

MODERN
CONSTITUTIONAL
THEORY:
A Reader
Fifth Edition

John H. Garvey
T. Alexander Aleinikoff
and
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Modern Constitutional Theory 4e

Gary Jacobsohn, Miguel Schor



Modern Constitutional Theory 4e:

Modern Constitutional Theory 4 Sweet & Maxwell, Limited, 1999-01-01 *Critical Theory and Democracy* Enrique Peruzzotti, Martin Plot, 2012-11-27 This book focuses on Andrew Arato's democratic theory and its relevance to contemporary issues such as processes of democratization, civil society, constitution making and the modern Executive. Andrew Arato is both globally and disciplinarily a prominent thinker in the fields of democratic theory, constitutional law and comparative politics, influencing several generations of scholars. This is the first volume to systematically address his democratic theory. Including contributions from leading scholars such as Dick Howard, Ulrich Preuss, Hubertus Buchstein, Janos Kis, Uri Ram, Leonardo Avritzer, Carlos de la Torre and Nicolás Lynch, this book is organized around three major areas of Arato's influence on contemporary political and social thought. The first section offers a comprehensive view of Arato's scholarship from his early work on critical theory and Western Marxism to his current research on constitution making and its application. The second section shifts its focus from the previous comprehensive approach to a much more specific one: Arato's widespread influence on the study of civil society in democratization processes in Latin America. The third section includes a previously unpublished work: A conceptual history of dictatorship and its rivals, one of the few systematic interrogations on the meaning of a political form of fundamental relevance in the contemporary world. *Critical Theory and Democracy* will be of interest to critical and social theorists and all Arato scholars.

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.

Comparative Constitutional Theory Gary Jacobsohn, Miguel Schor, 2018-02-23 The need for innovative thinking about alternative constitutional experiences is evident, and readers of *Comparative Constitutional Theory* will find in its pages a compendium of original, theory-driven essays. The authors use a variety of theoretical perspectives to explore the diversity of global constitutional experience in a post-1989 world prominently marked by momentous transitions from authoritarianism to democracy by multiple constitutional revolutions and devolutions, by the increased penetration of international law into national jurisdictions and by the enhancement of supra-national institutions of governance.

Constitutional Theory Carl Schmitt, 2008-01-23 Carl Schmitt's

magnum opus written during the Weimar regime wherein Schmitt challenges the theories and practices of Western constitutional government claiming that classical conceptions of democracy cannot be transposed onto modern political life

American Constitutionalism Stephen M. Griffin, 1998-07-27 Despite the outpouring of works on constitutional theory in the past several decades no general introduction to the field has been available Stephen Griffin provides here an original contribution to American constitutional theory in the form of a short lucid introduction to the subject for scholars and an informed lay audience He surveys in an unpolemical way the theoretical issues raised by judicial practice in the United States over the past three centuries particularly since the Warren Court and locates both theory and practices that have inspired dispute among jurists and scholars in historical context At the same time he advances an argument about the distinctive nature of our American constitutionalism regarding it as an instance of the interpenetration of law and politics American Constitutionalism is unique in considering the perspectives of both law and political science in relation to constitutional theory Constitutional theories produced by legal scholars do not usually discuss state centered theories of American politics the importance of institutions behaviorist research on judicial decision making or questions of constitutional reform but this book takes into account the political science literature on these and other topics The work also devotes substantial attention to judicial review and its relationship to American democracy and theories of constitutional interpretation

American Journal of Islamic Social Sciences 4:1 Hasan Turiibi, Mona Abul-Fadl, Fadl Abdallah, Muhammad Arif, Hasan Lunggulung, The American Journal of Islamic Social Sciences AJISS established in 1984 is a quarterly double blind peer reviewed and interdisciplinary journal published by the International Institute of Islamic Thought IIIT and distributed worldwide The journal showcases a wide variety of scholarly research on all facets of Islam and the Muslim world including subjects such as anthropology history philosophy and metaphysics politics psychology religious law and traditional Islam

Constitutional Development in China, 1982-2012 Lin Li, Jihong Mo, Guoqiang Zhai, 2019-11-29 This volume presents an overview of the evolution of the current Chinese Constitution 1982 and the characteristics of constitutional studies since 1978 Readers are introduced to the basic principles of constitutional system in China and gain insights into the real state of Chinese law allowing them to form their own opinions It will also aid commercial communications with Chinese legal professionals as well as enterprises The book covers a number of topics including the history of constitutional communication between Chinese constitutionalists and the International Association of Constitutional Law since 1981 the most important academic contributions to international conferences concerning constitutional law by Chinese constitutionalists the main characteristics of the current Chinese Constitution in the field of constitutional studies in China the key issues of constitutional practice and implementation in China the challenges of running the fundamental political system of the People's Representative Congress and the characteristics of rule of law specific to China

The Federal Contract Stephen Tierney, 2022 This book rethinks the idea and practice of federalism and considers the specific constitutional purposes that

federalism serves Using the methodology of constitutional theory the book re evaluates our understanding of federalism in its historical development and present incarnations

Global Constitutionalism Aydin Atilgan, 2017-11-27 This book provides insights into the viability of the idea of global constitution Global constitutionalism has emerged as an alternative paradigm for international law However in view of the complex and varied structure of contemporary constitutionalism in reality it is extremely difficult to use constitutional law to provide a new paradigm for international law The book argues that the cultural paradigm can offer functional tools for the global constitutionalism discourse In other words global constitutionalism could be handled in the context of a global constitutional culture instead of a global constitution This would provide a more realistic basis for discussing global constitutionalization of a society as diverse as the international community where a globalized polity and a globalized legal system have not yet been achieved

University of Chicago Law Review: Volume 81, Number 4 - Fall 2014 University of Chicago Law Review, 2014-12-17 The University of Chicago Law Review's 4th issue of 2014 features articles and essays from recognized legal scholars as well as extensive student research Contents include Articles The Legal Salience of Taxation by Andrew T Hayashi Tax Loss Mechanisms by Jacob Nussim Avraham Tabbach Regulating Systemic Risk in Insurance by Daniel Schwarcz Steven L Schwarcz American Constitutional Exceptionalism Revisited by Mila Versteeg Emily Zackin Comments Bursting the Speech Bubble Toward a More Fitting Perceived Affiliation Standard by Nicholas A Caselli Payments to Not Parent Noncustodial Parents as the Recipients of Child Support by Emma J Cone Roddy Too Small to Fail A New Perspective on Environmental Penalties for Small Businesses by Nicholas S Dufau Understanding Equal Sovereignty by Abigail B Molitor Widespread Uncertainty The Exclusionary Rule in Civil Removal Proceedings by Michael J O'Brien Clogged Conduits A Defendant's Right to Confront His Translated Statements by Casen B Ross Integral Decisionmaking Judicial Interpretation of Predispute Arbitration Agreements Naming the National Arbitration Forum by Daniel A Soto Volume 81 Number 4 also features Review Essays by Lisa Bernstein Avery W Katz and Eyal Zamir analyzing three recent books on contract law and theory

Constitutional Theory: Schmitt after Derrida Jacques de Ville, 2017-04-21 This book advances a new reading of the central works of Carl Schmitt and in so doing rethinks the primary concepts of constitutional theory In this book Jacques de Ville engages in a close analysis of a number of Schmitt's texts including Dictatorship 1921 The Concept of the Political 1927 Constitutional Theory 1928 Land and Sea 1942 Ex Captivitate Salus 1950 The Nomos of the Earth 1950 and The Theory of the Partisan 1963 This engagement takes place from the perspective of constitutional theory and focuses specifically on concepts or themes such as sovereignty the state the political constituent power democracy representation the constitution and human rights The book seeks to rethink the structure of these concepts in line with Derrida's analysis of Schmitt's texts on the concept of the political in Politics of Friendship 1993 This happens by way of an analysis of Derrida's engagement with Freud and other psychoanalysts Although the main focus in the book is on Schmitt's texts it further examines two texts of Derrida Khra 1993 and Fors The English Words of Nicholas

Abraham and Maria Torok 1976 by reading these alongside Schmitt's own reflections on the positive concept of the constitution

Accountability in the Contemporary Constitution Nicholas Bamforth, Peter Leyland, 2013-09 Accountability in the context of constitutional and administrative law is a complex concept This book examines the legal framework of public institutions in light of contemporary accountability debates the role of human rights in public accountability accountability in regulation and the operation of accountability in multi layered government

The Hollow Core of Constitutional Theory Donald L. Drakeman, 2021-04-08 The first major scholarly defense of the centrality of the Framers intentions in constitutional interpretation to appear in years

The Distorting Lens of Convergent Constitutional Theory Peter Cane, 2025-07-24 This book challenges the near universal acceptance of a US style Western constitutional paradigm as the best basis for comparative constitutional studies It does so on three main grounds anachronism othering and cultural specificity Main pillars of convergent constitutional theory are rooted in the revolutionary late eighteenth century a lost world constitutional arrangements that deviate from the paradigm are often branded as outliers or even as not constitutional at all and the foundations of the paradigm in liberal democracy give no space for other forms of constitutionalism Whatever the attractions of convergent theory as a normative ideal of good government for the purposes of understanding analysing and explaining constitutional systems it is far from ideal This book discusses and questions convergent theory's weddedness to writing as the technology of constitution making its image of a constitution as fundamental law its idea that a constitution expresses the sovereignty of the people its use of tripartite separation of powers as the basic principle of institutional design its relative neglect of administrative law its association of rights with judicially enforceable bills of rights and its obsession with a vaguely specified concept of democracy It makes suggestions for alternative preferable methods of understanding analysing and explaining constitutions and governmental and constitutional systems

Intellectual Property Thomas Cottier, Petros Constantinos Mavroidis, Marion Panizzon, 2010-04-23 The incorporation of intellectual property protection into the WTO international trading system has been a milestone in international economic law and has added a new dimension to trade regulation new rights and obligations and new challenges alike The contributors leading scholars and practitioners in the field provide insights into the legal relationship of the TRIPs Agreement to the GATT 94 and the GATS The book widens the debate with a thorough discussion on pending and unresolved relations of TRIPs the WTO UPOV the Convention on Biodiversity and Farmers Rights contained in the FAO International Undertaking and efforts of the World Bank GCIAR system including IPGRI What will be the impact of TRIPs on ownership of plant genetic resources Largely a victory for OECD countries the present state of intellectual property rights has important implications for developing countries The incorporation of intellectual property rights into the WTO system will eventually change the relationship of trade competition and intellectual property It will equally have to assist in providing equitable sharing of benefits in the use of plant genetic resources All of these issues are essential for the revision of exclusions from patenting in TRIPs This volume offers insights

into how this difficult task could and should be approached in a balanced manner and will be essential reading for economists and trade and intellectual property lawyers interested in the subject Moreover the volume will be relevant to agricultural economists as it addresses complex problems in the interstices of trade intellectual property plant genetic resources and sustainable development Thomas Cottier is Professor of European and International Economic Law University of Bern and Managing Director World Trade Institute University of Bern Petros C Mavroidis is Professor of Law University of Neuchâtel He formerly worked in the Legal Affairs Division of the World Trade Organization Marion Panizzon is Research Fellow University of Bern Simon Lacey is Research Fellow University of Bern

Constituent Power and the Law

Joel Colón-Ríos, 2020-03-26 Constituent power is the power to create new constitutions Frequently exercised during political revolutions it has been historically associated with extra legality and violations of the established legal order This book examines the relationship between constituent power and the law It considers the place of constituent power in constitutional history focusing on the legal and institutional implications that theorists politicians and judges have derived from it Commentators and citizens have relied on the concept of constituent power to defend the idea that electors have the right to instruct representatives to negate the doctrine of parliamentary sovereignty and to argue that the creation of new constitutions must take place through extra legislative processes including primary assemblies open to all citizens More recently several Latin American constitutions explicitly incorporate the theory of constituent power and allow citizens acting through popular initiative to trigger constitution making episodes that may result in the replacement of the entire constitutional order Constitutional courts have also at times employed constituent power to justify their jurisdiction to invalidate constitutional amendments that alter the fundamental structure of the constitution and thus amount to a constitution making exercise Some governments have used it to defend the legality of attempts to transform the constitutional order through procedures not contemplated in the constitution's amendment rule but considered participatory enough to be equivalent to the people in action sometimes sanctioned by courts Building on these findings Constituent Power and the Law argues that constituent power unlike sovereignty should be understood as ultimately based on a legal mandate to produce a particular type of juridical content In practice this makes it possible for a constitution making body to be understood as legally subject to popularly ratified substantive limits

The Constitutional Theory of the Federation and the European Union

Signe Rehling Larsen, 2021-02-04 From the start of the European integration process one question has puzzled scholars what type of political association is the European Union In absence of an agreed upon response most scholars have suggested that the European Union is sui generis This book challenges the sui generis thesis by demonstrating that the EU is not a unique form of association but rather a federal union of states or what this book calls a federation This is a discrete form of political association on par with though differentiated from political modernity's two other main forms namely the state and the empire The federation cannot be understood on the basis of the general theory of the state or its

concept of sovereignty The statist imaginary still dominates both the debates on federalism and the EU meaning that all federal policies are either seen as confederal associations of sovereign states or sovereign federal states This book challenges this binary by demonstrating that the federation is not a super state but a discrete political form with its own constitutional theory It is characterized by a double political existence a lack of internal hierarchy and the internal absence contestation or repression of sovereignty This book details the key aspects of federal constitutional theory and how this theory accounts for the EU s constitutional form as well as the crises it has faced in recent years This book is broken into five chapters that cover the introduction to federalism origins of the EU state transformation and teleology unity in diversity and emergency rule without a sovereign This book draws on a variety of literatures and historical material to help the reader develop a critical understanding of constitutional myths and the theory of federalism

The Selfless Constitution Stu Woolman, 2021-07-28

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.

The Rule of Recognition and the U.S. Constitution Matthew Adler, Kenneth Einar Himma, 2009-07-30. A volume of original essays that discusses the applicability of H. L. A. Hart's rule of recognition model of a legal system to U.S. Constitutional law as discussed in his book *The Concept of Law*.

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