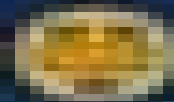


# RIGHTS AND CONSTITUTIONALISM

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

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# Rights And Constitutionalism The New South African Legal Order

**Shadrack Gutto**



## **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

**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 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

**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 *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 **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      *Sub National Constitutional Law in South Africa* Rassie Malherbe,Dirk Brand,2017-02-24 Derived from the renowned multi volume International Encyclopaedia of Laws this very useful analysis of Sub National constitutional law in South Africa 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 South Africa will welcome this guide and academics and researchers will appreciate its value in the study of comparative constitutional law      *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      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

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**Property and the Constitution** Janet McLean, 1999-08-23 Papers from a July 1998 conference written by public lawyers property lawyers and legal philosophers examine public dimensions of private property Contributors consider whether property is a human right and look at its role in making responsible citizens its relationship to freedom of speech constitutional protections of private property and attempts to redress historical wrongs by property settlements to indigenous people The editor is former director of the New Zealand Institute of Public Law and a lecturer at the University of Auckland New Zealand Distributed by ISBS Annotation copyrighted by Book News Inc Portland OR 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      **Separation of Powers, the Judiciary and the Politics of Constitutional Adjudication** Sanele Sibanda, 2022-12-26 Over the last 25 years the doctrine of separation of powers has been established as both a foundational value and a structural principle applied by the courts in interpreting the relationship between South Africa's constitutional structures. Jurisprudentially, the practicalities and contours of how, when and by whom the separation of powers should be determined has proven to be controversial. Therefore, the past decade has been characterised by heightened political contestation, often resulting in extensive litigation posing thorny political issues. This has had profound implications for the judiciary and raised difficult questions on the very nature of South African constitutionalism. These political contestations gathered even greater momentum and urgency during the early days of COVID-19 in 2020 when the first iteration of this book was produced as a special issue of the South African Journal on Human Rights. This timely volume brings together critical reflections on developments in South Africa's separation of powers jurisprudence and theory, the role and function of the judiciary through its judgments in shaping the landscape of constitutional politics, as well as the implications of this for the consolidation of South Africa's democratic constitutional project. It makes an important contribution to the debate on the politics of constitutional adjudication in light of the doctrine of separation of powers. This book will be of interest to researchers and advanced students of politics, history, law and legal theory, human rights and African studies.

**Constitutionalizing Economic Globalization** David Schneiderman, 2008-03-27 Are foreign investors the privileged citizens of a new constitutional order that guarantees rates of return on investment interests? Schneiderman explores the linkages between a new investment rules regime and state constitutions between a constitution-like regime for the protection of foreign investment and the constitutional projects of national states. The investment rules regime, as in classical accounts of constitutionalism, considers democratically authorized state action as inherently suspect. Despite the myriad purposes served by constitutionalism, the investment rules regime aims solely to enforce limits both inside and outside of national constitutional systems beyond which citizen-driven politics will be disabled. Drawing on contemporary and historical case studies, the author argues that any transnational regime should encourage innovation, experimentation and the capacity to imagine alternative futures for managing the relationship between politics and markets. These objectives have been best accomplished via democratic institutions operating at national, sub-national and local levels.

**Research Handbook on Modern Legal Realism** Shauhin Talesh, Elizabeth Mertz, Heinz Klug, 2021-03-26 This insightful Research Handbook provides a definitive overview of the New Legal Realism (NLR) movement reaching beyond historical and national boundaries to form new conversations. Drawing on deep roots within the law and society tradition, it demonstrates the powerful virtues of new legal realist research and its attention to the challenges of translation between social science and law. It explores an impressive range of contemporary issues including immigration, policing, globalization, legal education and access to justice, concluding with an examination of how different social science

disciplines intersect with NLR      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      *Constitutional Identity and Constitutionalism in Africa* Charles Manga Fombad,Nico Steytler,2024 This book in the Stellenbosch Handbooks in African Constitutional Law series provides a critical analysis of existing paradigms concepts and normative ideologies of modern African constitutional identity      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      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      **Constitutionalism and Transitional Justice in South Africa** Andrea Lollini,2011 Over the last fifteen years the South African postapartheid Transitional Amnesty Process implemented by the Truth and Reconciliation Commission TRC has been extensively analyzed by scholars and commentators from around the world and from almost every discipline of human sciences Lawyers historians anthropologists and sociologists as well as political scientists have tried to understand describe and comment on the shocking South African political decision to give amnesty to all who fully disclosed their politically motivated crimes committed during the apartheid era Investigating the postapartheid transition in South Africa from a multidisciplinary perspective involving constitutional law criminal law history and political science this book explores the overlapping of the postapartheid constitution making process and the Amnesty Process for political violence under apartheid and shows that both processes represent important innovations in terms of constitutional law and transitional justice systems Both processes contain mechanisms that encourage the constitution of the unity of the political body while ensuring future solidity and stability From this perspective the book deals with the importance of several



concepts such as truth about the past publicly shared memory unity of the political body and public confession

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