



# **The Rule of Law in the European Constitution**

Maria Luisa Fernandez Esteban



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## **Rule Of Law In The European Constitution:**

*The Rule of Law in the European Constitution* Maria Fernandez Esteban, 1999-07-15 The European Court of Justice once stated that the European Community is governed by the rule of law inasmuch as member states Community institutions and individuals are bound to the basic constitutional charter the Treaty The purpose of this book is to answer the question whether this statement is still valid for the European Union and to analyse which features best define the rule of law at the European level In order to define the principle of the rule of law at the European level this book undertakes a comparative analysis of what the principle means in different legal systems An analysis is also made of the implications for national legal orders specifically for judges The conclusion reached as a result of the research undertaken for this book is the co existence of two visions of the rule of law within national legal orders the traditional view of each legal order by itself and the new vision of the principle as defined by the Court of Justice This legal phenomenon involves what is defined as the paradox of the two paradigms of law which determines a share of concepts tools and remedies amongst legal systems

**The Rule of Law in the European Constitution** Maria Luisa Fernandez Esteban, 1999-01-01 The Tangled Complexity of the EU Constitutional Process Giuseppe Martinico, 2022-08-05 Offering a fresh view on the EU constitutionalisation process the new edition of *The Tangled Complexity of the EU Constitutional Process* presents three main points the idea of constitutional complexity the tension between constitutional evolutionism and constitutional constructivism in the process of European integration and the functional nature of conflicts in the evolution of the EU Because of its prodigiousness European law produces consternation among constitutionalists accustomed to traditional patterns of power This book argues that while constitutional conflicts have frequently been depicted as elements of disturbance along the path towards legal coherence they are physiological and might even be functional to the development of the European legal order which should not be understood in a deterministic manner The new edition will be of particular interest to academics and students in the disciplines of law international relations and political science

*The Rise and Fall of the European Constitution* NW Barber, Maria Cahill, Richard Ekins, 2019-01-10 The Draft European Constitution was arguably both an attempt to constitutionalise the Union re framing that project in the language of the state and an attempt to stretch the boundaries of constitutionalism itself re imagining that concept to accommodate the sui generis European Union The partial failure of this project is the subject of this collection of essays The collection brings together leading EU constitutional scholars to consider with the benefit of hindsight the purportedly constitutional character of the proposed Constitutional Treaty the reasons for its rejection by voters in France and the Netherlands the ongoing implications of this episode for the European project and the lessons it teaches us about what constitutionalism really means

*The EU Constitution in Time of War* Federico Fabbrini, 2025-02-01 Russia's illegal aggression against Ukraine has been a watershed moment for the European Union EU The return of large scale conventional warfare to the European continent unseen since the Second World War shattered the

illusion of perpetual peace and forced the EU to confront the reality of hard power Originally created to maintain internal peace the EU was never conceived to handle the challenges of war Yet the war in Ukraine required the EU to repurpose its machinery of government to do just that Embracing a comparative analytical framework this book examines how the EU constitution has functioned in response to Russia's aggression It scrutinizes the EU's legal reactions across five key policy areas foreign security and defence policy economic and fiscal policy justice and home affairs energy and industrial policy and enlargement and reform In doing so it investigates whether the EU constitution has enabled the EU to respond effectively to the war how EU treaties have been interpreted to authorize war related actions and whether these responses have adhered to constitutional limits Advancing a threefold argument this book asserts that the EU constitution has demonstrated sufficient flexibility to permit wartime actions Secondly it highlights the limitations exposed by the return of conventional warfare in Europe noting structural constraints and governance shortcomings that hinder decisive action and instances where laws inadequately constrain EU action particularly regarding fundamental rights and the rule of law Finally it evaluates the long term constitutional implications of war for EU governance and proposes legal reforms that could shape a more perfect EU for both times of war and peace

National Constitutions and EU Integration Stefan Griller, Lina Papadopoulou, Roman Puff, 2022-08-25 Do individual constitutions and the legal cultures underlying them pose an obstacle to future EU integration This ambitious collection brings together reports from all the European Member States systematically setting out their individual constitutional guarantees In doing so it tracks possible roadblocks to the future evolution of European integration Written by recognised authorities in each Member State it offers an authoritative and rigorous overview of the European Union's constitutional landscape Its single structure approach allows for comparison while maintaining consistency It will become the standard reference work for academics students and practitioners in the field of European Union law and integration

*Public Law in a Troubled Era* Katarzyna Gromek-Broc, 2023-07-14 Public law which examines relations between governments and institutions and individuals has in recent years become deeply disturbed by an erosion of the rule of law notably in some of the world's most professedly democratic nations In this book of edited essays many of the world's leading public lawyers draw on examples from the United Kingdom European States and the European Union EU to explore the alarming tensions unleashed as Europe is rocked by Brexit the war between nations on the EU border and the worldwide phenomenon of populist resistance to globalised forces and liberal democratic aspirations The book is dedicated to Professor Patrick Birkinshaw who until his retirement was Director of the Institute of European Public Law and Professor of Public Law at the University of Hull and widely respected as a leading authority on public law With a focus on public law and European public law jurisprudence with hugely important global ramifications the contributions continue his work and crucially deal with the new and troubling shape of the law politics relationship The essays examine these developments under four headings Law in a World Turned Upside Down with essays on e.g Brexit the denial of human

rights and the rule of law in Hungary climate change governance Law and Politics A Shifting Boundary showing how advances in the courts have prompted reaction to curtail judicial review and human rights protection especially evident in the fading mirage of fair trial rights and administration on the EU periphery Law s Promise specifying real achievements in the way of reform and higher levels of security for individuals and New Bearings exploring initiatives and emerging problems including reform of judicial review the European Banking Law digitalization of public administration and institutional interactions with the Chinese 1982 Constitution The book brings together leading university professors public officials and judges all experts in their respective fields All are concerned with a central role for law in the process of governance This unrivalled volume penetrates the contradictions uncertainties and insecurities that plague this topic of worldwide interest and debate and will prove invaluable to practitioners public administrators jurists judges and legal academics everywhere It will also be of interest to political scientists and politicians In its completely original and innovative discussions of the changes taking place at the interface of law and politics and of how law can enhance certainty and reliability in governance this book provides a most detailed and insightful analysis of the new bearings in public law in Europe and worldwide

**Towards a European Constitution** Michael Gehler, 2005 This volume represents a historical comparison of the American and the EU European constitutional experiences and lessons to be derived therefrom for the present time It is designed to deepen the understanding of the historical and political dimensions of constitutional designs and practises on two continents Hopefully such historical depth charts will expand the horizon of debates among experts and decision makers The first part concentrates on the historical dimension It deals with the experiences and perceptions of basic American political principles developments of international and humanitarian law and the historical dimension of constitutional debates The second part of the book aims at culling potential lessons from the American constitutional experience and the remarkable longevity of the U S constitution Additional chapters concentrate on specific aspects and elements of the European constitutional debate courts of law human rights minority protections as well as gender equality Still other contributions focus on the historical context of the recent European Constitutional Convention Chapters on writing a European bill of rights the EU reform debates of the 1990s and finally an analysis of the Brussels Constitutional Summit of June 2004 are also included The spillover effects of the economic and monetary union on the constitutional debates are covered here as well as Asian perceptions of European integration Practitioners and scholars address in this volume historical political and diplomatic dimensions and achievements in the process of European constitution making and its chances of success in the future Finally the current tensions in the Atlantic world are analysed and what they may portend for the future of European Union security options

**The Routledge Handbook of Differentiation in the European Union** Benjamin Leruth, Stefan Gänzle, Jarle Trondal, 2022-05-11 The Routledge Handbook of Differentiation in the European Union offers an essential collection of groundbreaking chapters reflecting on the causes and consequences of this complex

phenomenon With contributions from key experts in this subfield of European Studies it will become a key volume used for those interested in learning the nuts and bolts of differentiation as a mechanism of dis integration in the European Union especially in the light of Brexit Organised around five key themes it offers an authoritative encyclopaedia of differentiation and addresses questions such as How can one define differentiation in the European Union in the light of the most recent events Does differentiation create more challenges or opportunities for the European Union Is Europe moving away from an ever closer Union and heading towards an ever more differentiated Union especially as leading political figures across Europe favour the use of differentiation to reconcile divergences between member states This handbook is essential reading and an authoritative reference for scholars students researchers and practitioners involved in and actively concerned about research in the study of European integration As European differentiation is multifaceted and involves a wide range of actors and policies it will be of further interest to those working on countries and or in policy areas where differentiation is an increasingly relevant feature The Introduction and chapters 13 21 30 and 35 of this book is available for free in PDF format as Open Access from the individual product page at [www.routledge.com](http://www.routledge.com) It has been made available under a Creative Commons Attribution Non Commercial No Derivatives 4.0 license

**Foreign Policy Objectives in European Constitutional Law** Joris Larik, 2016-03-24 Presenting the first comprehensive account of foreign policy objectives as a growing part of European constitutional law Joris Larik confronts the trend of enshrining international ambitions in the highest laws of states and the European Union Closely examining the provisions of foreign policy objectives Larik differentiates their legal force and functions situating them into the overall legal order of the state the EU and the composite European constitutional space He argues that the codification of foreign policy objectives suggests a progression in the evolution of the role of the constitution from limiting public authority to guiding it towards certain goals both at home and in the wider world Advancing a comparative constitutional perspective for the study of EU external relations this volume contributes a constitutional dimension to the normative power debate in the study of EU foreign policy Drawing on established national doctrines on constitutional objectives from Germany France and India the book provides a common vocabulary for coming to terms with foreign policy objectives as legal norms across different jurisdictions In the pluralist context and closely intertwined legal orders of the EU and its Member States it shows how objectives help to channel the individual ambitions of the Member States through the Union framework towards a more coherent external action Furthermore the book connects its legal findings with the debate on the EU as an actor in international relations exploring the role of these norms in inter institutional struggles and processes of identity shaping legitimization and socialization

**Democracy and Rule of Law in the European Union** Flora A.N.J. Goudappel, Ernst M.H. Hirsch Ballin, 2015-12-30 The present collection of essays offers the reader a broad range of original perspectives on democracy and the rule of law in the European Union approaching the existing policy area from new points of view Leading experts from different countries and backgrounds focus on how

democracy and the rule of law are related to topics like security pension rights judicial cooperation and human rights protection Their expert views are based on a combination of theory and knowledge acquired in their practice as academics or practitioners in the field of European integration The issue of the rule of law and democracy is close to the heart of Professor Jaap de Zwaan a true European building bridges between countries and peoples He has written extensively on the subject of European integration Therefore this collection of expert views is not only an original and valuable contribution to the literature and discussion on the development and enlargement of the European Union but at the same time it is a tribute to Jaap de Zwaan whose academic and diplomatic career can be characterized as always serving an ever closer Union Flora Goudappel is Jean Monnet Professor of EU Trade Law in the Overseas Territories at the Erasmus University Rotterdam and a consultant on European Union law Ernst Hirsch Ballin is Professor of Dutch and European Constitutional Law at Tilburg University and Professor of Human Rights Law at the University of Amsterdam

*European Constitutional Language* András Jakab, 2016-04-15 If the task of constitutional theory is to set out a language in which the discourse of constitutional law may be grounded a question of the utmost importance is how this terminology is created defined and interpreted In this groundbreaking new work András Jakab maps out and analyses the grammar and vocabulary on which the core European traditions of constitutional theory are based He suggests understanding key constitutional concepts as responses to historical and present day challenges experienced by European societies Drawing together a great and diverse range of literature much of which has never before been touched upon by scholarship in the English language Jakab reconceptualises and argues for a new understanding of European constitutional law discourse In so doing he shines new light on what constitutes its distinctively European nature This remarkable book is essential reading for all scholars and students of constitutional theory in Europe and beyond

*European Constitutional Imaginaries* Jan Komárek, 2023-02-07 This is an open access title available under the terms of a CC BY NC ND 4.0 International licence It is free to read on the Oxford Academic platform and offered as a free PDF download from OUP and selected open access locations How can the EU be made legitimate and sustainable through constitutional law and what is the role of constitutional lawyers and their ideas in creating this sense of legitimacy This book seeks to answer these questions through the concept of the constitutional imaginary sets of ideas and beliefs that motivate and justify the practice of government and collective self rule Constitutional imaginaries are as important as institutions and office holders as they provide political action with an overarching sense and purpose recognized as legitimate by those governed Constitutional imaginaries are necessary fictions that make political rule possible and at the same time they are ideologies which hide from view various forms of domination *European Constitutional Imaginaries* deals with a variety of questions and is split into four parts to address the first part explores in more detail various meanings of European constitutional imaginary as seen by different disciplines legal sociology political and constitutional theory and philosophy The second part revisits the contribution of some key authors to the creation of European constitutional

imaginaries and the third part offers various new ways of thinking about European constitutionalism The fourth and final part examines political economy behind various constitutional imaginaries Written by a balanced mix of well established authors and newer talent European Constitutional Imaginaries promises to open debates on European constitutionalism that are necessary to understanding Europe s present predicament and its various crises all navigated through the medium of law

Strengthening the Rule of Law in Europe Werner Schroeder,2016-12-15 Respect for the rule of law is according to Article 2 of the Treaty on European Union a value on which the Union is founded and a prerequisite for the accession of new Member States However in some Member States there are deficiencies as regards the independence of the justice system or other aspects of the rule of law and on several occasions the Union has been confronted with a rule of law crisis In order to address this problem the book elucidates the principal elements of a common European rule of law in a global context and explores the different mechanisms and instruments appropriate to safeguard the rule of law and to address future rule of law crises in the Member States The book brings together contributions from renowned academics high ranking professionals and experts in the fields of European law public international law and constitutional law Rule of Law, Common Values, and Illiberal Constitutionalism Tímea Drinóczi,Agnieszka Bień-Kacała,2020-09-08 This book challenges the idea that the Rule of Law is still a universal European value given its relatively rapid deterioration in Hungary and Poland and the apparent inability of the European institutions to adequately address the illiberalization of these Member States The book begins from the general presumption that the Rule of Law since its emergence has been a universal European value a political ideal and legal conception It also acknowledges that the EU has been struggling in the area of value enforcement even if the necessary mechanisms are available and given an innovative outlook and more political commitment could be successfully used The authors appreciate the different approaches toward the Rule of Law both as a concept and as a measurable indicator and while addressing the core question of the volume widely rely on them Ultimately the book provides a snapshot of how the Rule of Law ideal has been dismantled and offers a theory of the Rule of Law in illiberal constitutionalism It discusses why voters keep illiberal populist leaders in power when they are undeniably acting contrary to the Rule of Law ideal The book will be of interest to academics and researchers engaged with the foundational questions of constitutionalism The structure and nature of the subject matter covered ensure that the book will be a useful addition for comparative and national constitutional law classes It will also appeal to legal practitioners wondering about the boundaries of the Rule of Law The EU and Constitutional Time Massimo Fichera,2023-07-01 This insightful book examines the inherent fragility of modern liberal constitutionalism and shows how it is in the nature of every constitutional community including the European Union to try to protract its own duration as much as possible The book considers the strengths weaknesses tensions and contradictions of European constitutionalism using the lens of constitutional time Political Theory and the European Constitution Lynn Dobson,Andreas Follesdal,2004-08-02 In June 2003 the Convention on the Future of Europe released what



may become the Constitution of the European Union This timely volume provides one of the first critical assessments of the draft Constitution from the vantage point of political theory The work combines detailed institutional analysis with normative political theory bringing theoretical analysis to bear on the pressing issues of institutional design answered or bypassed by the draft Constitution It addresses several themes that play out differently in federal arrangements than in unitary political orders European values especially the legitimate role of alleged common values liberty and powers how does the draft Constitution address competing normative preferences the European interest the noble words regarding common European objectives and values are often muddled or conflated different actors intending quite different things Several chapters contribute to clarifying the different senses of these terms

**The Jurisprudence of Constitutional Conflict in the European Union** Ana Bobić, 2022-05-12 A comparative and comprehensive account of the jurisprudence of constitutional conflict between the Court of Justice and national courts with the power of constitutional review This monograph addresses the incidences of and reasons for constitutional clashes in the application and enforcement of EU law It aims to determine how the principle of primacy of EU law works in reality and whether the jurisprudence of the courts under analysis supports this concept To this end the book explores the three areas of constitutional conflict ultra vires review identity review and fundamental rights review The book substantiates the descriptive and strengthens the normative contributions of the theory of constitutional pluralism in relation to the web of relations in the European judicial space By examining the influence that the jurisprudence of constitutional conflict has on the balance of powers between the Court of Justice and constitutional courts the volume develops the judicial triangle as an analytical tool that depicts the consequences for the horizontal constitutional courts vis vis the Court of Justice and vertical judicial relationships Court of Justice vis vis ordinary national courts constitutional courts vis vis ordinary national courts By offering a thorough compilation of the jurisprudence of constitutional conflict in the EU The Jurisprudence of Constitutional Conflict in the European Union improves our understanding of the principle of primacy of EU law and its limits as well as reinforces the theory of constitutional pluralism in explaining and guiding judicial power relations and interactions in the EU

Legal Constraints on EU Member States in Drafting Accession Agreements Narin Idriz, 2022-06-22 Do Member States of the EU have a free hand in drafting Accession Treaties or are there legal constraints on their primary law making powers in this regard That is the main question this book addresses It argues that such constraints do exist and seeks to identify them thereby providing a number of insights into the nature of the EU s legal order The point of departure as well as the main focus of the study is the proposed permanent safeguard clause PSC on the free movement of persons in the Negotiating Framework for Turkey Legal provisions rules principles and norms that might constrain Member States in this regard are identified with reference to the PSC The book examines constraints on Member States stemming from three sources of EU law Association Law based on the existing legal framework built on the EEC Turkey Association Agreement Part I EU Enlargement Law comprised of past practice and

existing EU rules on enlargement Part II and the foundations of EU Constitutional Law Part III which constrain Member States whenever they act within the scope of Union law both as primary and secondary lawmakers Part III reveals what the Court of Justice of the EU considers to be the essence or the very foundations of the Union's legal order which it protects against encroachment This is similar to what some constitutional courts do to protect the inner unity or basic structure of their constitutions The findings of this book can be applied to the accession of any candidate state It also sheds light on important implications for future treaty amendments and for identifying possible limits to differentiated integration

**Revisiting the Liberal Constitutional Features of the European Union** Inês Quadros, Miguel

Gorjão-Henriques, 2025-08-27 This book offers an innovative insight into constitutionalism as a well established framework for describing the legal and political features of the European Union It revisits and updates the core pillars upon which the European way of life was built liberal democratic constitutionalism while confronting the threats the EU is currently facing Examining the political tensions that surface in the European Union the tools used to address the rule of law crisis and the challenges posed to the autonomy of EU law while offering a fresh look into contemporary EU policies the book is a valuable resource for scholars researchers and practitioners eager to engage in the ongoing European dialogue

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