



LIMITING GOVERNMENT

An Introduction to Constitutionalism

András Sajó

Foreword by
Stephen Holmes

Limiting Government An Introduction To Constitutionalism

Rebecca E. Kingston



Limiting Government An Introduction To Constitutionalism:

Limiting Government András Sajó, 1999 1 2 Types of Fear EU Enlargement and the Failure of Conditionality Dimitry Kochenov, 2008-01-01 Among the criteria for accession to the European Union are democracy and the Rule of Law In the insightful analysis offered by the author of this book these concepts while admirable and even necessary criteria in principle are almost impossible to measure and any judgement grounded in them will always be difficult to justify In his words by including analysis of democracy and the Rule of Law within the field of the EU enlargement law the Union entered an unstable terrain of vague causal connections and blurred definitions Dr Kochenov addresses this problem by proceeding as follows 1 Outlining EU enlargement law in general including the principle of conditionality and the role played by the analysis of democracy and the Rule of Law in enlargement preparation 2 Focusing on the role actually played by the monitoring of democracy and the Rule of Law in ten candidate countries scrutinizing the way the EU used the legal tools and competences outlined in its enlargement law The book adopts the EU s own understanding of democracy and the Rule of Law as derived directly from the substance of the numerous legal and political instruments issued by the Community Institutions and especially the Commission in the course of the pre accession process In this way it demonstrates the actual as opposed to the officially announced role played by the assessment of democracy and the Rule of Law in the candidate countries in the regulation of enlargement Many formidable inconsistencies in the application of the conditionality principle are thus laid bare This leads the author to a series of recommendations on policy and procedure that he demonstrates could be profitably applied to the regulation of current and future accessions using the Commission s own structure of monitoring pre accession reforms in the three areas of the legislature executive and judiciary in candidate countries The probity and soundness of these recommendations firmly grounded as they are in the actual pre accession monitoring and its consequences for the pre accession progress of ten Eastern European countries admitted to the EU in 2004 and 2007 will greatly interest policymakers and scholars concerned with the future of European integration **Political Political Theory** Jeremy Waldron, 2016-03-07 Political theorists focus on the nature of justice liberty and equality while ignoring the institutions through which these ideals are achieved Political scientists keep institutions in view but deploy a meager set of value conceptions in analyzing them A more political political theory is needed to address this gap Jeremy Waldron argues **A Theory of the Executive Branch** Margit Cohn, 2021-02-24 The executive branch in Western democracies has been granted a virtually impossible task expected to imperially direct the life of the nation through thick and thin it is concurrently required to be subservient to legislation meted out by a sovereign parliament Drawing on a general argument from constitutional theory that prioritizes dispersal of power over concepts of hierarchy this book argues that the tension between dominance and submission in the executive branch is maintained by the adoption of various forms of fuzziness under which a guise of legality masks the absence of substantive limitation of power Under this internal tension vision of constitutionalism the executive branch is simultaneously

submissive to law and dominant over it while concepts of substantive legality are compromised Building on legal and political science research this volume classifies and analyses thirteen forms of fuzziness ranging from open ended or semi written constitutions to unapplied legislation The study of this unavoidable yet problematic feature of the public sphere is addressed descriptively and normatively Adding detailed examples from two fields of law emergency law and air pollution law in two systems the UK and the US the book ends with a call for raising the threshold of judicial review grounded in theories of participatory and deliberative democracy This book addresses an area that is surprisingly under researched Despite the increase in executive power across democratic polities and increasing public interest in the executive branch and executive powers this much needed book offers a theoretical foundation that should ground all analysis of arguably the most powerful branch of modern government

European Constitutional Imaginaries Jan Komárek, 2023-02-07 This is an open access title available under the terms of a CC BY NC ND 4.0 International licence It is free to read on the Oxford Academic platform and offered as a free PDF download from OUP and selected open access locations How can the EU be made legitimate and sustainable through constitutional law and what is the role of constitutional lawyers and their ideas in creating this sense of legitimacy This book seeks to answer these questions through the concept of the constitutional imaginary sets of ideas and beliefs that motivate and justify the practice of government and collective self rule Constitutional imaginaries are as important as institutions and office holders as they provide political action with an overarching sense and purpose recognized as legitimate by those governed Constitutional imaginaries are necessary fictions that make political rule possible and at the same time they are ideologies which hide from view various forms of domination European Constitutional Imaginaries deals with a variety of questions and is split into four parts to address the first part explores in more detail various meanings of European constitutional imaginary as seen by different disciplines legal sociology political and constitutional theory and philosophy The second part revisits the contribution of some key authors to the creation of European constitutional imaginaries and the third part offers various new ways of thinking about European constitutionalism The fourth and final part examines political economy behind various constitutional imaginaries Written by a balanced mix of well established authors and newer talent European Constitutional Imaginaries promises to open debates on European constitutionalism that are necessary to understanding Europe's present predicament and its various crises all navigated through the medium of law

Accountability of Judicial Power Piotr Mikuli, 2025-04-29 This book brings together a group of international scholars to discuss theoretical and comparative considerations of judicial accountability Accountability of the judiciary is an essential element in a democratic state ruled by law Its design must take into account the need to ensure both the legitimacy of the judiciary and its independence The work discusses accountability in the light of recent research including studies on the crisis of the rule of law in the contemporary world The book adopts a broad approach to accountability which has various facets referring both to the courts that is the organisational element of the judicial branch of government and to judges its

individual dimension It is divided into four parts the first deals with the essence of the concept of accountability of the judiciary the second discusses the emerging standards relating primarily to the individual accountability of judges and the third discusses the position of constitutional judges through the lens of accountability The fourth and final part provides a detailed consideration of the specific accountability mechanisms The book will be a valuable resource for academics

researchers and policymakers working in the areas of constitutional law and politics and accountability studies **An Unamendable Constitution?** Richard Albert, Bertil Emrah Oder, 2018-09-03 This book examines the subject of constitutional unamendability from comparative doctrinal empirical historical political and theoretical perspectives It explores and evaluates the legitimacy of unamendability in the various forms that exist in constitutional democracies Modern constitutionalism has given rise to a paradox can a constitutional amendment be unconstitutional Today it is normatively contested but descriptively undeniable that a constitutional amendment one that respects the formal procedures of textual alteration laid down in the constitutional text may be invalidated for violating either a written or unwritten constitutional norm This phenomenon of an unconstitutional constitutional amendment traces its political foundations to France and the United States its doctrinal origins to Germany and it has migrated in some form to all corners of the democratic world One can trace this paradox to the concept of constitutional unamendability Constitutional unamendability can be understood as a formally entrenched provision s or an informally entrenched norm that prohibits an alteration or violation of that provision or norm An unamendable constitutional provision is impervious to formal amendment even with supermajority or even unanimous agreement from the political actors whose consent is required to alter the constitutional text Whether or not it is enforced and also by whom this prohibition raises fundamental questions implicating sovereignty legitimacy democracy and the rule of law

Unconstitutional Constitutional Amendments Yaniv Roznai, 2017-02-23 Can constitutional amendments be unconstitutional The problem of unconstitutional constitutional amendments has become one of the most widely debated issues in comparative constitutional theory constitutional design and constitutional adjudication This book describes and analyses the increasing tendency in global constitutionalism to substantively limit formal changes to constitutions The challenges of constitutional unamendability to constitutional theory become even more complex when constitutional courts enforce such limitations through substantive judicial review of amendments often resulting in the declaration that these constitutional amendments are unconstitutional Combining historical comparisons constitutional theory and a wide comparative study Yaniv Roznai sets out to explain what the nature of amendment power is what its limitations are and what the role of constitutional courts is and should be when enforcing limitations on constitutional amendments

Comparative Constitution Making David Landau, Hanna Lerner, 2019 Recent years have witnessed an explosion of new research on constitution making Comparative Constitution Making provides an up to date overview of this rapidly expanding field

Beyond Genocide: Transitional Justice

and Gacaca Courts in Rwanda Pietro Sullo, 2018-09-19 Combining both legal and empirical research this book explores the statutory aspects and practice of Gacaca Courts inkiko gacaca the centrepiece of Rwanda's post genocide transitional justice system assessing their contribution to truth justice and reconciliation The volume expands the knowledge regarding these courts assessing not only their performance in terms of formal justice and compliance with human rights standards but also their actual modus operandi Scholars and practitioners have progressively challenged the idea that genocide should be addressed exclusively through westernised criminal law arguing that the uniqueness of each genocidal setting requires specific context sensitive solutions Rwanda's experience with Gacaca Courts has emerged as a valuable opportunity for testing this approach offering never previously tried homegrown solutions to the violence experienced in 1994 and beyond Due to the unprecedented number of individuals brought to trial the absence of lawyers the participative nature and the presence of lay judges directly elected by the Rwandan population Gacaca Courts have attracted the attention of researchers from different disciplines and triggered dichotomous reactions and appraisals The tensions existing within the literature are addressed anchoring the assessment of Gacaca in a comprehensive legal analysis in conjunction with field research Through the direct observation of Gacaca trials and by holding interviews and informal talks with survivors perpetrators ordinary Rwandans academics and the staff of NGOs a purely legalistic perspective is overcome offering instead an innovative bottom up approach to meta legal concepts such as justice fairness truth and reconciliation Outlining their strengths and shortcomings this book highlights what aspects of Gacaca Courts can be useful in other post genocide contexts and provides crucial lessons learnt in the realm of transitional justice The primary audience this book is aimed at consists of researchers working in the areas of international criminal law transitional justice genocide restorative justice African studies human rights and criminology while practitioners students and others with a professional interest in the topical matters that are addressed may also find the issues raised relevant to their practice or field of study Pietro Sullo teaches public international law and international diplomatic law at the Brussels School of International Studies of the University of Kent in Brussels He is particularly interested in international human rights law transitional justice international criminal law constitutional transitions and refugee law After earning his Ph D at the Sant Anna School of Advanced Studies in Pisa Dr Sullo worked at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg as a senior researcher and as a coordinator of the International Doctoral Research School on Retaliation Mediation and Punishment He was also Director of the European Master's Programme in Human Rights and Democratization E MA in Venice from 2013 to 2015 and lastly he has worked for international NGOs and as a legal consultant for the Libya Constitution Drafting Assembly on human rights and transitional justice

The Oxford Handbook of Comparative Law Mathias Reimann, Reinhard Zimmermann, 2019-03-26 This fully revised and updated second edition of The Oxford Handbook of Comparative Law provides a wide ranging and diverse critical survey of comparative law at the beginning of the twenty first century It

summarizes and evaluates a discipline that is time honoured but not easily understood in all its dimensions In the current era of globalization this discipline is more relevant than ever both on the academic and on the practical level The Handbook is divided into three main sections Section I surveys how comparative law has developed and where it stands today in various parts of the world This includes not only traditional model jurisdictions such as France Germany and the United States but also other regions like Eastern Europe East Asia and Latin America Section II then discusses the major approaches to comparative law its methods goals and its relationship with other fields such as legal history economics and linguistics Finally section III deals with the status of comparative studies in over a dozen subject matter areas including the major categories of private economic public and criminal law The Handbook contains forty eight chapters written by experts from around the world The aim of each chapter is to provide an accessible original and critical account of the current state of comparative law in its respective area which will help to shape the agenda in the years to come Each chapter also includes a short bibliography referencing the definitive works in the field

The Routledge International Handbook of European Social Transformations Peeter Vihalemm, Anu Masso, Signe Opermann, 2017-11-22 This book focuses on social transformations as one of the central topics in the social sciences The study of European social transformations is very valuable in the context of universal discussions within social sciences explaining invariable universal attributes of societies and examining changing attributes The book consists of 20 chapters on European social transformations written from the perspectives of distinguished scholars from such disciplines as economics political science educational science geography media and communication studies public management and administration social psychology and sociology The temporal and spatial range of the book is wide including such global changes as time space compression focusing particularly on change processes in Europe during the last two decades The book consists of four main parts beginning with an overview of the theoretical and methodological approaches and then focusing separately on post communist transformations institutional drivers of social transformations in the European Union and European transformations in the context of global processes The book presents current theoretical empirical and methodological approaches that complement the scientific literature on social transformations This book is both an invaluable resource for scholars and an indispensable teaching tool for use in the classroom and will be of interest to students academics and policy makers studying how this diverse region has changed over recent years

Multiple Democracies in Europe Paul Blokker, 2009-12-04 This book provides an in depth discussion and analysis of democracy in Europe with a focus on the new EU member states and makes an important and original contribution to the debate on the future of European democracy Author Paul Blokker seeks to provide a critical reconceptualization of the notion of democratic political culture by developing a multiple democracies theoretical approach He draws on debates in democratization theory and normative political theory and presents a cultural sociological approach for the analysis of democratization and democratic regimes This approach emphasizes the historical and cultural embedment

of democracy identifies a potential variety of ethics of democracy that underpin democratic political cultures and points to the significance of democratic imagination in the interpretation and recombination of such ethics The book explores the relevance of this approach by analysing multiple political cultures and their role in the emergence of democratic regimes in three new member states Hungary Poland and Romania providing a detailed description and analysis of political cultures by means of the analysis of constitutional politics constitutional texts and political elite discourses and the identification of distinct politico cultural elements that distinguish these societies from each other It will be of interest to students and scholars of democracy European studies post communist studies political theory and comparative politics

Democratic Transition in Slovenia Danica Fink Hafner, Sabrina P. Ramet, 2006 The first of the Yugoslav successor states to successfully build a democratic system and to enter the European Union Slovenia stands as a model for democratic transition This ground breaking volume analyzes the challenges confronting the post Communist government and evaluates the strategies adopted in refashioning its value system Sabrina P Ramet and Danica Fink Hafner have assembled a team of outstanding specialists to analyze various aspects of the country's transformation from socialism to democracy The editors note that while a great deal has been written on political and economic questions relatively little attention has been paid to the transformation and transmission of values and norms in Eastern Europe over the past fifteen years Slovenia's experience reflected in these pages demonstrates how a small country has created the preconditions necessary to the construction of a civic democratic culture Six values are emphasized as central to this project tolerance equality church state separation respect for democratic procedure and the rule of law human rights and civic mindedness The volume editors join the other contributors in discussing the way in which Slovenia has set out to build democracy the ways in which values are transmitted the role of the media in a free society the structure of educational systems and other questions which are of concern not just to Slovenes but to everyone who aspires to live in an open democratic society

Routledge Handbook of Law and Terrorism Genevieve Lennon, Clive Walker, 2015-07-16 In the years since 9 11 counter terrorism law and policy has proliferated across the world This handbook comprehensively surveys how the law has been deployed in all aspects of counter terrorism It provides an authoritative and critical analysis of counter terrorism laws in domestic jurisdictions taking a comparative approach to a range of jurisdictions especially the UK the US Australia Canada and Europe The contributions to the book are written by experts in the field of terrorism law and policy allowing for discussion of a wide range of regulatory responses and strategies of governance The book is divided into four parts reflective of established counter terrorism strategic approaches and covers key themes such as Policing and special powers including surveillance Criminal offences and court processes Prevention of radicalisation and manifestations of extremism Protective preparative security The penology of terrorism In addressing counter terrorism laws across a broad range of topics and jurisdictions the handbook will be of great interest and use to researchers students and practitioners in criminal law counter terrorism and security studies

Saving the European

Union from its Illiberal Member States András Jakab, Lando Kirchmair, 2025-03-29 In the last decade at least two European Union EU member states have deteriorated from fragile liberal democracies to illiberal regimes This deterioration not only includes key elements of the rule of law but also mechanisms of democratic accountability have eroded While the cause is an unfortunate combination of factors post socialist EU member states are particularly likely to embrace an illiberal cause Saving the European Union from its Illiberal Member States aims to show that inherited cultural patterns from socialism and even earlier in the form of informal practices and narratives are a largely underestimated source of illiberalism Initially the book diagnoses an unfortunate dynamic of mutual poisoning existing vulnerabilities and weaknesses of democracy and the rule of law at the level of EU law are exacerbated by illiberal member states and vice versa The crisis of illiberal regimes is shown to be a symptom of the EU's own constitutional malaise Authors András Jakab and Lando Kirchmair aim to offer antidotes to this mutual affliction highlighting areas of EU law that have been neglected Chapters examine whether an epistemological tool such as the EU Justice Scoreboard could be adapted to identify illiberal elements The authors also argue that the protection of fundamental rights needs to be strengthened through the completion of the European Fundamental Rights Union Finally the book states that the Spitzenkandidaten system needs to be further strengthened and stabilised for the long term not only to ensure the democratic accountability of the Commission but also because this has the potential to bring the Commission's hitherto undecided and hesitant stance closer to that of the European Parliament

European Constitutional Language András Jakab, 2016-04-15 If the task of constitutional theory is to set out a language in which the discourse of constitutional law may be grounded a question of the utmost importance is how this terminology is created defined and interpreted In this groundbreaking new work András Jakab maps out and analyses the grammar and vocabulary on which the core European traditions of constitutional theory are based He suggests understanding key constitutional concepts as responses to historical and present day challenges experienced by European societies Drawing together a great and diverse range of literature much of which has never before been touched upon by scholarship in the English language Jakab reconceptualises and argues for a new understanding of European constitutional law discourse In so doing he shines new light on what constitutes its distinctively European nature This remarkable book is essential reading for all scholars and students of constitutional theory in Europe and beyond

Militant Democracy Svetlana Tyulkina, 2015-02-11 The term militant democracy was coined by Karl Loewenstein in the 1930s He argued that attempts to establish democracy in the Weimar Republic failed due to the lack of militancy against subversive movements The concept of militant democracy was introduced to legal scholarship and constitutional practice so as to provide democracy with legal means to defend itself against the range of possible activities of non democratic political actors This book offers a broad comparative look at the legal concept of militant democracy It analyses both theoretical and substantive aspects of this concept investigating its practice in a number of countries and on a diverse array of issues Examining cases in

Australia Turkey Spain Germany Israel India the USA and the Council of Europe Svetlana Tyulkina maps the historical development of militant democracy in constitutional theory and explores its interaction with various traditional and contemporary notions of democracy The book analyses the possibilities and pitfalls of the concept of militant democracy when applied to protect democracy when it is under threat of harm or destruction by undemocratic actors and suggests possible solutions and measures to overcome those dangers In its evaluation of the capacity and justification for democracies to apply militant democracy measures this book will be of great use and interest to students and scholars of public comparative constitutional law international law human rights law and comparative politics Montesquieu and His Legacy Rebecca E. Kingston, 2008-11-04 Montesquieu 1689 1755 is regarded as one of the most important thinkers of the Enlightenment His *Lettres persanes* and *L'Esprit des lois* have been read by students and scholars throughout the last two centuries While many have associated Montesquieu with the doctrine of the separation of powers in the history of ideas Rebecca E Kingston brings together leading international scholars who for the first time present a systematic treatment and discussion of the significance of his ideas more generally for the development of Western political theory and institutions In particular *Montesquieu and His Legacy* supplements the conventional focus on the institutional teachings of Montesquieu with attention to the theme of morals and manners The contributors provide commentary on the broad legacy of Montesquieu's thought in past times as well as for the contemporary era Strategies of Financial Regulation Junghoon Kim, 2020-12-03 This book analyses different strategies and their results in implementing financial regulation in terms of rule making public enforcement and private enforcement The analysis is based on a comparative study of conduct of business regulation on mis-selling of financial instruments in the UK and South Korea It extends into liquidity regulation in the banking sector and credit rating agency regulation The book concludes that in rule making purposive rules are more effective for achieving regulatory goals with minimal undesirable results but a rule making system with purposive rules can only work on a foundation of trust among rule makers enforcers and the regulated that with respect to public enforcement the enforcement strategies should combine the compliance oriented and deterrence oriented approaches and be continuously adjusted based on close monitoring of the regulatory outcomes and that in private enforcement regulation should be instituted as the minimum requirement in private law

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In an era characterized by interconnectedness and an insatiable thirst for knowledge, the captivating potential of verbal expression has emerged as a formidable force. Its power to evoke sentiments, stimulate introspection, and incite profound transformations is genuinely awe-inspiring. Within the pages of "**Limiting Government An Introduction To Constitutionalism**," a mesmerizing literary creation penned with a celebrated wordsmith, readers set about an enlightening odyssey, unraveling the intricate significance of language and its enduring effect on our lives. In this appraisal, we shall explore the book's central themes, evaluate its distinctive writing style, and gauge its pervasive influence on the hearts and minds of its readership.

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Table of Contents Limiting Government An Introduction To Constitutionalism

1. Understanding the eBook Limiting Government An Introduction To Constitutionalism
 - The Rise of Digital Reading Limiting Government An Introduction To Constitutionalism
 - Advantages of eBooks Over Traditional Books
2. Identifying Limiting Government An Introduction To Constitutionalism
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Limiting Government An Introduction To Constitutionalism
 - User-Friendly Interface
4. Exploring eBook Recommendations from Limiting Government An Introduction To Constitutionalism
 - Personalized Recommendations

- Limiting Government An Introduction To Constitutionalism User Reviews and Ratings
- Limiting Government An Introduction To Constitutionalism and Bestseller Lists
- 5. Accessing Limiting Government An Introduction To Constitutionalism Free and Paid eBooks
 - Limiting Government An Introduction To Constitutionalism Public Domain eBooks
 - Limiting Government An Introduction To Constitutionalism eBook Subscription Services
 - Limiting Government An Introduction To Constitutionalism Budget-Friendly Options
- 6. Navigating Limiting Government An Introduction To Constitutionalism eBook Formats
 - ePub, PDF, MOBI, and More
 - Limiting Government An Introduction To Constitutionalism Compatibility with Devices
 - Limiting Government An Introduction To Constitutionalism Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Limiting Government An Introduction To Constitutionalism
 - Highlighting and Note-Taking Limiting Government An Introduction To Constitutionalism
 - Interactive Elements Limiting Government An Introduction To Constitutionalism
- 8. Staying Engaged with Limiting Government An Introduction To Constitutionalism
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Limiting Government An Introduction To Constitutionalism
- 9. Balancing eBooks and Physical Books Limiting Government An Introduction To Constitutionalism
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Limiting Government An Introduction To Constitutionalism
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Limiting Government An Introduction To Constitutionalism
 - Setting Reading Goals Limiting Government An Introduction To Constitutionalism
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Limiting Government An Introduction To Constitutionalism
 - Fact-Checking eBook Content of Limiting Government An Introduction To Constitutionalism

- Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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