

THE ENTRENCHMENT OF DEMOCRACY

This volume of essays brings together a group of leading political scientists, legal scholars, and political theorists to describe and analyze the body of constitutional law and practice within and upon democratic institutions, in particular examining how constitutional law shapes electoral democracy. Constitutional law and practice on this question are complex and varied. This volume therefore takes a thematic and regional approach: it selects a range of key theoretical questions related to democratic constitutional design and offers a series of chapters featuring a diverse range of voices, as well as a blend of theory, qualitative studies, and quantitative methods. Readers will gain a multifaceted understanding of a phenomenon of growing importance. The volume will also be useful to students of comparative constitutionalism, who will gain a rich array of empirical evidence to stimulate further work. This title is also available as Open Access on Cambridge Core.

TOM GINSBURG is Leo Spitz Distinguished Service Professor of International Law at the University of Chicago and a research scholar at the American Bar Foundation.

AZIZ Z. HUQ is the Frank and Bernice J. Greenberg Professor of Law at the University of Chicago; his most recent book is *The Rule of Law: A Very Short Introduction*.

TARUNABH KHAITAN is the Professor (Chair) of Public Law at the London School of Economics and Political Science and an honorary professorial fellow at Melbourne Law School. Previously, he was Professor of Public Law & Legal Theory at the University of Oxford.

COMPARATIVE CONSTITUTIONAL LAW AND POLICY

Series Editors

Tom Ginsburg *University of Chicago*
Zachary Elkins *University of Texas at Austin*
Ran Hirschl *University of Toronto*

Comparative constitutional law is an intellectually vibrant field that encompasses an increasingly broad array of approaches and methodologies. This series collects analytically innovative and empirically grounded work from scholars of comparative constitutionalism across academic disciplines. Books in the series include theoretically informed studies of single constitutional jurisdictions, comparative studies of constitutional law and institutions, and edited collections of original essays that respond to challenging theoretical and empirical questions in the field.

Books in the Series

The Entrenchment of Democracy: The Comparative Constitutional Design of Elections, Parties, and Voting Tom Ginsburg, Aziz Z. Huq, and Tarunabh Khaitan

Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity Ran Hirschl and Yaniv Roznai

Courts that Matter: Activists, Judges, and the Politics of Rights Enforcement Sandra Botero

The Story of Constitutions: Discovering the We in Us Wim Voermans

Democracy Under God: Constitutions, Islam and Human Rights in the Muslim World Dawood Ahmed and Muhammad Zubair Abbasi

Buddhism and Comparative Constitutional Law Edited by Tom Ginsburg and Ben Schonthal

Amending America's Unwritten Constitution Edited by Richard Albert, Ryan C. Williams, and Yaniv Roznai

Constitutionalism and a Right to Effective Government? Edited by Vicki C. Jackson and Yasmin Dawood

The Fall of the Arab Spring: Democracy's Challenges and Efforts to Reconstitute the Middle East Tofiq Maboudi

Filtering Populist Claims to Fight Populism: The Italian Case in a Comparative Perspective Giuseppe Martinico

Constitutionalism in Context David S. Law

The New Fourth Branch: Institutions for Protecting Constitutional Democracy Mark Tushnet

The Veil of Participation: Citizens and Political Parties in Constitution-Making Processes Alexander Hudson

Towering Judges: A Comparative Study of Constitutional Judges Edited by Rehan Abeyratne and Iddo Porat

The Constitution of Arbitration Victor Ferreres Comella

Redrafting Constitutions in Democratic Orders: Theoretical and Comparative Perspectives
Edited by Gabriel L. Negretto

From Parchment to Practice: Implementing New Constitutions Edited by Tom Ginsburg
and Aziz Z. Huq

*The Failure of Popular Constitution Making in Turkey: Regressing Towards
Constitutional Autocracy* Edited by Felix Petersen and Zeynep Yanaşmayan

A Qualified Hope: The Indian Supreme Court and Progressive Social Change Edited by
Gerald N. Rosenberg, Sudhir Krishnaswamy, and Shishir Bail

*Reconstructing Rights: Courts, Parties, and Equality Rights in India, South Africa, and
the United States* Stephan Stohler

Constitutions in Times of Financial Crisis Edited by Tom Ginsburg, Mark D. Rosen, and
Georg Vanberg

*Hybrid Constitutionalism: The Politics of Constitutional Review in the Chinese Special
Administrative Regions* Eric C. Ip

Constitution-Making and Transnational Legal Order Edited by Tom Ginsburg, Terence
C. Halliday, and Gregory Shaffer

The Invisible Constitution in Comparative Perspective Edited by Rosalind Dixon and
Adrienne Stone

The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis Theunis Roux

Constitutional Courts in Asia: A Comparative Perspective Edited by Albert H. Y. Chen
and Andrew Harding

Judicial Review in Norway: A Bicentennial Debate Anine Kierulf

Constituent Assemblies Edited by Jon Elster, Roberto Gargarella, Vatsal Naresh, and
Bjorn Erik Rasch

*The DNA of Constitutional Justice in Latin America: Politics, Governance, and Judicial
Design* Daniel M. Brinks and Abby Blass

The Adventures of the Constituent Power: Beyond Revolutions? Andrew Arato

Canada in the World: Comparative Perspectives on the Canadian Constitution Edited by
Richard Albert and David R. Cameron

Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka Dian
A. H. Shah

Courts and Democracies in Asia Po Jen Yap

Proportionality: New Frontiers, New Challenges Edited by Vicki C. Jackson and Mark
Tushnet

*Constituents before Assembly: Participation, Deliberation, and Representation in the
Crafting of New Constitutions* Todd A. Eisenstadt, A. Carl LeVan, and Tofigh Maboudi

Assessing Constitutional Performance Edited by Tom Ginsburg and Aziz Z. Huq

Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka
Benjamin Schonthal

Engaging with Social Rights: Procedure, Participation and Democracy in South Africa's Second Wave Brian Ray

Constitutional Courts as Mediators: Armed Conflict, Civil-Military Relations, and the Rule of Law in Latin America Julio Ríos-Figueroa

Perils of Judicial Self-Government in Transitional Societies David Kosař

Making We the People: Democratic Constitutional Founding in Postwar Japan and South Korea Chaihark Hahm and Sung Ho Kim

Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South César Rodríguez-Garavito and Diana Rodríguez-Franco

Unstable Constitutionalism: Law and Politics in South Asia Edited by Mark Tushnet and Madhav Khosla

Magna Carta and Its Modern Legacy Edited by Robert Hazell and James Melton

Constitutions and Religious Freedom Frank B. Cross

International Courts and the Performance of International Agreements: A General Theory with Evidence from the European Union Clifford J. Carrubba and Matthew J. Gabel

Reputation and Judicial Tactics: A Theory of National and International Courts Shai Dothan

Social Difference and Constitutionalism in Pan-Asia Edited by Susan H. Williams

Constitutionalism in Asia in the Early Twenty-First Century Edited by Albert H. Y. Chen

Constitutions in Authoritarian Regimes Edited by Tom Ginsburg and Alberto Simpser

Presidential Legislation in India: The Law and Practice of Ordinances Shubhankar Dam

Social and Political Foundations of Constitutions Edited by Denis J. Galligan and Mila Versteeg

Consequential Courts: Judicial Roles in Global Perspective Edited by Diana Kapiszewski, Gordon Silverstein, and Robert A. Kagan

Comparative Constitutional Design Edited by Tom Ginsburg

The Entrenchment of Democracy

THE COMPARATIVE CONSTITUTIONAL DESIGN OF
ELECTIONS, PARTIES, AND VOTING

Edited by

TOM GINSBURG

University of Chicago

AZIZ Z. HUQ

University of Chicago

TARUNABH KHAITAN

London School of Economics and Political Science



CAMBRIDGE
UNIVERSITY PRESS



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781009447737

DOI: [10.1017/9781009447713](https://doi.org/10.1017/9781009447713)

© Cambridge University Press & Assessment 2024

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, with the exception of the Creative Commons version
the link for which is provided below, no reproduction of any part may take place without
the written permission of Cambridge University Press & Assessment.

An online version of this work is published at doi.org/10.1017/9781009447713 under a Creative Commons
Open Access license CC-BY-NC 4.0 which permits re-use, distribution and reproduction in any medium
for non-commercial purposes providing appropriate credit to the original work is given and any changes
made are indicated. To view a copy of this license visit <https://creativecommons.org/licenses/by-nc/4.0>

When citing this work, please include a reference to the DOI [10.1017/9781009447713](https://doi.org/10.1017/9781009447713)

First published 2024

A catalogue record for this publication is available from the British Library.

A Cataloging-in-Publication data record for this book is available from the Library of Congress

ISBN 978-1-009-44773-7 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.