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African Customary Law in South Africa 2e (2nd Edition)

Post Apartheid Constitutions Perspectives On South Africas Basic Law

Marius Pieterse



Post Apartheid Constitutions Perspectives On South Africa's Basic Law:

Constitutional Origins, Structure, and Change in Federal Countries International Association of Centers for Federal Studies, Forum of Federations, 2005 Providing examples of diverse forms of federalism including new and mature developed and developing parliamentary and presidential and common law and civil law the comparative studies in this volume analyse government in Australia Belgium Brazil Canada Germany India Mexico Nigeria Russia South Africa Switzerland and the United States Each chapter describes the provisions of a constitution explains the political social and historical factors that influenced its creation and explores its practical application how it has changed and future challenges offering valuable ideas and lessons for federal constitution making and reform Contributors include Ignatius Ayua Akaayar Nigeria Raoul Blindenbacher Switzerland Dakas C J Dakas Nigeria Kris Deschouwer Belgium Juan Marcos Guti rrez Gonz lez Mexico John Kincaid USA Rainer Knopff Canada Jutta Kramer Germany Akhtar Majeed India Marat S Salikov Russia Cheryl Saunders Australia Anthony M Sayers Canada Nicolas Schmitt Switzerland Celina Sousa Brazil Nico Steytler South Africa and G Alan Tarr USA The French edition is forthcoming in the Fall 2005 as *Les origines structure et changements constitutionnels dans les pays f d raux*

Governing Hate and Race in the United States and South Africa Patrick Lynn Rivers, 2008-08-20 In this book Patrick Lynn Rivers asserts that states govern racist hate by governing racial constructs Rivers maintains that state practices used to govern hate and race in both the United States and South Africa do not make citizens safer even as the United States markets itself as a melting pot of cultures and South Africa touts its status as the new multicultural city on a hill In effect the regulatory practices of the neoliberal state aid in the redirection of responsibility for the eradication of racist hate away from the nation and toward the hated leaving unaddressed the systemic causes of hate In line with emerging scholarship on hate but also taking advantage of the perspective that comparative analysis makes possible Rivers advocates a particular brand of progressive activism for a socially engaged state and citizenry where race is central and racism is not anomalous

Introduction to the Law of South Africa C. G. Van der Merwe, J. E. Du Plessis, 2004-01-01 This title is part of an established Series which introduces various legal systems of the world It provides an authoritative and accessible overview of the main branches of South African public private and commercial law Offering insight into the rich system of South African law this title will be of particular interest to the international legal community The South African legal system has not only developed fascinating mixtures of civil law and common law rules over more than a century but has also experienced a post apartheid South Africa Of particular interest is the way in which so many branches of law have been infused by basic constitutional values Many of the contributors have published work in their own fields and have considerable experience of presenting their subject matter in a broader comparative perspective The succinct and balanced nature of the contributions makes this title attractive to a wide audience of academics students and practitioners with an interest in this remarkable legal system

The Constitution of South Africa Heinz Klug, 2010-07-15 South Africa's 1996 Final

Constitution is widely recognised as the crowning achievement of the country's dramatic transition to democracy. This transition began with the unbanning of the liberation movements and release of Nelson Mandela from prison in February 1990. This book presents the South African Constitution in its historical and social context, providing students and teachers of constitutional law and politics an invaluable resource through which to understand the emergence, development and continuing application of the supreme law of South Africa. The chapters present a detailed analysis of the different provisions of the Constitution, providing a clear, accessible and informed view of the constitution's structure and role in the new South Africa. The main themes include a description of the historical context and emergence of the constitution through the democratic transition; the implementation of the constitution and its role in building a new democratic society; the interaction of the constitution with the existing law and legal institutions, including the common law, indigenous law and traditional authorities; as well as a focus on the strains placed on the new constitutional order by both the historical legacies of apartheid and new problems facing South Africa. Specific chapters address the historical context, the legal, political and philosophical sources of the constitution, its principles and structure, the bill of rights, parliament and executive, as well as the constitution's provisions for cooperative government and regionalism. The final chapter discusses the challenges facing the Constitution and its aspirations in a democratic South Africa. The book is written in an accessible style with an emphasis on clarity and concision. It includes a list of references for further reading at the end of each chapter.

Indonesian Constitutional Reform, 1999-2002 Denny Indrayana, 2008 Constitutional Design for Divided Societies Sujit Choudhry, 2008

How should constitutions respond to the challenges raised by ethnic, linguistic, religious and cultural differences? In this volume, leading scholars of constitutional law, comparative politics and political theory address this debate at a conceptual level as well as through numerous country case studies.

Lawfare and Judicial Legitimacy Kate Dent, 2023-07-28

Lawfare is a complex and evolving concept with many permutations. It is a term that is used to describe both a judicialisation of politics, where the Constitutional Court is called upon to uphold constitutional responsibilities, compensating for institutional failures in the broader democratic space; and instances where there is abuse of the legal process to escape accountability. When the court is dragged into politics, it forces an examination of the legitimate scope of judicial review. This book explains how judicialisation of politics leads to the politicisation of adjudication and further weaponisation of the law. Exploring the judicial-political dynamics of South Africa from 2009 onwards, the work traces the consequences of the judicialisation of politics for institutional resilience and broader constitutional stability. Through an in-depth study of judicial legitimacy, the book seeks to provide an overarching theoretical justification for the dangers that inhere in lawfare. It analyses the potential costs of both judicial statesmanship and strategies of deference and avoidance when trying to navigate the Court safely through the era of lawfare. South Africa offers an interesting crucible within which to observe an unfolding global trend. Strengthened by its comparative focus, the implications of lawfare presented in this book transcend the South African context and are applicable

to other jurisdictions in the world The book will be of interest to researchers academics and practitioners working in the areas of Constitutional Law and Politics *From Parchment to Practice* Tom Ginsburg, Aziz Z. Huq, 2020-04-30 Asks how the parchment promises of a written constitution are translated into political practice working through the many problems of constitutional implementation after adoption The Limits of Constitutional Democracy Jeffrey K. Tulis, 2010-11-14 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations Uncovering the reasons for this ambivalence this book looks at the difficulties of constitutional democracy and reexamines fundamental questions What is constitutional democracy When does it succeed or fail Can constitutional democracies conduct war Can they preserve their values and institutions while addressing new forms of global interdependence The authors gathered here interrogate constitutional democracy's meaning in order to illuminate its future The book examines key themes the issues of constitutional failure the problem of emergency power and whether constitutions should be suspended when emergencies arise the dilemmas faced when constitutions provide and restrict executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation In addition to the editors the contributors are Sotirios Barber Joseph Bessette Mark Brandon Daniel Deudney Christopher Eisgruber James Fleming William Harris II Ran Hirschl Gary Jacobsohn Benjamin Kleinerman Jan Werner Müller Kim Scheppele Rogers Smith Adrian Vermeule and Mariah Zeisberg *The Limits of Constitutional Democracy* Jeffrey K. Tulis, Stephen Macedo, 2010-10-18 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations Uncovering the reasons for this ambivalence this book looks at the difficulties of constitutional democracy and reexamines fundamental questions What is constitutional democracy When does it succeed or fail Can constitutional democracies conduct war Can they preserve their values and institutions while addressing new forms of global interdependence The authors gathered here interrogate constitutional democracy's meaning in order to illuminate its future The book examines key themes the issues of constitutional failure the problem of emergency power and whether constitutions should be suspended when emergencies arise the dilemmas faced when constitutions provide and restrict executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation In addition to the editors the contributors are Sotirios Barber Joseph Bessette Mark Brandon Daniel Deudney Christopher Eisgruber James Fleming William Harris II Ran Hirschl Gary Jacobsohn Benjamin Kleinerman Jan Werner Müller Kim Scheppele Rogers Smith Adrian Vermeule and Mariah Zeisberg *Litigating Socio-economic Rights in South Africa* Christopher Mbazira, 2009 Litigating Socio Economic Rights in South Africa A choice between corrective and distributive justice by Christopher Mbazira 2009 ISBN 978 0 9814124 7 4 Pages viii 273 Print version Available Electronic version Free PDF available Promoting the Rule of Law in Post-Conflict States Laura Grenfell, 2013-07-11 In most post conflict states a strong level of legal pluralism is the norm

particularly in regions of Africa and Asia where between eighty and ninety per cent of disputes are resolved through non state legal mechanisms The international community in particular the United Nations persistently drives the re establishment of the rule of law in war torn areas where traditionally customary law is prevalent Laura Grenfell traces the international community s evolving understanding of the rule of law in such regions and explores the implications of strong legal pluralism for the rule of law enterprise Using the comparative examples of two unique case studies South Africa and Timor Leste Promoting the Rule of Law in Post Conflict States provides insight into the relationship between the rule of law and legal pluralism Alongside these studies the book offers a comprehensive introduction to the conceptual framework of the rule of law in the context of approaches taken by the international community *Power-Sharing in the Global South* Eduardo

Wassim Aboultaif, Soeren Keil, Allison McCulloch, 2024-02-22 Power sharing serves as a popular conflict resolution device at war s end Yet the performance record of such arrangements is highly variable sometimes leading to peace and stability and at other times to immobilism and institutional collapse This book explores the adoption function and dissolution of power sharing arrangements across the Global South including case studies of Colombia Ethiopia Malaysia and Iraq and others to make sense of this mixed record Authors identify a range of contextual factors as well as significant variations in the institutional rules and their meaning across the cases that help to explain divergent power sharing outcomes Emphasis throughout the chapters is placed on system adaptability for power sharing success *The Politics of Principle* Theunis Roux, 2013-03-28 Uses a single country case study to enrich research on the role of constitutional courts in new democracies

The Global Debate Over Constitutional Property Gregory S. Alexander, 2011-07-29 Countries around the world are heatedly debating whether property should be a constitutional right But American lawyers have largely ignored this debate which is divided into two clear camps those who believe making property a constitutional right undermines democracy by fostering inequality and those who believe it provides the security nec *The Routledge Handbook of African Law* Muna Ndulo, Cosmas Emeziem, 2021-11-23 The Routledge Handbook of African Law provides a comprehensive critical overview of the contemporary legal terrain in Africa The international team of expert contributors adopt an analytical and comparative approach so that readers can see the nexus between different jurisdictions and different legal traditions across the continent The volume is divided into five parts covering Legal Pluralism and African Legal Systems The State Institutions Constitutionalism and Democratic Governance Economic Development Technology Trade and Investment Human Rights Gender Based Violence and Access to Justice International Law Institutions and International Criminal Law Providing important insights into both the specific contexts of African legal systems and the ways in which these legal traditions intersect with the wider world this handbook will be an essential resource for academics researchers lawyers and graduate and undergraduate students studying this ever evolving field **A Theory of African Constitutionalism** Berihun Adugna Gebeye, 2021-07-08 A Theory of African Constitutionalism asks and seeks to answer why we need a new theoretical

framework for African constitutionalism and how this could offer us better theoretical and practical tools with which to understand improve and assess African constitutionalism on its own terms By locating constitutional studies in Africa within the experiences interactions and contestations of power and governance beginning in precolonial times the book presents the development and transformation of African constitutional systems across time and place along with the attendant constitutional designs and practices ranging from the nature and operation of the African state to its vertical and horizontal government structures to its constitutional rights regime This title offers both a theoretically and comparatively rich historically and contextually informed and temporally and spatially extensive account of the nature travails and incremental successes of African constitutionalism with detailed case studies from Nigeria Ethiopia and South Africa A Theory of African Constitutionalism provides scholars policymakers governments and constitution builders in Africa and beyond with new insights for reimagining the purpose substance and scope of constitutions and constitutionalism The Impossible Machine Adam Sitze, 2013-07-30 A fresh though counterintuitive understanding of South Africa's Truth and Reconciliation Commission's legal political and cultural heritage The Selfless Constitution, 2023-01-10 Do you possess freedom the will to do as you choose as an individual as a participant in social affairs or as a citizen in the political realm Well no Not really At least not as most of us understand a term loaded down with metaphysical baggage Don't worry You've got something better a neurological system capable of carrying out the most complex analytical and computational tasks membership in innumerable communities that provide you with huge stores of knowledge and wisdom and a politico constitutional order that ought to provide the material and the immaterial conditions that will enable you to pursue a life worth valuing Drop the simplistic folk psychology of unfettered freedom whilst holding on to intentionality and you might be inclined to adopt a set of social practices and political arrangements that enhance the chances that you and your compatriots will flourish As many recent studies of consciousness reveal our neurological systems are complex feedback mechanisms designed to create myriad for trial and error and if you survive the production of new stores of knowledge Individuals comprised of numerous radically heterogeneous naturally and socially determined selves are always experimenting attempting to divine through reflection and action what works best even when best means fully embracing who we already are Choice architects those persons charged with constructing the environments within which we operate daily should if responsible regularly run experiments that attempt to eliminate biases and ultimately deliver norms that nudge us away from negative defaults toward more optimal ends A constitutional democracy made up of millions of radically heterogeneous densely populated individuals constantly strives to determine what works best for most of its many constituents Because South Africa's Constitution states at an extremely high level of generality only some of the norms that govern our lives it remains for citizens representatives and judges to create doctrines and institutions that serve its capaciously framed ends best After canvassing the relevant literature in neuroscience empirical philosophy behavioural psychology social capital theory development economics and

emergent experimental governance this work suggests that manifold experiments in living that fall within the accepted parameters of our shared constitutional norms are likely over time to produce more optimal ways of being that can be replicated by other members of our polity Our reflexive stance toward best practices a linchpin of this book s take on experimental governance when inextricably linked to a commitment to flourishing and to the expansion of individual capabilities should cause us to alter the content of the fundamental norms that shape our lives and bind us to one another A political order founded upon experimental constitutionalism and flourishing promises an egalitarian pluralist reformation of South African society The book spins out its novel thesis against the concrete backdrop of political arrangements and judicial doctrines that have emerged during the first 20 years of our truly vibrant constitutional democracy Its trenchant analysis of political institutions and constitutional case law shows us how far we have come and how far we still have to go

Can rights cure? The impact of human rights litigation on South Africa's health system Marius Pieterse, 2014-08-01 Can rights cure At a time when South Africa s ailing and dysfunctional health system is on the verge of radical transformation through the mooted introduction of a National Health Insurance scheme and when there are increasing political tensions between government and the courts this book reflects upon the South African experience of judicially enforcing health related constitutional rights It attempts to understand the ways in which rights based litigation has impacted on the operation and transformation of different features of the health system including the formulation and implementation of health laws and policies processes of health resource allocation and rationing the regulation of health care delivery in the private sector and the promotion and protection of public health

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