

# RIGHTS AND CONSTITUTIONALISM

*OF THE PRINCIPLES, HISTORY, AND THEORY OF RIGHTS*

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# Rights And Constitutionalism The New South African Legal Order

**John Mukum Mbaku Esq., Julius O.  
Ihonvbere**



## **Rights And Constitutionalism The New South African Legal Order:**

**Rights and Constitutionalism** Dawid Hercules Van Wyk, 1996 This major work written by prominent South African academics is an introduction to the new constitutional order in South Africa It places fundamental rights as affirmed in Chapter 3 of the South African Constitution in a comparative and international context The authors draw heavily on the constitutional experience of countries such as Canada India Germany and the United States which greatly influenced the drafting of Chapter 3 of the Constitution The study is shaped by principles that form the foundation of the new order the supremacy of the Constitution the notion of a democratic constitutional state and the judicial protection of fundamental rights The book is divided into four parts The first deals with constitutionalism democracy and constitutional interpretation The second part provides an examination of the historical background of the 1993 Constitution and a description of the principal features of the Constitution The third part contains an analysis of the key fundamental rights which constitutes the main purpose of the study Detailed treatment is given to civil and political rights social and economic rights the concepts of equality and administrative justice and the circumstances in which limitations may be imposed on rights A separate chapter is devoted to the international protection of human rights as directed by Section 35 1 of the Constitution The final part comprises a bibliography of the works cited in the text following the sequence of the chapters This is a book which will be of interest to all constitutional law specialists and to many political scientists particularly those with an interest in constitutionalism and constitutional litigation

**Equality and Non-discrimination in South Africa** Shadrack Gutto, 2001 This study explores and critiques law and law making in the nascent constitutional democracy in the new South Africa with a focus on the complex roles of the executive parliament political parties the media and civil society The capacity and potential in the judiciary and the legal profession in promoting and protecting values and rights of equality and non discrimination is examined Substantive equality and non discrimination law in theory and in practice is considered critically from a broad historical and social context that highlights areas of race gender disability harassment and hate speech socio economic rights and legal services International human rights law and comparative law aspects are skillfully interwoven in this pioneering scholarly work

The Right to Property in Commonwealth Constitutions Tom Allen, 2000-03-09 Practical theoretical and historical approach to constitutional rights to property in Commonwealth countries

Governance in the New South Africa Guy C. Z. Mhone, Omano Edigheji, 2003 The major challenges confronting South Africa since the advent of non racial multiparty democracy have been the need to promote democratic governance economic growth global competitiveness and to improve the standard of living of its people especially the previously disadvantaged majority Black population These challenges have coincided with the ascendancy of globalisation with its attendant social economic and political imperatives all of which have consequences for governance and development at the national level not least in emerging economies like South Africa This important book assesses the implications of global imperatives for the nature capacity character and scope

of democratic governance and the pursuit of equitable development in the new South Africa A major conclusion is that the implementation of domestic economic reforms predicated on market fundamentalism with its dominant logic and paradigm of globalisation and economic management is incompatible and irreconcilable with the quest for democratic governance and equitable development The contributors contend that such an approach reproduces a substantively undemocratic and inequitable society Governance in the New South Africa concludes by offering some considerations related to how substantive democracy and equitable development may be promoted in South Africa on the basis of democratic governance and developmentalism

*Minority Protection in Post-Apartheid South Africa* Kristin Henrard, 2002-08-30 Accommodation of population diversity is a vital issue for any multinational society The legacy of Apartheid in South Africa complicates this effort considerably Henrard introduces a theoretical framework regarding how to accommodate minority protection in the most appropriate way and analyzes the respective contributions of individual rights minority rights and the right to self determination Subsequent chapters examine the case study of post apartheid South Africa and attempt to investigate its constitutional development Henrard finds that provisions within the 1996 Constitution do acknowledge an interrelation between these three important factors however implementation of minority protection policy is often quite a different matter In seeking appropriate means of minority protection this study stresses inclusionism integration and the essential right to identity and real equality While Henrard reviews and discusses the entire democratic transformation process in South Africa she cautions that because current developments are characterized by their unsettled nature major transformation and flux analysis of the implementation phase can be only indicative The apartheid history does not in itself inhibit progressive stances on this important issue Still despite the promising nature of the 1996 Constitution the picture that emerges in terms of policy development aimed at minority protection is ambivalent

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

**Handbook of Global Legal Policy** Stuart Nagel, 2022-04-18 Featuring a pragmatic approach to coping with the legal complications surrounding pretrial release drug related crime and freedom of religion among other issues this timely reference presents a host of legal policy problems in

diverse political and cultural settings throughout the world Contributors bridge the academic gulf between worldwide and public policy studies as well as the ideological gap between liberal and conservative attitudes toward constitutional law individual liberty public safety and human rights The authors emphasize the need for an integrated one world perspective in the international legal community drawing on over 1200 references tables and illustrations

**Judicial Recourse to Foreign Law** Basil Markesinis, Jorg Fedtke, 2012-12-06 Accessible and clearly structured this is the first book to include examinations of public and private law in the discussion about access to foreign laws With commentaries by an international collection of leading judges in the field it looks at the practice in a range of countries spread across the globe In jurisprudence an exchange of ideas is essential as there is no monopoly of wisdom Legal convergence is particularly beneficial to both public law as constitution building is done in so many parts of the world and to commercial law where enhanced communication trade and information mean that people have to work more closely together This book examines the theme of judicial mentality and how it helps or hinders recourse to foreign ideas raises and addresses the dangers that accompany comparative law and judicial creativity looks at the practice in America Canada England France Germany Italy Israel South Africa and at the European Court of Justice Ideal for practitioners and academics it is an essential read for those working in or studying jurisprudence at undergraduate or postgraduate level

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

**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

**Socio-economic Rights in the South African Constitution** Mandla Seleane, 2001 This publication will assist researchers students and the public in their understanding of socio economic rights

**The Transition to Democratic Governance in Africa** John Mukum Mbaku Esq., Julius O. Ihonvbere, 2003-04-30 Africa is currently experiencing sociopolitical and economic changes of unprecedented proportions New leaders institutions discourses and methods of political organization and action are shaping a new future Through a case study approach this essay collection provides a comprehensive analysis of the history trajectory actors institutions contradictions failures and opportunities in contemporary efforts at democratization in Africa While presenting the dynamics of democracy and democratization in several African countries they also look at critical issues in Africa's transition projects from political parties and elections through constitutions and constitutionalism to new structures of power and politics A provocative analysis for scholars students researchers and policy makers involved with African political and economic development

Religion and Law Peter W. Edge, 2017-03-02 Discussion of the way in which law engages with religious difference often takes place within the context of a single jurisdiction Religion and Law An Introduction presents a comprehensive text for students drawing on examples from

across key Anglophone jurisdictions the United Kingdom the United States Canada New Zealand Australia and South Africa as well as international law to explore a broad range of issues Aimed at a non legal readership this book introduces the use of legal sources and focuses on factual situations as much as legal doctrine Key issues arising from interaction of the religious individual and the State are discussed as well as the religious organisation or community and the State The interaction is explored through case studies of areas as diverse as the legal regulation of religious drug use sacred spaces and sacred places and claims of clergy misconduct Taking a broad non jurisdictional approach to the key issues in particular providing insights differing from the dominant US experiences and paradigms this student friendly textbook includes a clearly structured bibliography and clear guidance on how to approach relevant legal materials Making Rights Work Penny Smith, 2019-01-15 First published in 1999 this edited collection of essays explores various perspectives on making rights work in South Africa Canada the USA and the UK along with pieces on gender political LGBT and British legal rights The volume was inspired by recent strides forward at the time including the South African Constitution adopted on the 8th of May 1996 and sought to provide a snapshot of rights debates at the time The Idea of Property Laura S. Underkuffler, 2003 Legal scholars and philosophers have long been engaged in studying the secret of the internal structure of property in law This text aims to advance our understanding of property as an idea and the power that claimed property rights should have against competing public interests Constitutional Comparison François Venter, 2021-07-26 In our globalized era it has become impossible to deal effectively with constitutional law and related subjects such as fundamental rights administrative law and political science without knowledge of foreign systems A wealth of literature is available on practically all constitutional systems and the intricacies of their application This however presents the constitutionalist with a formidable problem Which foreign systems should I explore in order to make relevant comparisons and how should I go about it This book addresses the core problems of comparability and appropriate comparative methodology in the realm of contemporary constitutionalism The outcome is however not mere theorizing Most of the text is devoted to an incisive application of the chosen comparative method to four geographically historically and culturally divergent but thoroughly comparable constitutional systems In the course of the comparative exercise contemporary constitutional dogma and constitutional mechanics are analyzed and explained in many instances in their historical contexts making the book itself a useful source of comparative and historical information Equality John Baker, K. Lynch, Sara Cantillon, Judy Walsh, 2016-05-23 How can egalitarian ideals be put into action This ground breaking book sets out a new interdisciplinary model for equality studies Integrating normative questions about the ideal of equality with empirical issues about the nature of inequality it applies a new framework to a wide range of contemporary inequalities Proposing far reaching changes in the economy politics law education and research practices it sets out innovative political strategies for achieving those aims It is an invaluable resource for both academics and activists *Globalization and Private Law* Michael Faure, Andre Van der Walt, 2010-01-01

This timely book explores the relationship between private law and globalization. It examines the consequences of the fact that law making now takes place in a globalized world which increasingly leads to questions of accountability and legitimacy of the law making process. Within this work European and South African scholars deal with the relationship between private law and globalization in fourteen innovative chapters addressing inter alia globalization, democracy and accountability, harmonization versus decentralization, public law issues, corporate governance, procedural issues as well as human rights and the environment. This well documented and original study will be a valuable resource for academics and legal practitioners as well as students. Specialists in private law, transnational law, international law and legal theory should also not be without this important book.

Socio-economic Rights in South Africa Danie Brand, Christof H. Heyns, 2005

Chinese Yearbook of Human Rights, Volume 4 (2006) Sun Shiyan, Bi Xiaoqing, 2003-12-14

The Chinese Yearbook of Human Rights is co-sponsored by the United Nations Office of the High Commissioner for Human Rights, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and three institutes under the Chinese Academy of Social Sciences: the Institute of Law, the Centre for Human Rights Studies and the Centre for International Law Studies. The purpose of the Chinese Yearbook of Human Rights is to create a forum for the academic exchange between China and the international community in the field of human rights. Accordingly, the Yearbook will aim to publish high quality academic articles written by scholars from both China and other countries on human rights issues from perspectives of law, philosophy, political science, history and international relations.

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