

# The Politics Of Constitutional Review In Germany

Constitutional Review in EuropeJudicial Review in New DemocraciesThe Constitutional ReviewRights-Based Constitutional ReviewJudicial Review and the ConstitutionConstitutional Review in Hong Kong Under the 'One Country, Two Systems' FrameworkReview of Constitutional StudiesThe Supreme CourtHuman Rights and Judicial ReviewJudicial Review in the Contemporary WorldConstitutional InterpretationConstitutional Review and DemocracyConstitutional Review and DemocracyThe Constitutional ReviewConstitutional InterpretationJudicial Review of LegislationJudicial Review in American HistoryThe Constitutional Foundations of Judicial ReviewCommon Law and Liberal TheoryJournal of Constitutional and Parliamentary Studies Maartje de Visser Tom Ginsburg John Bell Christopher Forsyth Guangxiang Li Peter Charles Hoffer David M. Beatty Mauro Cappelletti Craig R. Ducat Miodrag A. Jovanović Miodrag A. Jovanović Arne Mavčič Harold William Chase Gerhard van der Schyff Kermit L. Hall Mark Elliott James R. Stoner

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constitutions serve to delineate state powers and enshrine basic rights such matters are hardly uncontroversial but perhaps even more controversial are the questions of who should uphold s the constitution and how constitutional review is organised these two questions are the subject of this book by maartje de visser which offers a comprehensive comparative analysis of how 11 representative european countries answer these questions as well as a critical appraisal of the eu legal order in light of these national experiences where possible the book endeavours to identify europe s common and diverse constitutional traditions of constitutional review the raison d être jurisdiction and composition of constitutional courts are explored and so too are core features of the constitutional adjudicatory process yet this book also deliberately draws attention to the role of non judicial actors in upholding the constitution as well as the complex interplay amongst constitutional courts and other actors at the national and european level the member states featured are belgium the czech republic finland france

germany italy hungary the netherlands spain poland and the united kingdom this book is intended for practitioners academics and students with an interest in european constitutional law

new democracies around the world have adopted constitutional courts to oversee the operation of democratic politics where does judicial power come from how does it develop in the early stages of democratic liberalization and what political conditions support its expansion this book answers these questions through an examination of three constitutional courts in asia taiwan korea and mongolia in a region that has traditionally viewed law as a tool of authoritarian rulers constitutional courts in these three societies are becoming a real constraint on government in contrast with conventional culturalist accounts this book argues that the design and functioning of constitutional review are largely a function of politics and interests judicial review the power of judges to rule an act of a legislature or national leader unconstitutional is a solution to the problem of uncertainty in constitutional design by providing insurance to prospective electoral losers judicial review can facilitate democracy

constitutional review has become an essential feature of modern liberal democratic constitutionalism in particular constitutional review in the context of rights litigation has proved to be most challenging for the courts by offering in depth analyses on changes affecting constitutional design and constitutional adjudication while also engaging with general theories of comparative constitutionalism this book seeks to provide a heightened understanding of the constitutional and political responses to the issue of adaptability and endurance of rights based constitutional review these original contributions written by an array of distinguished experts and illustrated by the most up to date case law cover australia belgium finland france hungary ireland italy spain the united kingdom and the united states and include constitutional systems that are not commonly studied in comparative constitutional studies providing structured analyses the editors combine studies of common law and civil law jurisdictions centralized and decentralized systems of constitutional review and large and small jurisdictions this multi jurisdictional study will appeal to members of the judiciary policymakers and practitioners looking for valuable insights into the case law of a range of constitutional and supreme courts in this rapidly expanding field of constitutional adjudication it also serves as an excellent resource for academics scholars and advanced students in the fields of law human rights and political science

this collection of essays presents opposing sides of the debate over the foundations of judicial review in this work however the discussion of whether the ultra vires doctrine is best characterised as a central principle of administrative law or as a harmless justificatory fiction is located in the highly topical and political context of constitutional change the thorough jurisprudential analysis of the relative merits of models of legislative intention and judicial creativity provides a sound base for consideration of the constitutional problems arising out of legislative devolution and the human rights act 1998 as the historical orthodoxy is challenged by growing institutional independence leading figures in the field offer competing perspectives on the future of judicial review confucius was wrong to say that it is a curse to live in interesting times we are witnessing the development of a constitutional philosophy which recognises fundamental values and gives them effect in the

mediation of law to the people sir john laws contributors nick bamforth paul craig david dyzenhaus mark elliot david feldman christopher forsyth brigid hadfield jeffrey jowell qc sir john laws dawn oliver sir stephen sedley mark walters with short responses by trs allan stephen bailey robert carnoworth martin loughlin michael taggart sir william wade

this thesis enquires into the establishment justification and scope of constitutional review in hong kong against the unique constitutional order of one country two systems established in hong kong after its return to china in 1997 constitutional review had emerged in hong kong in the pre handover judicial enforcement of the bill of rights but its establishment was in the cfa s decision in ng ka ling the central question concerning constitutional review in hong kong is that the text of the basic law does not expressly provide for this authority in light of the theories on the law of constitution and constitutional review advocated by kelsen dworkin and cappelletti this thesis argues that the higher law status of the basic law understood in both positive and normative senses makes constitutional review not only scientifically necessary but morally desirable further it is argued that given the common law legal system and the checks and balances in the political structure of present hong kong it is most appropriate for the courts to exercise the power of constitutional review however constitutional review under the basic law is an intra jurisdictional issue involving not only the operation of the hong kong legal system but also the legal system in mainland china the hong kong courts jurisdiction of constitutional review is therefore a limited one in that sense and to that extent there is what might be called the counter beijing difficulty in the hong kong courts exercise of the power of constitutional review nonetheless the power of constitutional review has made the cfa a powerful court it is the unwritten basic law formulated by the courts that is shaping octx it is argued that to maintain the workability of the octx framework due judicial restraint seems sensible and desirable

for more than two centuries the u s supreme court has provided a battleground for nearly every controversial issue in our nations history this veteran team of talented historians produces the most readable astute and up to date single volume history of this venerated institution

human rights and judicial review a comparative perspective collects in one volume a basic description of the most important principles and methods of analysis followed by the major courts enforcing constitutional bills of rights around the world the courts include the supreme courts of japan india canada and the united states the constitutional courts of germany and italy and the european court of human rights each chapter is devoted to an analysis of the substantive jurisprudence developed by these courts to determine whether a challenged law is constitutional or not and is written by members of these courts who have had a prior academic career the book highlights the similarities and differences in the analytical methods used by these courts in determining whether or not someone s constitutional rights have been violated students and scholars of constitutional law and human rights judges and advocates engaged in constitutional litigation will find the book a unique and valuable resource

retaining the format of its predecessor this eighth edition of this first volume of a two volume set reflects developments in

american constitutional law through the end of the supreme court s october 2001 term material on the presidential pardoning power has been restored and there is new coverage of the usa patriot act the authorization to intervene in afghanistan and iraq and the relationship between judicial attitudes and constitutional doctrines in the context of american political history ducat is professor emeritus of northern illinois university annotation c 2003 book news inc portland or booknews com

this volume is a follow up to the conference constitutional review and democracy organized in november 2013 at the faculty of law university of belgrade the conference was convened as part of the ongoing project constitutionalism and rule of law in the nation state building the case of serbia the book sheds new light on the complex relation between democracy and judicial review of constitutionality it starts off with some general and theoretical aspects of the debate then the second section discusses constitutional review in the european transnational setting while the third part explores the dynamics between parliaments and highest courts in constitutional democracies without the formalized constitutional review finally the book addresses the role of constitutional review in the processes of democratic transition and consolidation contents include part i general aspects and theoretical problems establishing effective constitutional review the theory of constitutional review always above the law justification of constitutional review revisited on the abstract case against constitutional review part ii constitutional review beyond the nation state constitutional review in a democratic deficit setting the case of the european union authority of european human rights law lessons for constitutional law ban on political parties in a dialogue of jurisdictions cases against turkey bulgaria and spain part iii constitutionalism and democracy without review lingering with intent the uk constitutional review constitutional review and democracy in the netherlands balancing legislative and judicial powers in an internationalized legal order part iv constitutional review and democratic transition constitutional justice and the rule of law the contribution of the spanish constitutional court to the consolidation of democracy the romanian constitutional judge lost in transition finding ways through the clouds of uncertainty searching for paths in the desert of sorrow the functioning of constitutional justice in a non consolidated democracy constitutional review and the parliamentary supermajority the hungarian example the role of the constitutional court of serbia in developing constitutional democracy the example of a dispute on the legal nature of representative mandate series democracy and the rule of law vol 5 subject constitutional law international law

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this book presents a comparative constitutional analysis of the system of constitutional review in more than 150 countries it describes different models of constitutional review and the bodies that hold this special and exclusive decision making power on constitutional matters it classifies the constitutional review bodies as special bodies responsible for protecting the constitutionality for which they hold a certain legal superiority in relation to other branches of power their review quite often covers legislative acts that are the highest legal instruments of a specific legal and political system this gives the constitutional review body a special status with power to provide constitutional review under the system of the separation of powers especially in relation to the legislative power that it may even annul statutes adopted by the legislative body the book includes a french summary tables and map presenting constitutional judicial review around the world

constitutionalism is the permanent quest to control state power of which the judicial review of legislation is a prime example although the judicial review of legislation is increasingly common in modern societies it is not a finished project this device still raises questions as to whether judicial review is justified and how it may be structured yet judicial review s justification and its scope are seldom addressed in the same study thereby making for an inconvenient divorce of these two related avenues of study to narrow the divide the object of this work is quite straightforward namely is the idea of judicial review defensible and what influences its design and scope this book addresses these matters by comparing the judicial review of legislation in the united kingdom the human rights act of 1998 the netherlands the halsema proposal of 2002 and the constitution of south africa of 1996 these systems present valuable material to study the issues raised by judicial review the netherlands is of particular interest as its constitution still prohibits the constitutional review of acts of parliament while allowing treaty review of such acts the halsema proposal wants to even out this difference by allowing the courts also to apply constitutional norms to legislation and not only to international norms the human rights act and the south african constitution also present interesting questions that will make their study worthwhile one can think of the issue of dialogue between the legislature and the judiciary this topic enjoys increased attention in the united kingdom but is somewhat underexplored in south african thought on judicial review these and similar issues are studied in each of the three systems to

not only gain a better understanding of the systems as such but also of judicial review in general

this work is a collection of essays discussing the historical theory and political debate over judicial review in america the repeated scholarly and public considerations of the legitimacy of judicial review by an unelected judiciary throughout american history are reviewed these articles

recent years have witnessed a vibrant debate concerning the constitutional basis of judicial review which reflects a broader discourse about the role of the courts and their relationship with the other institutions of government within the constitutional order this book comprehensively analyses the foundations of judicial review it subjects the traditional justification based on the doctrine of ultra vires to critical scrutiny and fundamental reformulation and it addresses the theoretical challenges posed by the impact of the human rights act 1998 on administrative law and by the extension of judicial review to prerogative and non statutory powers it also explores the relationship between the theoretical basis of administrative law and its practical capacity to safeguard individuals against maladministration the book seeks to develop a constitutional rationale for judicial review which founds its legitimacy in core principles such as the rule of law the separation of powers and the sovereignty of parliament it presents a detailed analysis of the interface between constitutional and administrative law and will be of interest to all public lawyers

in this book james stoner s purpose is to recover the common law basis of american constitutionalism american constitutionalism in general he argues and judicial review in particular cannot be fully understood without acknowledging their roots in both common law and liberal political theory but for the most part the common law underpinnings of constitutionalism have received short shrift

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