



**AN INQUIRY INTO THE
EXISTENCE OF GLOBAL VALUES
THROUGH THE LENS OF COMPARATIVE
CONSTITUTIONAL LAW**

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Hart Studies in Comparative Public Law

B L O O M S B U R Y

An Inquiry Into The Existence Of Global Values Through The Lens Of Comparative Constitutional Law Hart Studies In Comparative Public Law

Rosalind Dixon



An Inquiry Into The Existence Of Global Values Through The Lens Of Comparative Constitutional Law Hart Studies In Comparative Public Law:

An Inquiry into the Existence of Global Values Dennis Davis, Alan Richter, Cheryl Saunders, 2015-08-27 The world appears to be globalising economically technologically and even to a halting extent politically This process of globalisation raises the possibility of an international legal framework a possibility which has gained pressing relevance in the wake of the recent global economic crisis But for any international legal framework to exist normative agreement between countries with very different political economic cultural and legal traditions becomes necessary This work explores the possibility of such a normative agreement through the prism of national constitutional norms Since 1945 more than a hundred countries have adopted constitutional texts which incorporate at least in part a Bill of Rights These texts reveal significant similarities the Canadian Charter of Rights and Freedoms for instance had a marked influence on the drafting of the Bill of Rights for South Africa New Zealand and Hong Kong as well as the Basic Law of Israel Similarly the drafts of Eastern European constitutions reflect significant borrowing from older texts The essays in this book examine the depth of these similarities in particular the extent to which textual borrowings point to the development of foundational values in these different national legal systems and the extent of the similarities or differences between these values and the priorities accorded to them From these national studies the work analyses the rise of constitutionalism since the Second World War and charts the possibility of a consensus on values which might plausibly underpin an effective and legitimate international legal order

An Inquiry Into the Existence of Global Values, 2015 The world appears to be globalizing economically technologically and even to a halting extent politically This process of globalization raises the possibility of an international legal framework a possibility which has gained pressing relevance in the wake of the recent global economic crisis But for any international legal framework to exist normative agreement between countries with very differing political economic cultural and legal traditions becomes necessary This book explores the possibility of such a normative agreement through the prism of national constitutional norms Since 1945 more than a hundred countries have adopted constitutional texts which incorporate at least in part a Bill of Rights These texts reveal significant similarities which are examined in the book From these national studies the book analyzes the rise of constitutionalism since World War II and charts the possibility of a consensus of values which might plausibly underpin an effective and legitimate international legal order R sum de l diteur

Comparative Federalism Francesco Palermo, Karl Kössler, 2017-10-05 This is the first comprehensive book that explores the subject of federalism from the perspective of comparative constitutional law whilst simultaneously placing a strong emphasis on how federal systems work in practice This focus is reflected in the book s two most innovative elements First it analyses from a comparative point of view how government levels exercise their powers and interact in several highly topical policy areas like social welfare environmental protection or migrant integration Second the book incorporates case law boxes discussing seminal judgments

from federal systems worldwide and thus demonstrates the practical impact of constitutional jurisprudence on policymakers and citizens alike This is simply the best analysis of contemporary federalism currently available It is comprehensive in its coverage thorough in its analysis and persuasive in its conclusions Every student of federalism from novice to expert will find benefit from this volume Professor G Alan Tarr Rutgers University Wading through the thicket of the multiple forms that the federal idea has taken in the contemporary world this remarkably comprehensive treatise backed by case law fills a long awaited gap in the literature on comparative federalism It combines a mastery of the literature on federal theory with a critical understanding of how it plays out in practice Outstanding in the breadth of its scope this magisterial survey will serve as a work of reference for generations of scholars who seek to understand how federalism works in developed as well as developing countries Professor Balveer Arora Jawaharlal Nehru University New Delhi This book is an extraordinarily handy work of reference on the diverse federal type systems of the world It handles both shared principles and differences of perspective structure or practice with confidence and ease It will become a standard work for scholars and practitioners working in the field Professor Cheryl Saunders The University of Melbourne This is a remarkable book for its sheer breadth of scope combining detail of practice with analysis of federal principles and for its fresh look at federalism With great erudition drawing on world scholarship and the practice of federalism across the globe Palermo and Kessler magnificently traverse from the ancient roots of federalism to the contemporary debates on ethno cultural dimensions and participatory democracy The book sets a new benchmark for the study of comparative federalism providing new insights that are bound to influence practice in an era where federal arrangements are expected to deliver answers to key governance and societal challenges Professor Nico Steytler University of the Western Cape *The Foundations and Traditions of Constitutional Amendment* Richard Albert, Xenophon Contiades, Alkmene Fotiadou, 2017-07-13 There is growing interest in constitutional amendment from a comparative perspective Comparative constitutional amendment is the study of how constitutions change through formal and informal means including alteration revision evolution interpretation replacement and revolution The field invites scholars to draw insights about constitutional change across borders and cultures to uncover the motivations behind constitutional change to theorise best practices and to identify the theoretical underpinnings of constitutional change This volume is designed to guide the emergence of comparative constitutional amendment as a distinct field of study in public law Much of the recent scholarship in the field has been written by the scholars assembled in this volume This book like the field it hopes to shape is not comparative alone it is also doctrinal historical and theoretical and therefore offers a multiplicity of perspectives on a subject about which much remains to be written This book aspires to be the first to address comprehensively the new dimensions of the study of constitutional amendment and will become a reference point for all scholars working on the subject The volume covers all of the topics where innovative work is being done such as the notion of the people the trend of empirical quantitative approaches to constitutional change unamendability sunrise clauses

constitutional referenda the conventional divide between constituent and constituted powers among other important subjects It creates a dialogue that cuts through these innovative conceptualisations and highlights scholarly disagreement and in so doing puts ideas to the test The volume therefore captures the fierce ongoing debates on the relevant topics it reveals the current trends and contested issues and it offers a variety of arguments elaborated by prominent experts in the field It will open the way for further dialogue

Entick v Carrington Adam Tomkins, Paul F Scott, 2015-09-24 *Entick v Carrington* is one of the canons of English public law and in 2015 it is 250 years old In 1762 the Earl of Halifax one of His Majesty's Principal Secretaries of State despatched Nathan Carrington and three other of the King's messengers to John Entick's house in Stepney They broke into his house seizing his papers and causing significant damage Why Because he was said to have written seditious papers published in the Monitor Entick sued Carrington and the other messengers for trespass The defendants argued that the Earl of Halifax had given them legal authority to act as they had Lord Camden ruled firmly in Entick's favour holding that the warrant of a Secretary of State could not render lawful actions such as these which were otherwise unlawful The case is a canonical statement of the common law's commitment to the constitutional principle of the rule of law In this collection leading public lawyers reflect on the history of the case the enduring importance of the legal principles for which it stands and the broader implications of *Entick v Carrington* 250 years on Winner of the American Society for Legal History Sutherland Prize 2016

The Dynamics of Exclusionary Constitutionalism Mazen Masri, 2017-02-09 What does Israel's definition as a Jewish and democratic state mean How does it affect constitutional law How does it play out in the daily life of the people living in Israel This book provides a unique and detailed examination of the consequences of the Jewish and democratic definition It explores how the definition affects the internal ordering of the state the operation of the law and the ways it is used to justify protect and regenerate certain features of Israeli constitutional law It also considers the relationship between law and settler colonialism and how this relationship manifests itself in the constitutional order *The Dynamics of Exclusionary Constitutionalism* offers a novel perspective on the Jewish and democratic definition rooted in constitutional theory and informed by a socio legal approach Relying on a wide range of court cases and statutes as well as secondary sources the book shows how the definition is deeply embedded in the constitutional structure and operates as a matter of law in a manner that concentrates political power in the hands of the Jewish citizens and excludes the Palestinian Arab citizens in Israel from the political process Mazen Masri's study is a timely intervention in an increasingly important question and is essential reading for those who want to understand Israel's character its relationship with the constitutional order and its impact on society

Legitimate Expectations in the Common Law World Matthew Groves, Greg Weeks, 2017-01-12 The recognition and enforcement of legitimate expectations by courts has been a striking feature of English law since *R v North and East Devon Health Authority ex parte Coughlan* 2001 3 QB 213 Although the substantive form of legitimate expectation adopted in *Coughlan* was quickly accepted by English courts and received a

generally favourable response from public law scholars the doctrine of that case has largely been rejected in other common law jurisdictions The central principles of Coughlan have been rejected by courts in common law jurisdictions outside the UK for a range of reasons such as incompatibility with local constitutional doctrine or because they mark an undesirable drift towards merits review The sceptical and critical reception to Coughlan outside England is a striking contrast to the reception the case received within the UK This book provides a detailed scholarly analysis of these issues and considers the doctrine of legitimate expectations both in England and elsewhere in the common law world **The Federal Idea** Amnon

Lev, 2017-08-31 A significant part of the world's population lives under some sort of federal arrangement And yet the concepts of federalism and federation remain under theorised Federalist theorists have for the most part defined their object by opposition to the unitary state As a result they have not developed public law theories that capture the specificity of this type of polity Bringing together contributions from leading public law theorists and intellectual historians this volume explores the foundations of federalism It develops novel perspectives on the core problems of traditional federalist theory and charts new departures in federalist theory and federal power sharing At a time when we look for more inclusive ways of ordering public life the volume fills an urgent theoretical and political need **Soft Law and Public Authorities** Greg

Weeks, 2016-02-25 This book considers the phenomenon of soft law employed by domestic public authorities Lawyers have long understood that public authorities are able to issue certain communications in a way that causes them to be treated like law even though these are neither legislation nor subordinate legislation Importantly for soft law as a regulatory tool people tend to treat soft law as binding even though public authorities know that it is not It follows that soft law's binding effects do not apply equally between the public authority and those to whom it is directed Consequently soft law is both highly effective as a means of regulation and inherently risky for those who are regulated by it Rather than considering soft law as a form of regulation this book examines the possible remedies when a public authority breaches its own soft law upon which people have relied thereby suffering loss It considers judicial review remedies modes of compensation which are not based upon a finding of invalidity namely tort and equity and soft challenges outside the scope of the courts such as through the

Ombudsman or by seeking an ex gratia payment Principled Reasoning in Human Rights Adjudication Se-shauna

Wheatle, 2017-04-20 Implied constitutional principles form part of the landscape of the development of fundamental rights in common law jurisdictions affecting issues ranging from the remuneration of judges to the appropriation of property by the state Principled Reasoning in Human Rights Adjudication offers thematic analysis of the use of the implied constitutional principles of the rule of law and separation of powers in human rights cases The book examines the functions played by those principles in rights adjudication in Australia Canada the Commonwealth Caribbean and the United Kingdom It argues that a complete understanding of implied constitutional principles requires thoroughgoing analysis of the sources and methods of implication and of the specific roles played by such principles in the adjudicative process By disaggregating particular

functions and placing those functions within their respective institutional contexts this book develops an understanding of the features of cases in which implied constitutional principles are invoked and the work done by those principles

Human Rights and Judicial Review in Australia and Canada Janina Boughey, 2017-06-15 It is commonly asserted that bills of rights have had a righting effect on the principles of judicial review of administrative action and have been a key driver of the modern expansion in judicial oversight of the executive arm of government A number of commentators have pointed to Australian administrative law as evidence for this righting hypothesis They have suggested that the fact that Australia is an outlier among common law jurisdictions in having neither a statutory nor a constitutional framework to expressly protect human rights explains why Australia alone continues to take an apparently formalist legalist and conservative approach to administrative law Other commentators and judges including a number in Canada have argued the opposite that bills of rights have the effect of stifling the development of the common law However for the most part all these claims remain just that there has been limited detailed analysis of the issue and no detailed comparative analysis of the veracity of the claims This book analyses in detail the interaction between administrative and human rights law in Australia and Canada arguing that both jurisdictions have reached remarkably similar positions regarding the balance between judicial and executive power and between broader fundamental principles including the rule of law parliamentary sovereignty and the separation of powers It will provide valuable reading for all those researching judicial review and human rights

The Scope and Intensity of Substantive Review Hanna Wilberg, Mark Elliott, 2015-11-26 Inspired by the work of Professor Michael Taggart this collection of essays from across the common law world is concerned with two separate but related themes First to what extent and by what means should review on substantive grounds such as unreasonableness be expanded and intensified Jowell Elliott and Varuhas all agree with Taggart that proportionality should not sweep the rainbow but propose different schemes for organising and conceptualising substantive review Groves and Weeks and Hoexter evaluate the state of substantive review in Australia and South Africa respectively The second theme concerns the broader Canadian sense of substantive review including the illegality grounds and whether deference should extend to these grounds Cane and Aronson consider the relevance and impact of different constitutional and doctrinal settings Wilberg and Daly address questions concerning when and how deference is to operate once it is accepted as appropriate in principle Rights based review is discussed in a separate third part because it raises both of the above questions Geiringer Sales and Walters examine the choices to be made in settling the approach in this area each focusing on a different dichotomy Taggart's work is notable for treating these various aspects of substantive review as parts of a broader whole and for his search for an appropriate balance between judicial scrutiny and administrative autonomy across this entire area By bringing together essays on all these topics this volume seeks to build on that approach

Administrative Law and Judicial Deference Matthew Lewans, 2016-01-28 In recent years the question whether judges should defer to administrative decisions has attracted considerable interest

amongst public lawyers throughout the common law world This book examines how the common law of judicial review has responded to the development of the administrative state in three different common law jurisdictions the United Kingdom the United States of America and Canada over the past 100 years This comparison demonstrates that the idea of judicial deference is a valuable feature of modern administrative law because it gives lawyers and judges practical guidance on how to negotiate the constitutional tension between the democratic legitimacy of the administrative state and the judicial role in maintaining the rule of law

Proportionality and Facts in Constitutional Adjudication Anne Carter,2022-01-27 This book considers the relationship between proportionality and facts in constitutional adjudication Analysing where facts arise within each of the three stages of the structured proportionality test suitability necessity and balancing it considers the nature of these facts vis vis the facts that arise in the course of ordinary litigation The book s central focus is on how proportionality has been applied by courts in practice and it draws on the comparative experience of four jurisdictions across a range of legal systems The central case study of the book is Australia where the embryonic and contested nature of proportionality means it provides an illuminating study of how facts can inform the framing of constitutional tests The rich proportionality jurisprudence from Germany Canada and South Africa is used to contextualise the approach of the High Court of Australia and to identify future directions for proportionality in Australia at a time when the doctrine is in its formative stages The book has three broad aims First it considers the role of facts within proportionality reasoning Second it offers procedural insights into fact finding in constitutional litigation Third the book s analysis of the dynamic Australian case law on proportionality means it also serves to clarify the nature and status of proportionality in Australia at a critical moment Since the 2015 decision of *McCloy v New South Wales* where four justices supported the introduction of a structured three part test of proportionality the Court has continued to disagree about the utility of such a test These developments mean that this book with its doctrinal and comparative approach is particularly timely

Constitutional Courts, Gay Rights and Sexual Orientation Equality Angioletta Sperti,2017-05-04 In the last fifteen years constitutional issues regarding the rights of gays lesbians and same sex couples have emerged on a global scale The pace of recognition of their fundamental rights both at judicial and legislative level has dramatically increased across different jurisdictions reflecting a growing consensus toward sexual orientation equality This book considers a wide range of decisions by constitutional and international courts from the decriminalization of sexual acts to the recognition of same sex marriage and parental rights for same sex couples It discusses analogies and differences in judicial arguments and rationales in such cases focusing in particular on human dignity privacy liberty equality and non discrimination It argues that courts operate as major exporters of models and principles and that judicial cross fertilization also helps courts in increasing the acceptability of gays and lesbians rights in public opinions and politics Courts discuss changes in the social perception of marriage and family at national and international levels and at the same time confirm and reinforce them forging the legal debate over sexual orientation equality Furthermore by promoting

the political reception of the achievements of foreign gay movements in their own jurisdictions courts play an essential role in breaking the political stalemate Constitutional Law in Venezuela Allan R. Brewer-Carías, 2023-08-20 Derived from the renowned multi volume International Encyclopaedia of Laws this very useful analysis of constitutional law in Venezuela 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 Venezuela will welcome this guide and academics and researchers will appreciate its value in the study of comparative constitutional law *Interpreting Discrimination Law Creatively* Alice Taylor, 2023-08-24 This book explores the judiciary's role in achieving substantive equality utilising statutory discrimination law The normative literature suggests that to eliminate discrimination courts have to adopt a more substantive interpretation of discrimination laws but the extent to which this has occurred is variable The book tackles the problem by exploring the idea that there needs to be a creative interpretation of discrimination law to achieve substantive results The author asks is a creative interpretation of statutory discrimination law consistent with the institutional role of the judiciary The author takes a comparative approach to the interpretation of non discrimination rights by considering the interpretation of statutory discrimination law in the UK Canada and Australia The book explores the differences in doctrine that have developed by considering key controversies in discrimination law Who does discrimination law protect What is discrimination When can discrimination be justified The author argues that differences in the case law in each jurisdiction are explained by the way in which the appropriate role for the courts in rights review norm elaboration and institutional competence is conceived in each studied jurisdiction It provides valuable reading for academics policy makers and those researching discrimination law and statutory human rights *Australian Constitutional Values* Rosalind Dixon, 2018-02-08 Vigorous debate exists among constitutional scholars as to the appropriate modalities of constitutional argument and their relative weight Many scholars however argue that one important modality of constitutional argument involves attention to underlying

constitutional purposes or values In Australia this kind of values oriented approach has been advocated by leading constitutional scholars and also finds support in the judgments of the High Court at various times particularly during the Mason Court era Much of the scholarly debate on constitutional values to date however focuses on whether the Court should in fact look to constitutional values in this way not the kinds of values the Court should consider given such an approach This book responds to this gap in the existing scholarly literature by inviting a range of leading Australian constitutional lawyers and scholars to address the relevance and scope of various substantive constitutional values and how they might affect the Court s approach to constitutional interpretation in various contexts It is essential reading for anyone seeking a deeper understanding of Australia s constitutional system

Belhar Confession Mary-Anne Plaatjies-Van Huffel, 2017-12-12 e The subject of the Belhar Confession is an academic one which has enjoyed international attention with congregations in the West having adopted it as one of their confessions for use The content of this book is aimed chiefly at a scholarly community with ample knowledge of confessional documents and is a contribution on the subject of the Belhar Confession The current challenges to the church and theology are discussed Racism is one issue that poses an increasingly huge challenge to South Africa today The book demonstrates what needs to be done extra to deal with the scourge of racism that seems to have percolated through virtually all aspects of our existence and particularly the church today in South Africa e Prof Rothney Tshaka University of South Africa

Democracy of Expression Andrew T. Kenyon, 2021-06-17 Drawing from multiple scholarly fields Kenyon examines free speech s positive dimensions of enablement and how they can be pursued

Eventually, you will no question discover a other experience and deed by spending more cash. nevertheless when? realize you consent that you require to get those every needs once having significantly cash? Why dont you try to acquire something basic in the beginning? Thats something that will guide you to understand even more a propos the globe, experience, some places, afterward history, amusement, and a lot more?

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