The Constitution of Spain: A Contextual Analysis

Erin C. Houlihan and Sumit Bisarya

The Constitution of Spain

This book provides a critical introduction to the principles and institutions that make up the Spanish Constitution, which was enacted in 1978. It first explains the process of transition from Franco's dictatorship to democracy, in order to understand the historical circumstances under which the Constitution was framed. After offering a theory to justify the authority of the Constitution over ordinary laws, the book proceeds to explain the basic principles of the Spanish political regime, as well as the structure of its complex legal system. Later chapters focus on various institutions, such as the Crown, Parliament and the Government. A specific chapter is devoted to the territorial distribution of power between the State, the regions and local government. The last two chapters deal with the constitutional role of courts, and the protection of fundamental rights. The book includes some reflections on the challenges that lie ahead and the constitutional reforms that may need to be considered in the future.

Constitutional Law in Spain

This very useful analysis of constitutional law in Spain 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 Spain will welcome this guide, and academics and researchers will appreciate its value in the study of comparative constitutional law.
The Constitution of Italy
Marta Cartabia, Nicola Lupo, 2022-02-10
This book introduces the reader to the Italian Constitution, which entered into force on 1 January 1948, and examines whether it has successfully managed the political and legal challenges that have occurred since its inception, and fulfilled the three main functions of a Constitution: maintaining a community, protecting the fundamental rights of citizens and ensuring the separation of powers.

Fixing the Euro Within the National Constitutional Guardrails
Frederik Behre, 2023-07-14
EU fiscal integration is indispensable to establishing a stable single currency in the long run. However, this integration is proving ever more difficult in light of increasing national constitutional opposition. The author of this groundbreaking book shows that this dilemma between EU fiscal integration and national constitutional limits can be refuted. He provides a structured, comparative overview and outlook on how the available national constitutional space can be adapted to the political aspirations aiming at implementing EU fiscal integration steps while at the same time effectively protecting the national constitutional values at stake. Beginning with a macro-comparative assessment of Finland and Germany – two countries which have comprehensively dealt with Eurocrisis-issues in largely contrasting constitutional ways – and continuing with a comparative assessment of the specific French, German, Polish, and Spanish constitutional (identity) limits, EU fiscal integration steps are tested against the charted national constitutional space to determine their attainability. The resulting overview identifies best practices that can be employed to locate constitutional space for EU fiscal integration while enhancing the protection of core constitutional principles. The analysis addresses such specific areas as the following: constitutional red-line limits vs. flexible or mutable constitutional approaches to EU fiscal integration; strict constitutional identity limits that formulate obstacles to the attainment of EU fiscal integration; how national constitutional authorities perceive and portray the EU in their respective approaches; integration measures as an increase in the impact of sovereign powers vs. loss of autonomous decision-making; application of national constitutional frameworks during the Eurocrisis; ex ante constitutional review and ex post judicial scrutiny in representative Member States; national budgetary responsibility and fiscal autonomy; emergency budgetary instruments; and funding options for fiscal integration. The analysis throughout highlights the important role EU integration plays in stabilizing core national constitutional values in light of such complex challenges as the COVID-19 pandemic, the current Russian war of aggression against Ukraine and the required common defence strategies, but also climate change and digitalization. In its innovative response to the urgent challenge of feasible EMU reforms to stabilize the euro, this book displays how national constitutional systems can address EU (fiscal) integration in a more flexible and yet more effective manner, how EU integration steps can engage with national constitutional concerns in a more structured manner, as well as specifically how national parliaments can be integrated and play a decisive role even when budgetary and fiscal powers are conferred at the EU level, thereby identifying a future model for EU cooperation in politically important competence areas. It thus offers a constructive outlook on achievable fiscal integration steps which will prove of inestimable value to lawyers,
judges, and policymakers at the national and EU levels.

*The Oxford Handbook of Spanish Politics* Diego Muro, Ignacio Lago, 2020-02-11 Oxford Handbooks offer authoritative and up-to-date surveys of original research in a particular subject area. Specially commissioned essays from leading figures in the discipline give critical examinations of the progress and direction of debates, as well as a foundation for future research. Oxford Handbooks provide scholars and graduate students with compelling new perspectives upon a wide range of subjects in the humanities, social sciences, and sciences--

*The Max Planck Handbooks in European Public Law* Armin von Bogdandy, Peter Huber, Sabrina Ragone, 2023-01-16 The Max Planck Handbooks in European Public Law describe and analyse public law of the European legal space, an area that encompasses not only the law of the European Union but also the European Convention on Human Rights and, importantly, the domestic public laws of European states. Recognizing that the ongoing vertical and horizontal processes of European integration make legal comparison the task of our time for both scholars and practitioners, the series aims to foster the development of a specifically European legal pluralism and to contribute to the legitimacy and efficiency of European public law. The first volume of the series began this enterprise with an appraisal of the evolution of the state and its administration, offering both cross-cutting contributions and specific country reports. The third volume (the second in chronological terms) continues this approach with an in-depth appraisal of constitutional adjudication in various and diverse European countries. Fourteen country reports and two cross-cutting contributions investigate the antecedents, foundations, organization, procedure, and outlook of constitutional adjudicators throughout the Continent. They include countries with powerful constitutional courts, jurisdictions with traditional supreme courts, and states with small institutions and limited ex ante review. In keeping with the focus on a diverse but unified legal space, each report also details how its institution fits into the broader association of constitutional courts that, through dialogue and conflict, brings to fruition the European legal space. Together, the chapters of this volume provide a strong and diverse foundation for this dialogue to flourish.

*Constitución Española en El Contexto Constitucional Europeo* Francisco Fernández Segado, 2003

*The Oxford Handbook of Comparative Administrative Law* Peter Cane, Senior Research Fellow Peter Cane, Herwig C. H. Hofmann, Professor of European and Transnational Public Law Herwig C H Hofmann, Associate Professor of Law Eric C Ip, Eric C. Ip, Olmiad S Ioffe Professor of International and Comparative Law Peter L Lindseth, 2021-01-17 In this Handbook, distinguished experts in the field of administrative law discuss a wide range of issues from a comparative perspective. The book covers the historical beginnings of comparative administrative law scholarship, and discusses important methodological issues and basic concepts such as administrative power and accountability.

*National Constitutions and EU Integration* Stefan Griller, Lina Papadopoulou, Roman Puff, 2022-08-25 Do individual constitutions, and the legal cultures underlying them, pose an obstacle to future EU integration? This ambitious collection
brings together reports from all the European Member States, systematically setting out their individual constitutional guarantees. In doing so, it tracks possible roadblocks to the future evolution of European integration. Written by recognised authorities in each Member State, it offers an authoritative and rigorous overview of the European Union's constitutional landscape. Its single-structure approach allows for comparison while maintaining consistency. It will become the standard reference work for academics, students and practitioners in the field of European Union law and integration.

*Linguistic Claims and Political Conflicts* Andrea C. Bianculli, Jacint Jordana, Mónica Ferrín Pereira, 2020-12-30 This book explores and assesses the multiple levels at which linguistic policies can be challenged, devised and enacted, i.e. subnational, national and supranational, and the variety of state and non-state actors involved. Moving beyond descriptive and normative approaches, it provides an empirical comparative assessment of the policy responses and strategies deployed to deal with linguistic diversity and conflicts in Spain, a country where almost one third of the population is at least bilingual in their own languages. The Spanish case is then assessed within the European context, both from the perspective of multilevel influence and mutual interaction, and from the learning experiences it may entail for similar or equivalent problems and disputes occurring at the European level or beyond. This text will be of key interest to scholars and students of Spanish politics, linguistics, identity politics and more broadly of European politics and governance, public policy, education and communication policy and comparative politics.

*Rights and Freedoms in the Spanish Constitution*, 2015

*The Constitution of Romania* Bianca Selejan-Gutan, 2016-04-21 In December 1989, Romania became the last Eastern European communist country to break with its communist dictatorship, the most powerful in the region at the time. It has struggled ever since to overcome the transition to democracy and to become a ‘full-time’ member of the Western democratic community of states. This book provides a contextual analysis of the Romanian constitutional system, with references to the country's troubled constitutional history and to the way in which legal transplantation has been used. The Constitution's grey areas, as well as the gap between the written constitution and the living one, will also be explained through the prism of recent events that cast a negative shadow upon the democratic nature of the Romanian constitutional system. The first chapters present a brief historical overview and an introduction to Romanian constitutional culture, as well as to the principles and general features of the 1991 Constitution. The chapters which follow explain the functioning of the institutions and their interrelations—Parliament, the President, the Government and the courts. The Constitutional Court has a special place in the book, as do local government and the protection of fundamental rights. The last chapter refers to the mechanisms and challenges of constitutional change and development.

*Ombuds Institutions, Good Governance and the International Human Rights System* Linda C. Reif, 2020-07-27 This book uses comparative law and comparative international law approaches to explore the role of human rights ombuds, classic-
based ombuds and other types of ombuds institutions in human rights protection and promotion, their methods of application of international and domestic human rights law and their roles in strengthening good governance. It highlights the increasing importance of national human rights ombuds institutions globally and their roles as national human rights institutions (NHRIs).

The Veil of Participation Alexander Hudson, 2021-05-06 Hudson provides new evidence about the roles of political parties, leaders, and citizen-participants in constitution-making processes.

Federalism and the Rights of Persons with Disabilities Delia Ferri, Francesco Palermo, Giuseppe Martinico, 2023-07-13 This book shines a light on the still unexplored relationships between federalism and disability rights. It investigates how the UN Convention on the Rights of Persons with Disabilities (CRPD) is implemented by different federal systems around the world. It analyses the effects that the obligations undertaken under the CRPD have on federal governance and on the constitutional division of powers within 14 federal systems, including those in Germany, Canada, Brazil, India, the UK and Italy. The book also considers the trends and patterns of disability rights governance in federal systems and looks at the future developments of comparative disability federalism.

National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law Anneli Albi, Samo Bardutzky, 2019-05-29 This two-volume book, published open access, brings together leading scholars of constitutional law from twenty-nine European countries to revisit the role of national constitutions at a time when decision-making has increasingly shifted to the European and transnational level. It offers important insights into three areas. First, it explores how constitutions reflect the transfer of powers from domestic to European and global institutions. Secondly, it revisits substantive constitutional values, such as the protection of constitutional rights, the rule of law, democratic participation and constitutional review, along with constitutional court judgments that tackle the protection of these rights and values in the transnational context, e.g. with regard to the Data Retention Directive, the European Arrest Warrant, the ESM Treaty, and EU and IMF austerity measures. The responsiveness of the ECJ regarding the above rights and values, along with the standard of protection, is also assessed. Thirdly, challenges in the context of global governance in relation to judicial review, democratic control and accountability are examined. On a broader level, the contributors were also invited to reflect on what has increasingly been described as the erosion or ‘twilight’ of constitutionalism, or a shift to a thin version of the rule of law, democracy and judicial review in the context of Europeanisation and globalisation processes. The national reports are complemented by a separately published comparative study, which identifies a number of broader trends and challenges that are shared across several Member States and warrant wider discussion. The research for this publication and the comparative study were carried out within the framework of the ERC-funded project ‘The Role and Future of National Constitutions in European and Global Governance’. The book is aimed at scholars, researchers, judges and legal advisors.
working on the interface between national constitutional law and EU and transnational law. The extradition cases are also of interest to scholars and practitioners in the field of criminal law. Anneli Albi is Professor of European Law at the University of Kent, United Kingdom. Samo Bardutzky is Assistant Professor of Constitutional Law at the University of Ljubljana, Slovenia.

**Morality and Legality of Secession** Pau Bossacoma Busquets, 2019-11-19 This book explores secession from three normative disciplines: political philosophy, international law and constitutional law. The author first develops a moral theory of secession based on a hypothetical multinational contract. Under this contract theory, injustices do not determine the existence of a right to secede, but the requirements to exercise it. The book’s second part then argues that international law is more inclined to accept and advance a remedial right approach to secession. Therefore, justice as multinational fairness is to be fully institutionalized under the constitutional law of liberal democracies. The final part proposes constitutionalizing a qualified right to secede with the aim of fostering recognition and accommodation of national pluralism as well as cooperation and compromise between majority and minority nations.

**Textbook on Administrative Law** Peter Leyland, Gordon Anthony, 2016 The eighth edition of Textbook on Administrative Law continues to provide students with an accessible and stimulating guide to the subject. Practical in approach, the authors concentrate on fully analysing core topics, while at the same time setting them within a contextual and thematic framework.

**Defensive Federalism** Ferran Requejo, Marc Sanjaume-Calvet, 2022-09-16 Defensive Federalism presents an original contribution to the field of federalism and multinational democracies, exploring the concept of defensive federalism as a protection of self-government against the tyranny of the majority. The empirical evidence on federal and regional polities often shows critical imbalances in the territorial division of powers beyond what has been formally established in the constitutional rules. This volume highlights the rights, institutions, decision-making processes and procedural rules that can protect and develop the practical political, economic and cultural powers of federated and regional entities, especially those linked to territorial national minorities. The authors focus on federalism as a safeguard of self-rule, as well as a set of institutional and procedural rules to avoid the territorial dimension of the tyranny of the majority. They answer two fundamental questions: how is it possible to design new stable and fairer federal agreements between national minorities and majorities where there is no single ideal solution? Is there a need for a new kind of defensive federal model for approaching national pluralism in liberal democracies? This book will be of great interest to students and scholars of federalism, national diversity and democracy, as well as policymakers and practitioners in both public and private institutions. Chapter 8 of this book is freely available as a downloadable Open Access PDF under a Creative Commons Attribution 4.0 license available at http://www.taylorfrancis.com

**Practical Considerations for Public Participation in Constitution-Building What, When, How and Why?** Erin C. Houlihan
Public participation has become a core element of modern constitution-building. Robust participation is credited with a range of benefits—from improving individual behaviours and attitudes to democracy to shaping elite bargaining dynamics, improving constitutional content, and strengthening outcomes for democracy and peace. Yet it is not well understood whether and how public participation can achieve these ends. Much of what we think we know about participatory constitution-building remains theoretical. No two processes are alike, and there is no agreed definition of what constitutes a ‘participatory process’. Yet national decision-makers must contend with the key question: What does a robust participation process look like for a particular country, at a particular time, in a particular context? What considerations and principles can be derived from comparative experience to guide decisions? This Policy Paper unpacks the forms and functions of public participation across different stages of the constitution-building process and considers the ways in which public engagement can influence the dynamics of the process, including political negotiations.

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Introduction

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