Inquiry 1 Legal Comparison as Method of Analysis 2 Comparative Analysis as Constitutional Directive 3 Possibilities for Legal Comparison 4 Similarities in the German and South African Property Orders 4 1 Bases of the Legal Systems and their Material Law 4 2 Corresponding Legal Problems 4 3 Comparable Legal Methods 4 4 Constitutional Principles 5 Differences between the German and South African Systems of Property Law 5 1 Drafting Circumstances 5 2 Wording of South African and German Property Clauses 6 Course of Inquiry Two Background to the Constitutional Protection of Property in Germany and South Africa 4 The Drafting Histories of the South African and German Constitutional Property Clauses 1 Relevance of an Historical Inquiry 2 Germany Development of Property Protection Under a Constitution 2 1 Historical Background of article 14 GG 2 1 1 First Attempts at Constitutional Protection of Property 2 1 2 Property Protection in the Weimar Republic and Under National Socialism 2 1 3 Circumstances Influencing the Drafting of article 14 GG 2 1 4 Constitutional Property Protection in a Reunified Germany 2 2 Relevance of article 14 GG for the German Property Order 3 South Africa Negotiating a Constitutional Property Clause 3 1 Historical Background to the Property Clauses 3 1 1 The Inclusion of a Property Guarantee in the Constitution 3 1 2 Compromises Incorporated in Section 28 IC and Section 25 FC 3 1 3 Certification of Section 25 FC 3 2 Relevance of the Constitutional Property Clauses for the South African Property Order 4 Constitutionalism and Socio economic Needs 5

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Willoughby,1917      Constitutional Law in Switzerland Alexander Misisic,Nicole Töpperwien,2018-06-07 Derived from the renowned multi volume International Encyclopaedia of Laws this very useful analysis of constitutional law in Switzerland provides essential information on the country s sources of constitutional law its form of government and its administrative structure Lawyers who handle transnational matters will appreciate the clarifications of particular terminology and its application Throughout the book the treatment emphasizes the specific points at which constitutional law affects the interpretation of legal rules and procedure Thorough coverage by a local expert fully describes the political system the historical background the role of treaties legislation jurisprudence and administrative regulations The discussion of the form and structure of government outlines its legal status the jurisdiction and workings of the central state organs the subdivisions of the state its decentralized authorities and concepts of citizenship Special issues include the legal position of aliens foreign relations taxing and spending powers emergency laws the power of the military and the constitutional relationship between church and state Details are presented in such a way that readers who are unfamiliar with specific terms and concepts in varying contexts will fully grasp their meaning and significance Its succinct yet scholarly nature as well as the practical quality of the information it provides make this book a valuable time saving tool for both practising and academic jurists Lawyers representing parties with interests in Switzerland will welcome this guide and academics and researchers will appreciate its value in the study of comparative constitutional law      **Hong Kong's New Constitutional Order** Yash Ghai,1997-05-01 This is the first systematic analysis of the constitutional legal economic social and political systems of Hong Kong as a special administrative region of China It examines the Basic Law against its historical and socio economic contexts including its international and domestic foundations and the loss and the resumption of sovereignty by China The author offers a conceptualization of the Basic Law and locates it within China s constitutional political and legal

systems The book explores the balance as well as the tensions between the autonomy of Hong Kong and the sovereignty of China which are aggravated by the necessity to accommodate contrasting economic and political systems It also identifies key legal and political problems that are likely to arise in implementing the Basic Law and suggests an approach to its interpretation The Basic Law provides a fascinating example of the interaction of widely different traditions of law politics and economy and a novel system of autonomy Its study is therefore of great interest to scholars of comparative law and politics This new edition covers significant political constitutional and legal developments since the transfer of sovereignty in July 1997

Human Rights and their Limits Wiktor Osiatyński, 2009-09-14 Human Rights and their Limits shows that the concept of human rights has developed in waves each call for rights served the purpose of social groups that tried to stop further proliferation of rights once their own goals were reached While defending the universality of human rights as norms of behavior Osiaty ski admits that the philosophy on human rights does not need to be universal Instead he suggests that the enjoyment of social rights should be contingent upon the recipient s contribution to society He calls for a soft universalism that will not impose rights on others but will share the experience of freedom and help the victims of violations Although a state of unlimited democracy threatens rights the excess of rights can limit resources indispensable for democracy This book argues that although rights are a prerequisite of freedom they should be balanced with other values that are indispensable for social harmony and personal happiness

**International Law and Domestic Legal Systems** Dinah Shelton, 2011-09-29 Different countries incorporate and interpret international law in different ways This book provides a systematic analysis of the domestic constitutional regime of over two dozen countries setting out the status accorded to international law in those countries and its normative weight as well as problems relating to its implementation This country by country comparison allows the book to examine how the international legal order and domestic legal systems interact and influence each other Through a series of chapters on the role of international law in 27 countries throughout the world it shows a growing tendency towards greater democratic participation in treaty making coupled with a significant utilization of informal agreements that by pass such participation as well as a role for non binding normative instruments as persuasive authority in domestic judicial decision making The chapters suggest a stronger attachment to international law in legal systems that have survived a period of repression resulting in many cases in a higher normative status for international human rights instruments in those states The impact of the European Union on the constitutional order of its member states is also examined

**Italian Constitutional Justice in Global Context** Vittoria Barsotti, Paolo G. Carozza, Marta Cartabia, Andrea Simoncini, 2016 Italian Constitutional Justice in Global Context is the first book ever published in English to provide an international examination of the Italian Constitutional Court ItCC offering a comprehensive analysis of its principal lines of jurisprudence historical origins organization procedures and its current engagement with transnational European law The ItCC represents one of the strongest and most successful examples of constitutional judicial review and is distinctive in its

structure institutional dimensions and well developed jurisprudence Moreover the ItCC has developed a distinctive voice among global constitutional actors in its adjudication of a broad range of topics from fundamental rights and liberties to the allocations of governmental power and regionalism Nevertheless in global constitutional dialog the voice of the ItCC has been almost entirely absent due to a relative lack of both English translations of its decisions and of focused scholarly commentary in English This book describes the Italian Style in global constitutional adjudication and aims to elevate Italian constitutional jurisprudence to an active participant role in global constitutional discourse The authors have carefully structured the work to allow the ItCC s own voice to emerge It presents broad syntheses of major areas of the Court s case law provides excerpts from notable decisions in a narrative and analytical context addresses the tension between the ItCC and the Court of Cassation and positions the development character and importance of the ItCC s jurisprudence in the larger arc of global judicial dialog

*The Foundations and Traditions of Constitutional Amendment* Richard Albert,Xenophon Contiades,Alkmene Fotiadou,2017-07-13 There is growing interest in constitutional amendment from a comparative perspective Comparative constitutional amendment is the study of how constitutions change through formal and informal means including alteration revision evolution interpretation replacement and revolution The field invites scholars to draw insights about constitutional change across borders and cultures to uncover the motivations behind constitutional change to theorise best practices and to identify the theoretical underpinnings of constitutional change This volume is designed to guide the emergence of comparative constitutional amendment as a distinct field of study in public law Much of the recent scholarship in the field has been written by the scholars assembled in this volume This book like the field it hopes to shape is not comparative alone it is also doctrinal historical and theoretical and therefore offers a multiplicity of perspectives on a subject about which much remains to be written This book aspires to be the first to address comprehensively the new dimensions of the study of constitutional amendment and will become a reference point for all scholars working on the subject The volume covers all of the topics where innovative work is being done such as the notion of the people the trend of empirical quantitative approaches to constitutional change unamendability sunrise clauses constitutional referenda the conventional divide between constituent and constituted powers among other important subjects It creates a dialogue that cuts through these innovative conceptualisations and highlights scholarly disagreement and in so doing puts ideas to the test The volume therefore captures the fierce ongoing debates on the relevant topics it reveals the current trends and contested issues and it offers a variety of arguments elaborated by prominent experts in the field It will open the way for further dialogue

**European Union Law** Damian Chalmers,Gareth Davies,Giorgio Monti,2019-09-12 The most current contextual and authoritative EU law text including Brexit the euro and the migration crisis

[The Cambridge Companion to the United States Constitution](#) Karen Orren,John W. Compton,2018-03-22 This Companion provides a broad historically informed introduction to the study of the US constitutional system In place of the usual laundry lists of cases doctrines and theories it

presents a picture of the constitutional system in action with separate sections devoted to constitutional principles organizational structures and the various legal and extra legal actions through which litigators and average citizens have attempted to bring about constitutional change Finally the volume covers a number of subjects that are rarely discussed in works aimed at a general audience but which are critical to ensuring that constitutional rights are honored in the day to day lives of citizens These include standing and causes of action suits against officeholders and the inner workings of the Foreign Intelligence Surveillance Court FISC This Companion places present day constitutional controversies in historical context and offers insights from a range of disciplines including history political science and law

*Remedies against Immunity?*  
Valentina Volpe, Anne Peters, Stefano Battini, 2021-04-08 The open access book examines the consequences of the Italian Constitutional Court's Judgment 238/2014 which denied the German Republic's immunity from civil jurisdiction over claims to reparations for Nazi crimes committed during World War II This landmark decision created a range of currently unresolved legal problems and controversies which continue to burden the political and diplomatic relationship between Germany and Italy The judgment has wide repercussions for core concepts of international law and for the relationship between different legal orders The book's three interlinked legal themes are state immunity reparation for serious human rights violations and war crimes including historical ones and the interaction between international and domestic institutions notably courts Besides a meticulous legal analysis of these themes from the perspectives of international law European law and domestic law the book contributes to the civic debate on the issue of war crimes and reparation for the victims of armed conflict It proposes concrete legal and political solutions to the parties involved for overcoming the present paralysis with a view to a sustainable interstate conflict solution and helps judges directly involved in the pending post-Sentenza reparation cases After an Introduction Part I Part II Immunity investigates core international law concepts such as those of pre/post judgment immunity and international state responsibility Part III Remedies examines the tension between state immunity and the right to remedy and suggests original schemes for solving the conundrum under international law Part IV adds European Perspectives by showcasing relevant regional examples of legal cooperation and judicial dialogue Part V Courts addresses questions on the role of judges in the areas of immunity and human rights at both the national and international level Part VI Negotiations suggests concrete ways out of the impasse with a forward looking aspiration In Part VII The Past and Future of Remedies a sitting judge in the Court that decided Sentenza 238/2014 adds some critical reflections on the Judgment Joseph H. H. Weiler's Dialogical Epilogue concludes the volume by placing the main findings of the book in a wider European and international law perspective

*Citizenship in the European Union* Anne Wesemann, 2020-10-30 The book proposes a new approach to constitutional analysis of the EU and its legal framework arguing that the existence of constitutional rights norms within EU law enables this particular legal order to respond effectively to societal and political challenges within the rigidity of constitutionalism Providing new perspectives on constitutionalism in the EU this book considers the way the Court

of Justice of the European Union CJEU discusses and applies the EU citizenship Treaty norms by analysing the courts approach to decision making which resembles the balancing and weighing of conflicting principles      **Structural**

**Principles in EU External Relations Law** Marise Cremona, 2018-02-22 The law and practice of EU external relations is governed not only by general objectives Articles 3 5 and 21 TEU and Article 205 TFEU and values Article 2 TEU but also by a set of principles found in the Treaties and developed by the Court of Justice which structure the system functioning and exercise of EU external competences This book identifies a set of structural principles as a legal norm category governing EU external relations it explores the scope content and function of those principles that may be categorised as structural With an ambitious scope and a stellar line up of experts in the field the collection offers a truly innovative perspective on the role of law in EU external relations      **The Methodology of Constitutional Theory** Dimitrios Kyritsis, Stuart Lakin, 2022-02-24

What sort of methods are best suited to understanding constitutional doctrines and practices Should we look to lawyers and legal methods alone or should we draw upon other disciplines such as history sociology political theory and moral philosophy Should we study constitutions in isolation or in a comparative context To what extent must constitutional methods be sensitive to empirical data about the functioning of legal practice Can ideal theory aid our understanding of real constitutions This volume brings together constitutional experts from around the world to address these types of questions through topical events and challenges such as Brexit administrative law reforms and the increasing polarisations in law politics and constitutional scholarship Importantly it investigates the ways in which we can ensure that constitutional scholars do not talk past each other despite their persistent and often fierce disagreements In so doing it aims systematically to re examine the methodology of constitutional theory      **Sociological Constitutionalism** Paul Blokker, Chris Thornhill, 2017-10-12 This landmark book provides the first systematic overview of the key scholarly contributions in an emerging field of research on constitutionalism the sociology of constitutions It presents chapters offering very different normative and methodological approaches to constitutions ranging from analysis of national constitutional law to research on transnational legal forms to discussions of the constitutional impact of international human rights law The book makes an important contribution to a series of wider debates spanning constitutional law legal theory comparative constitutionalism sociology and political science about the changing nature of constitutionalism Researchers and students in constitutional law will gain a comprehensive appreciation of a diverse range of distinctively sociological approaches to constitutional law and an in depth understanding of distinctive sociological dimensions of constitutions The book offers insights into the sources of constitutional normativity in society and it proposes different sociological methods for addressing them      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     Reasonableness and Law Giorgio Bongiovanni, Giovanni Sartor, Chiara Valentini, 2009-08-19 Reasonableness is at the centre of legal debate both in academic circles and in practice This unique reference work adopts an interdisciplinary perspective merging jurisprudence legal theory political philosophy and the different branches of law All aspects relating to reasonableness and law are addressed by the most prominent scholars in the field In the first part of the book the focus is on jurisprudential analyses of the concept of reasonableness and on its moral political and constitutional implications In the second part reasonableness is examined in the different fields of law like Public Private and International Law Here in more detail the practical consequences of reasonableness are worked out making this work of interest to practitioners as well as legal theorists     **The 'Militant Democracy' Principle in Modern Democracies** Markus Thiel, 2016-02-17 This collection provides an up to date analysis of key country approaches to Militant Democracy Featuring contributions from some of the key people working in this area including Mark Tushnet and Helen Irving each chapter presents a stocktaking of the legal measures to protect the democracy against its enemies within In addition to providing a description of the country's view of Militant Democracy and the current situation it also examines the legal and political provisions to defend the democratic structure against attacks The discussion also presents proposals for the development of the Militant Democracy principle or its alternatives in policy and legal practice In the final chapter the editor compares the different arrangements and formulates a minimum consensus as to what measures are indispensable to protect a democracy Highly topical this book is a valuable resource for students academics and policy makers concerned with democratic principles     **Philosophical Foundations of European Union Law** Julie Dickson, Pavlos Eleftheriadis, 2012-10-11 This volume brings together legal philosophers political philosophers and EU legal academics in the service of developing the philosophical analysis of EU law In a series of original and complementary essays they bring their varied disciplinary expertise and theoretical perspectives to bear on central issues facing the Union and its law

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