

**SAVING
THE
CONSTITUTION
FROM
THE COURTS**

BY WILLIAM GANGI

Saving The Constitution From The Courts

Laurent Coutron



Saving The Constitution From The Courts:

Saving the Constitution from the Courts William Gangi, 1995 In Roosevelt's New Deal days the threat from the Court was the judges attempt to run the nation's economy Now as the limits of individual freedoms are increasingly unrestrained Gangi sees a parallel but perhaps more fundamental peril He challenges the reader to pick up any newspaper and find in it judges telling lawmakers what to do and how to do it Gangi does not doubt the good will of the reformers in the short term recent expansions of rights are beneficial But he argues abuse of judicial power is eroding a more basic American freedom the people's right to self government Gangi is concerned that present justices no longer understand American structures as set up by the framers of the Constitution and he gives an exhaustive summary of *The Federalist Papers* a classic defense of the original document written by Hamilton Jay and Madison under the pen name Publius Conservatives and liberals alike are guilty he says Recent Supreme Courts are an embarrassment to the American political tradition Troubled by the shadow of a new tyranny the author does not pull his punches Where he sees bias masquerading in legal garb he names it and he urges activists to stop the unseemly scurrying to the courts every time a public policy battle is lost Gangi concludes that if Americans are to regain control of their government they must first rediscover their faith in democracy Not everyone will agree with the views espoused in this provocative book but all who read it will understand a great deal better the critical issues with which it deals BOOK JACKET Title Summary field provided by Blackwell North America Inc All Rights Reserved

How to Save a Constitutional Democracy Tom Ginsburg, Aziz Z. Huq, 2018-10-05 We can't afford to be complacent any more A formidable book extremely rich in historical examples case studies and quantitative data *International Journal of Constitutional Law* Democracies are in danger Around the world a wave of populist leaders threatens to erode the core structures of democratic self rule In the United States the tenure of Donald Trump marks a decisive turning point for many What kind of president intimidates jurors calls the news media the enemy of the American people and seeks foreign assistance investigating domestic political rivals Many think the Constitution will safeguard us from lasting damage But is that assumption justified Drawing on an array of other countries experiences Tom Ginsburg and Aziz Z. Huq show how constitutional rules can both hinder and hasten the decline of democratic institutions The checks and balances of the federal government a robust civil society and media and individual rights such as those enshrined in the First Amendment often fail as bulwarks against democratic decline The sobering reality they contend is that the US Constitution's design makes democratic erosion more not less likely Its structural rigidity has had unforeseen consequence leaving the presidency weakly regulated and empowering the Supreme Court to conjure up doctrines that ultimately facilitate rather than inhibit rights violations Even the bright spots in the Constitution the First Amendment for example may have perverse consequences in the hands of a deft communicator who can degrade the public sphere by wielding hateful language banned in many other democracies We and the rest of the world can do better and the authors conclude by laying out practical steps for how laws

and constitutional design can play a more positive role in managing the risk This book makes a huge contribution to our understanding of how democracies erode and what institutional reforms would make it harder for authoritarian populists to entrench their power Yascha Mounk author of *The People vs Democracy* Whereas other recent books on the crisis of American democracy focus on what has gone wrong Ginsburg and Huq provide us with clear eyed proposals including some bold constitutional reforms for how to fix it Steven Levitsky New York Times bestselling coauthor of *How Democracies Die*

L'obligation de renvoi préjudiciel à la Cour de justice Laurent Coutron, 2014-05-27 Amorc par l arr t K bler un mouvement jurisprudentiel r cent a conduit la Cour de justice concevoir divers m canismes qui permettent aux justiciables de sanctionner directement ou indirectement une juridiction nationale qui a m connu son obligation de renvoi pr judiciaire C est ainsi que les justiciables pourront solliciter la remise en cause de la chose d cid e voire de la chose jug e ou encore chercher engager la responsabilit judiciaire de l tat On pressent pourtant que les solutions tr s restrictives forg es par la Cour de justice sont supplant es par les dispositifs nationaux Ceux ci paraissent en effet plus ais s actionner voire plus performants qu il s agisse de la violation du droit au juge l gal comme en Allemagne ou en Espagne ou encore de l introduction du dispositif l gislatif su dois La pr sentation sans gal ce jour de pr s de vingt rapports nationaux permettra de mieux appr cier l effectivit de la protection juridictionnelle dont disposent les justiciables via le renvoi pr judiciaire L int r t de cet ouvrage est d autant plus vif que l adh sion prochaine de l Union europ enne la Convention europ enne des droits de l homme se traduira vraisemblablement par une revitalisation des dispositions permettant de sanctionner une violation de l obligation de renvoi pr judiciaire Cet ouvrage s adresse principalement aux magistrats et aux avocats ainsi qu aux universitaires sp cialis s dans l tude du droit processuel

Constitutionality of Law without a Constitutional Court Mirosław Granat, 2023-09-01 This book analyses the problem of the possibility of guaranteeing the constitutionality of law in cases when a constitutional court either has been weakened or does not exist A starting point of the research is the emergence of the so called illiberal constitutionalism in several states namely Poland Hungary and Turkey as this phenomenon gravely affects the functioning of constitutional courts The work is divided into three parts The first contains contributions of a theoretical nature dedicated to the current shape of constitutional review in particular in the light of the emergence of illiberal constitutionalism This part of the book also deals with the collapse of the centralised constitutional review in Poland and the attempts to resolve the constitutional crisis The second is focused on discussing specific current problems with constitutional review on the basis of states such as Hungary Romania Turkey and Poland The third relates to other forms of constitutional review that is the so called dispersed model and the parliamentary one executed in the course of the legislative process The contributions discuss such forms of constitutional review in the Netherlands and Finland The book will be a valuable resource for students academics and policy makers working in the areas of constitutional law and politics

Courts to the Rescue of the Public Interest Rob Van Gestel, 2025-05-14 This is an open access title available under the terms of a CC BY NC ND 4 0 License It is

free to read download and share on Elgaronline.com This timely book examines the increasing pressure on courts to protect underrepresented matters of public interests at the risk of political reprisals It explores the different strategies used by judges across jurisdictions in Europe the USA India and South Africa to legitimize their decisions in contentious public interest cases

Judging Russia Alexei Trochev, 2008-04-28 This is a study of the actual role that the Russian Constitutional Court played in protecting fundamental rights and resolving legislative executive struggles and federalism disputes in both Yeltsin's and Putin's Russia Trochev argues that judicial empowerment is a non linear process with unintended consequences and that courts that depend on their reputation flourish only if an effective and capable state is there to support them This is because judges can rely only on the authoritativeness of their judgments unlike politicians and bureaucrats who have the material resources necessary to respond to judicial decisions Drawing upon systematic analysis of all decisions of the Russian Court published and unpublished and previously unavailable materials on their non implementation and resting on a combination of the approaches from comparative politics law and public administration this book shows how and why judges attempted to reform Russia's governance and fought to ensure compliance with their judgments

Reports of Cases Determined in the District Courts of Appeal of the State of California, 1927

Supermajority Voting in Constitutional Courts Cristóbal Caviedes, 2024-08-02 This book challenges the wide use of majority rule in many constitutional courts for declaring statutes unconstitutional and argues that these courts should rather perform constitutional review by using supermajority rules Considering that constitutional courts often tackle hard moral issues it is questionable whether a bare majority of judges should suffice for settling them especially considering these courts counter majoritarian nature Further the wide use of majority rule for checking the constitutionality of legislation may increasingly risk their reputation Such a concern is developing in the United States following a series of Supreme Court decisions This book argues that majority rule is unjustified in constitutional review This means that in constitutional review considering majority rule's traits there are no decisive reasons for using this voting rule over other voting rules Additionally the book argues that when checking the constitutionality of legislation constitutional courts should replace majority rule with supermajority rules Thus for declaring statutes unconstitutional it is argued that more than 50% of the judges present plus one judge present should be needed This book will be of interest to academics researchers and policy makers working in the areas of Constitutional Law and Politics

Judicial Dissent in European Constitutional Courts Katalin Kelemen, 2017-09-28 Dissent in courts has always existed It is natural and healthy that judges disagree on legal issues of a certain importance and difficulty The question is if it is reasonable to conceal dissent Not every legal system allows judges to explain their disagreement to the public in a separate opinion attached to the judgment of the court Most constitutional courts do This book presents a comparative analysis of the practice of judicial dissent in constitutional courts from the perspective of the civil law tradition It discusses the theoretical background presents the history of the institution and today's

practice thus laying down the basis for an accurate consideration of the phenomenon from a legal perspective *How Social Movements Can Save Democracy* Donatella della Porta, 2020-04-03 The birth of democracies owes much to the interventions and mobilizations of ordinary people Yet many feel as though they have inherited democratic institutions which do not deliver for the people that a rigid democratic process has been imposed from above with increasing numbers of people feeling left out or left behind In this well researched volume leading political sociologist Donatella della Porta rehabilitates the role social movements have long played in fostering and deepening democracy particularly focusing on progressive movements of the Left which have sought to broaden the plurality of voices and knowledge in democratic debate Bridging social movement studies and democratic theory della Porta investigates contemporary innovations in times of crisis particularly those in the direction of participatory and deliberative practices crowd sourced constitutions referendums from below and movement parties and reflects on the potential and limits of such alternative politics In a moment in which concerns increase for the potential disruption of a Great Regression led by xenophobic movements and parties the cases and analyses of resistance in this volume offer important material for students and scholars of political sociology political science and social movement studies *European Constitutional Courts towards Data Retention Laws* Marek Zubik, Jan Podkowik, Robert Rybski, 2020-10-30 The book analyses the impact the jurisprudence of the constitutional courts of EU Member States and the Court of Justice of the European Union has had on the perception of freedom of communications in the digital era with respect to these courts judgments regarding regulating storage and access to telecommunications data known as telecommunications data retention from 2008 to 2017 To do so it examines the jurisprudence of the constitutional courts of Austria Bulgaria Cyprus Czech Republic Ireland Germany Poland Portugal Romania Slovenia and Slovakia i e those courts that have already ruled on domestic provisions regulating telecommunications data retention Further it investigates the judgments of the Court of Justice of European Union regarding directive 2006 24 EC regulating telecommunications data retention along with relevant jurisprudence of the European Court of Human Rights As such the book provides a comparative study of jurisprudence and national measures to implement the Data Retention Directive Moreover the book discusses whether our current understanding of protection of freedom of communications guaranteed by the constitutions of EU member states and the EU Charter of Fundamental Rights which was developed in the era of analogue communications remains accurate in the era of digital technologies and mass surveillance simultaneously applied by states and private corporations In this context the book reconstructs constitutional standards that currently apply in the EU towards data retention This book presents a unique comparative analysis of all judgments concerning Directive 2006 24 EC which can be used in the legislative process on the EU forum aimed at introducing new principles of data retention and by constitutional courts in the context of comparative argumentation **European Yearbook of Constitutional Law 2022** Jurgen de Poorter, Gerhard van der Schyff, Maarten Stremler, Maartje De Visser, Ingrid Leijten, Charlotte van Oirsouw, 2023-07-25 The

European Yearbook of Constitutional Law EYCL is an annual publication devoted to the study of constitutional law. It aims to provide a forum for in depth analysis and discussion of new developments in the field both in Europe and beyond. This fourth volume of the EYCL addresses the underexplored and contentious topic of whether the EU possesses a constitutional identity of its own. To date the main focus of scholarship and case law concerns the constitutional identities of the Member States of the EU. This is because the EU has to respect such identities according to article 4(2) TEU. The attention for Member States constitutional identities stands in stark contrast to the notion of an EU constitutional identity. Such an identity features very little in the literature and debate on constitutional identity and the legal architecture of the EU. Consequently this edition of the EYCL addresses the gap in legal research by studying constitutional identity with a focus on the EU itself. The book explores various views on whether the EU possesses such an identity and what any possible identity might entail. In this way a fuller and more inclusive picture can be formed of constitutional identity as it relates to the multilevel constitutional order inhabited by the EU and its Member States. This volume will be of special interest to constitutional and legal scholars who are interested in EU and national constitutional law as well as to political scientists. In addition the book is relevant for judges, government officials, judges and policy makers who work with EU constitutional law and its relationship with national constitutional law.

Jurgen de Poorter is State Councillor at the Dutch Council of State and professor at Tilburg Law School Department of Public Law and Governance. Gerhard van der Schyff is associate professor at Tilburg Law School Department of Public Law and Governance. Maarten Stremmer is assistant professor at Maastricht University Faculty of Law Department of Public Law. Maartje De Visser is associate professor at SMU School of Law Singapore. Ingrid Leijten is professor at Tilburg Law School Department of Public Law and Governance. Charlotte van Oirsouw is PhD researcher at Utrecht University Department of Constitutional and Administrative Law.

Debates and Proceedings of the Constitutional Convention of the State of Illinois Illinois. Constitutional Convention, 1870

Constitutional Courts and Democratic Values Víctor Ferreres Comella, 2009-12-01

Víctor Ferreres Comella contrasts the European centralised constitutional court model in which one court system is used to adjudicate constitutional questions with a decentralised model such as that of the United States in which courts deal with both constitutional and non constitutional questions

Corpus Juris William Mack, William Benjamin Hale, 1917

Reports of Cases Argued and Decided in the Supreme Court of the United States United States. Supreme Court, 1882

God Save the Hon'ble Supreme Court Fali S. Nariman, 2018-07-24

A timely volume that highlights the forthright and candid views and opinions on a wide variety of pertinent issues by one of India's most respected legal luminaries FALI S NARIMAN with a remarkable track record in the legal field is not one to mince his words. He holds forth cogently on topics such as the Supreme Court and the judiciary, politicians and Parliament, the media and its right to expression, the Constitution of which he is an ardent defender and the minorities and more. Whatever be the subject he drives home his points on the basis of sound and logical contentions and arguments. Also he questions the recent functioning of the

Supreme Court of India the government's policies vis vis the press the judiciary and particularly the minorities who he declares today need to be protected as per the Constitution more than ever before He peppers the text with countless facts innumerable anecdotes and enthralling incidents that make for fascinating and enriching reading His analysis of judicial activism and the fear of a majoritarian government provide much food for thought The contents are rounded off with nostalgic cameos on the author's experience regarding defamation which he says is a luxury and a wholesome tribute to the Super Judge Justice V R Krishna Iyer whose presence he greatly misses Here is a work that neither the students of law and contemporary politics nor the legal practitioners and the lay person can afford to miss

The Global Decline of the Mandatory Death Penalty Andrew Novak, 2016-03-16 Historically at English common law the death penalty was mandatory for the crime of murder and other violent felonies Over the last three decades however many former British colonies have reformed their capital punishment regimes to permit judicial sentencing discretion including consideration of mitigating factors Applying a comparative analysis to the law of capital punishment Novak examines the constitutional jurisprudence and resulting legislative reform in the Caribbean Sub Saharan Africa and South and Southeast Asia focusing on the rapid retreat of the mandatory death penalty in the Commonwealth over the last thirty years The coordinated mandatory death penalty challenges which have had the consequence of greatly reducing the world's death row population represent a case study of how a small group of lawyers can sponsor human rights litigation that incorporates international human rights law into domestic constitutional jurisprudence ultimately harmonizing criminal justice regimes across borders This book is essential reading for anyone interested in the study and development of human rights and capital punishment as well as those exploring the contours of comparative criminal justice

Legal dispute over the Constitutional Court in Poland Bogumił Szmulik, Jarosław Szymanek, 2020 The strengthening of the position of courts was to a large extent the result of the creation and rapid development of constitutional justice It has made the power that was in some measure next to nothing a real power and the apolitical placement of courts changed into a political one or at least one leading to serious political repercussions There is no doubt today that courts are a branch of power in the full sense of the word and some even point out that because of constitutional justice they have become de facto the first power From the position of a passive power they have changed their placement mainly owing to constitutional justice to that of an active power which competes on a par with the authority of the parliament and government in search of a golden mean of political balance As a consequence constitutional courts have slowly but very consistently forged their position by stepping into the shoes of a power that is as a matter of fact a political and active one This apart from prestige and recognition for constitutional courts has also created the threat that like with all the other active branches of power they would become a participant in disputes and polemics and could enter into a classic power conflict Political disputes over the Constitutional Court cannot be eliminated altogether The Court by its very nature may betray political engagement or at least its judicial decisions will have a political effect which

means that it will be engaged in the political optics of rivalry between the separated branches of power The constitutional drafters acting rationally should therefore exercise due care to eliminate possible tensions Political disputes cannot be predicted nor can they be eliminated However they can be mitigated and unfortunately this is still missing in the Polish Constitutional Court model FROM THE INTRODUCTION Nott and McCord's Reports of Cases Determined in the Constitutional Court of South Carolina Henry Junius Nott, South Carolina. Constitutional Court of Appeals, David James McCord, 1860

The Enigmatic Realm of **Saving The Constitution From The Courts**: Unleashing the Language is Inner Magic

In a fast-paced digital era where connections and knowledge intertwine, the enigmatic realm of language reveals its inherent magic. Its capacity to stir emotions, ignite contemplation, and catalyze profound transformations is nothing in short supply of extraordinary. Within the captivating pages of **Saving The Constitution From The Courts** a literary masterpiece penned with a renowned author, readers attempt a transformative journey, unlocking the secrets and untapped potential embedded within each word. In this evaluation, we shall explore the book's core themes, assess its distinct writing style, and delve into its lasting effect on the hearts and minds of those who partake in its reading experience.

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