

# **International Journal of Constitutional Law**

**Volume 1, Number 1, 2003**

## **Articles**

Normal Dorsen and Michel Rosenfeld

**Note to Readers**

Jürgen Habermas

**Intolerance and discrimination**

Frank I. Michelman

**The constitution, social rights, and liberal political justification**

Claire L'Heureux-Dubé

**Realizing equality in the twentieth century: the role of the Supreme Court of Canada in comparative perspective**

Xin Chunying

**What kind of judicial power does China need?**

Mark Tushnet

**The issue of state action/horizontal effect in comparative constitutional law**

Michel Troper

**The logic of justification of judicial review**

Simon Evans

**Australia**

Rodrigo P. Correa G.

**Chile**

Beate Rudolf

**European Union**

Christine Langenfeld

**Germany**

Benny Y.T. Tai

**Hong Kong/China**

Anashri Pillay

**South Africa**

Wojciech Sadurski

**The struggle for constitutional justice in post-communist Europe**

David Dyzenhaus  
**Transitional justice**

**Volume 1, Number 2, 2003**

**Articles** 📄

Barry Friedman and Cheryl Saunders  
**Editors' introduction**

D. M. Davis  
**Constitutional borrowing: The influence of legal culture and local history in the reconstitution of comparative influence: The South African experience**

Lee Epstein and Jack Knight  
**Constitutional borrowing and nonborrowing**

Yasuo Hasebe  
**Constitutional borrowing and political theory**

Wiktor Osiatynski  
**Paradoxes of constitutional borrowing**

Carlos F. Rosenkrantz  
**Against borrowings and other nonauthoritative uses of foreign law**

Kim Lane Scheppele  
**Aspirational and aversive constitutionalism: The case for studying cross-constitutional influence through negative models**

Hilary Charlesworth  
**The Constitution of East Timor, May 20, 2002**

Mark Elliott  
**United Kingdom**  
**The European Convention: preliminary observations**

Valéry Giscard d'Estaing  
**The convention and the future of Europe: Issues and goals**

Guiliano Amato  
**The European convention: First achievements and open dilemmas**

Robert Badinter  
**A European constitution: Perspectives of a French delegate to the convention**

Michel Rosenfeld

**The European Convention and constitution making in Philadelphia**

Sujit Choudhry

**Review: Judicial power and the Charter: Canada and the paradox of liberal constitutionalism**

Noah Feldman

**Review: Constitutions in a nonconstitutional world: Arab basic laws and the prospects for accountable government**

### **Volume 1, Number 3, 2003**

#### **Articles**

Francisco Rubio Llorente

**A Charter of dubious utility**

Gordon Silverstein

**Globalization and the rule of law: "A machine that runs of itself?"**

Keith E. Whittington

**Legislative sanctions and the strategic environment of judicial review**

Burt Neuborne and Lorraine Weinrib

**Annals of constitutional courts**

Burt Neuborne

**The Supreme Court of India**

Caroline Taube

**Latvia: Political participation of linguistic minorities**

Li-ann Thio

**Singapore: Regulating political speech and the commitment "to build a democratic society"**

David Bilchitz

**South Africa: Right to health and access to HIV/AIDS drug treatment**

Alexei Trochev

**Ukraine: Constitutional Court invalidates ban on Communist Party**

David P. Currie

**Review: Die Verfassung und die Politik: Einsprüche in Störfällen, [The Constitution and Politics: Protestations in Troubled Times]**

Tamás Gyorfi  
**Review: Constitutional Democracy**

William E. Scheuerman  
**Review: Weimar: A Jurisprudence of Crisis**

**Volume 1, Number 4, 2003**

**Articles** 📄

**Introduction**

Upendra Baxi  
**"A known but an indifferent judge": Situating Ronald Dworkin in contemporary Indian jurisprudence**

Arthur Chaskalson  
**From wickedness to equality: The moral transformation of South African law**

Bernhard Schlink  
**Hercules in Germany?**

Gustavo Zagrebelsky  
**Ronald Dworkin's principle based constitutionalism: An Italian point of view**

Ronald Dworkin  
**Response to overseas commentators**

Frances Raday  
**Culture, religion, and gender**

Beate Rudolf  
**European Court of Human Rights: Legal status of postoperative transsexuals**

John Keown  
**European Court of Human Rights: Death in Strasbourg—assisted suicide, the *Pretty* case, and the European Convention on Human Rights**

Leslie Turano  
**Spain: Banning political parties as a response to Basque terrorism**

Abdullahi An-Na'im  
**Welfare State and Constitutionalism: Nordic Perspectives**

David Cole  
**The Security of Freedom: Essays on Canada's Anti-Terrorism Bill**

**Volume 2, Number 1, 2004**

**Articles** ■

Sujit Choudhry

**The *Lochner* era and comparative constitutionalism**

Terence Daintith

**The constitutional protection of economic rights**

Vicki C. Jackson

**Comparative constitutional federalism and transnational judicial discourse**

Mary Marshall

**Canada: Production of private records of victims of sexual assault in *R. v. Shearing***

Vijayashri Sripathi and Arun K. Thiruvengadam

**India: Constitutional amendment making the right to education a Fundamental Right**

Mark Tushnet

**United States: Supreme Court rules on affirmative action**

Babacar Kante

**Constitutionalism in Africa: Creating Opportunities, Facing Challenges**

Daniel Smilov

**Constitutional Justice, East and West: Democratic Legitimacy and Constitutional Courts in Post-Communist Europe in a Comparative Perspective**

Alec Walen

**The New Constitutional Order**

**Volume 2, Number 2, 2004**

**Articles** ■

**Emergency Powers and Constitutionalism**

John Ferejohn and Pasquale Pasquino

**The law of the exception: A typology of emergency powers**

Jon Elster

**Comments on the paper by Ferejohn and Pasquino**

David Dyzenhaus

**Intimations of legality amid the clash of arms**

Radhika Coomaraswamy and Charmaine de los Reyes

**Rule by emergency: Sri Lanka's postcolonial constitutional experience**

Samuel Issacharoff and Richard H. Pildes

**Emergency contexts without emergency powers: The United States' constitutional approach to rights during wartime**

Geoffrey R. Stone

**Free speech in World War II: "When are you going to indict the seditionists?"**

Vicki C. Jackson

**Proconstitutional behavior, political actors, and independent courts: A comment on Geoffrey Stone's paper**

Dominic McGoldrick

**The interface between public emergency powers and international law**

**Volume 2, Number 3, 2004**

### **Articles**

Winfried Brugger

**Communitarianism as the social and legal theory behind the German Constitution**

Victor Ferreres Comella

**The European model of constitutional review of legislation: Toward decentralization?**

Victor V. Ramraj

**Four models of due process**

Bernhard Hofstötter

**European Court of Human Rights: Positive obligations in *E. and others v. United Kingdom***

Shigenori Matsui

**Japan: The Supreme Court and the separation of church and state**

Mark Elliott

**United Kingdom: Parliamentary sovereignty under pressure**

William N. Eskridge, Jr.

**United States: *Lawrence v. Texas* and the imperative of comparative constitutionalism**

Reviewed by Christine B. Harrington

**On Law, Politics, and Judicialization**

Reviewed by Russell Miller

**Constitutional Courts in Comparison: The U.S. Supreme Court and the German Federal Constitutional Court**

Mattias Kumm

**Constitutional rights as principles: On the structure and domain of constitutional justice. A review essay on *A Theory of Constitutional Rights***

**Volume 2, Number 4, 2004**

### **Articles** ■

Diane Marie Amann

**"Raise the flag and let it talk": On the use of external norms in constitutional decision making**

Daphne Barak-Erez

**The international law of human rights and constitutional law: A case study of an expanding dialogue**

Michel Rosenfeld

**Constitutional adjudication in Europe and the United States: Paradoxes and contrasts**

Blanca Rodríguez Ruiz

**Recognizing the rights of unmarried cohabitants in Spain: Why not treat them like married couples?**

Xavier Philippe

**France: The amendment of the French Constitution "on the Decentralized Organization of the Republic"**

Renata Uitz

**Hungary: Mixed prospects for the constitutionalization of gay rights**

Felix Uhlmann

**Switzerland: Naturalization process presents conflict between democracy and the rule of law**

Charles Fried

**The British Constitution in the Twentieth Century**

David A.J. Richards

**Governing Sexuality: The Changing Politics of Citizenship and Law Reform**

Mark Tushnet

**Charter Conflicts: What is Parliament's Role?**

**Volume 3, Number 1, January 2005**

**Articles** ▣

Roberto Gargarella

**The constitution of inequality. Constitutionalism in the Americas, 1776–1860**

Michel Troper

**Marshall, Kelsen, Barak and the constitutionalist fallacy**

**Constitutional Court profile** ▣

Lynn Berat

**The Constitutional Court of South Africa and jurisdictional questions: In the interest of justice?**

**Constitutional developments** ▣

David Schneiderman

**Canada: Supreme Court addresses gay-positive readers in public schools**

Christine Langenfeld and Sarah Mohsen

**Germany: The teacher head scarf case**

Oliver Gerstenberg

**Germany: Freedom of conscience in public schools**

Karin Oellers-Frahm

**Italy and France: Immunity for the prime minister of Italy and the president of the French Republic**

Penelope Nevill

**New Zealand: The Privy Council is replaced with a domestic Supreme Court**

David Golove

**United States: The Bush administration's "war on terrorism" in the Supreme Court**



## ***Book reviews*** 📌

Samantha Besson

**Review: Sovereignty in Transition**

Gábor Halmai

**Review: The Constitution as an Instrument of Change**

**Volume 3, Number 2-3, June 2005**

## **Symposium on the proposed European Constitution**

### ***Preface*** 📌

Christopher Eisgruber and J.H.H. Weiler

**Preface**

### ***Prologue*** 📌

J.H.H. Weiler

**On the power of the Word: Europe's constitutional iconography**

### ***Keynote essay*** 📌

Dieter Grimm

**Integration by constitution**

### ***Part I. Europe's constitutional moment*** 📌

Neil Walker

**Europe's constitutional momentum and the search for polity legitimacy**

Philip Pettit

**Comment on Walker: Europe's constitutional momentum**

András Sajó

**Constitution without the constitutional moment: A view from the new member states**

Mark Tushnet

**Misleading metaphors in comparative constitutionalism: Moments and enthusiasm**

Ran Hirschl

**Preserving hegemony? Assessing the political origins of the EU Constitution**

## ***Part II . A constitutional identity for Europe? ▣***

Armin von Bogdandy

**The European constitution and European identity: Text and subtext of the Treaty establishing a Constitution for Europe**

Michel Rosenfeld

**The European treaty—constitution and constitutional identity: A view from America**

Miguel Poiares Maduro

**The importance of being called a constitution: Constitutional authority and the authority of constitutionalism**

Gianluigi Palombella

**Whose Europe? After the constitution: A goal-based citizenship**

Otto Pfersmann

**The new revision of the old constitution**

## ***Part III . Institutions, powers, decision making, and accountability ▣***

Paul Craig

**European governance: Executive and administrative powers under the new constitutional settlement**

George A. Bermann

**Executive power in the new European constitution**

Damian Chalmers

**Judicial authority and the constitutional treaty**

Mattias Kumm and Victor Ferreres Comella

**The primacy clause of the constitutional treaty and the future of constitutional conflict in the European Union**

Franz C. Mayer

**Competences—reloaded? The vertical division of powers in the EU and the new European constitution**

**Volume 3, Number 4, October 2005**

## ***A conversation between U.S. Supreme Court justices ▣***

Norman Dorsen

**The relevance of foreign legal materials in U.S. constitutional cases: A conversation between Justice Antonin Scalia and Justice Stephen Breyer**

## **Constitutional court judges' roundtable** 🇺🇸

**Comparative constitutionalism in practice: Sixth World Congress of the International Association of Constitutional Law Santiago, Chile, January 12–16, 2004**

Juan Colombo Campbell

**Professor Juan Colombo Campbell • Presiding judge of the Constitutional Court • Chile**

Olivier Dutheillet de Lamothe

**Olivier Dutheillet de Lamothe • Member, *Conseil constitutionnel* • France**

Wolfgang Hoffmann-Riem

**Wolfgang Hoffmann-Riem • Justice, Bundesverfassungsgericht (Constitutional Court) • Germany**

N. Santosh Hegde

**N. Santosh Hegde • Justice, Supreme Court • India**

Luis Lopez Guerra

**Luis Lopez Guerra • Former judge, *Tribunal Constitucional* (Constitutional Court) • Spain**

Stephen Sedley

**Stephen Sedley • Lord Justice of Appeal, Her Majesty's Court of Appeal • United Kingdom**

## **Articles** 🇺🇸

Robert Alexy

**Balancing, constitutional review, and representation**

Margaret A. Burnham

**Indigenous constitutionalism and the death penalty: The case of the Commonwealth Caribbean**

Luc B. Tremblay

**The legitimacy of judicial review: The limits of dialogue between courts and legislatures**

## **Constitutional Developments** 🇺🇸

David Feldman

**Renaming cities in Bosnia and Herzegovina**

Kai Peter Ziegler

**Democratic Republic of the Congo: The Transitional Constitution of April 1, 2003**

Beate Rudolf  
**European Union: Compulsory military service**

Nicolas Nohlen  
**Germany: The Electronic Eavesdropping Case**

Silvia Acierno and Julio Baquero Cruz  
**The Order of the Spanish Constitutional Court on the proposal to convert the Basque Country into a freely associated community: Keeping hands off constitutional politics**

### **Book review** 📖

András Sajó  
Christian Joerges, Inger-Johanne Sand, and Gunther Teubner, eds.,  
*Transnational Governance and Constitutionalism: International Studies in the Theory of Private Law*. Hart Publishing, 2004. 386 pp. • Anne-Marie Slaughter, *A New World Order*. Princeton University Press, 2004. 341 pp.

### **Review essay** 📖

Arthur J. Jacobson and John P. McCormick  
**The business of democracy is democracy**