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Informal constitutional change: constitutional change without formal constitutional amendment in comparative perspective

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Bibliography

- Ackerman, Bruce (1993), *We the People 1: Foundations*, The Belknap Press of Harvard University Press.
- Ackerman, Bruce (1996), *We the People 2: Transformations*, The Belknap Press of Harvard University Press.
- Ackerman, Bruce (2006), *Before the Next Attack, Preserving Civil Liberties in an Age of Terrorism*, Yale University Press.
- Ackerman, Bruce (2010), *The Decline and Fall of the American Republic*, The Belknap Press of Harvard University Press.
- Ackerman, Bruce (2014), *We The People 3: The Civil Rights Revolution*, The Belknap Press of Harvard University Press.
- Ackerman, Bruce and David Golove (1995), 'Is NAFTA Constitutional?', 108 *Harvard Law Review* 799.
- Adams, Maurice (2011), 'Wat de rechtsvergelijking vermag', *Ars Aequi* maart 2011, 192.
- Adler, David Gray (1988), 'The Constitution and Presidential Warmaking: The Enduring Debate', *Political Science Quarterly*, 103: 1–36.
- Albert, Richard (2010), 'Constitutional Handcuffs', 42 *Arizona State Law Journal* 663.
- Albert, Richard (2014a), 'The structure of constitutional amendment rules', 92 *Wake Forest Law Review* 913.
- Albert, Richard (2014b), 'Constitutional Amendment by Constitutional Desuetude', 62 *American Journal of Comparative Law* 641.
- Albert, Richard (2015a), 'How Unwritten Constitutional Norms Change Written Constitutions', 38 *Dublin University Law Journal*, 2015; Boston College Law School Legal Studies Research Paper No. 364. Available at SSRN: <https://ssrn.com/abstract=2628460> (accessed 18-4-2017).
- Albert, Richard (2015b), 'Constitutional Amendment by Stealth', 60 *McGill Law Journal* 673.
- Albert, Richard (2016, forthcoming), 'Quasi-Constitutional Amendments'. Available at SSRN: <https://ssrn.com/abstract=2844770> (accessed 18-4-2017).
- Albert, Richard (2017, forthcoming), 'The State of the Art in Constitutional Amendment (Introduction)' in: Richard Albert, Xenophon Contiades and Alkmene Fotiadu (eds.), *The Foundations and Traditions of Constitutional Amendment*, Hart Publishing, Boston College Law School Legal Studies Research Paper No. 432. Available at SSRN: <https://ssrn.com/abstract=2892895> (accessed 18-4-2017).
- Albert, Richard (2018, forthcoming), 'Constitutional Amendment and Dismemberment', *Yale Journal of International Law* 43, Boston College Law School Legal Studies Research Paper No. 424. Available at SSRN: <https://ssrn.com/abstract=2875931> (accessed 6-9-2017)

- Albert, Richard, Xenophon Contiades and Alkmene Fotiadu (eds.) (2017, forthcoming), *The Foundations and Traditions of Constitutional Amendment*, Hart Publishing.
- Alexander, Larry and Frederick Schauer (1997), *On Extrajudicial Constitutional Interpretation*, 110 *Harvard Law Review* 1359.
- Amar, Akhil Reed (1994), 'The Consent of the Governed: Constitutional Amendment Outside Article V', Faculty Scholarship Series, Paper 982. http://digitalcommons.law.yale.edu/fss_papers/982 (accessed 13-4-2017).
- Amar, Akhil Reed (2012), *America's Unwritten Constitution – The Precedents and Principles We Live By*, Basic Books, New York.
- Andenas, Mads (2000), 'Introduction', in: Mads Andenas (ed.), *The Creation and Amendment of Constitutional Norms*, British Institute of International & Comparative Law.
- Auer, James E. (1990), 'Article Nine of Japan's Constitution: From Renunciation of Armed Force Forever' to the Third Largest Defense Budget in the World', *Law and Contemporary Problems* 53.
- Badura, Peter (1992), 'Verfassungsänderung, Verfassungswandel, Verfassungsgewohnheitsrecht', in: *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Band VII, C.F. Müller Juristischer Verlag Heidelberg.
- Balkin, Jack M. (2011), *Living Originalism*, The Belknap Press of Harvard University Press.
- Balkin, Jack M. and Sanford Levinson (2010), 'Constitutional Dictatorship: Its Dangers and Its Design', 92 *Minnesota Law Review*, 1789.
- Barber, Nick (2012), *The Constitutional State*, Oxford: Oxford University Press.
- Barber, Nick W. (2016), 'Why Entrench?', 14(2) *International Journal of Constitutional Law* 325.
- Barents, J (1948), 'De taak der politieke wetenschap: verruiming van inzicht', 's-Gravenhage.
- Becker Ulrich and Kersten, Jens (2016), 'Phänomenologie des Verfassungswandels – Eine Verfassungstheoretische und rechtsdogmatische Perspektiverweiterung anlässlich der demografischen Entwicklung', 141 *Archiv des öffentlichen Rechts* 1.
- Benz, Arthur (2011), 'Das Zusammenspiel der Ebenen beim expliziten und impliziten Verfassungswandel', in: Christoph Hönnige, Sacha Kneip and Astrid Lorentz (ed.), *Verfassungswandel im Mehrebenensystem*, VS Verlag.
- Berger, Thomas U. (2012), 'Ripe for revision? The strange case of Japan's unchanging constitution', in: Wakefield (ed.), *A Time for Change? Japan's 'peace' constitution at 65*, Woodrow Wilson International Center for Scholars, Washington DC.
- Bobbitt, Philip (1994), 'War Powers: An Essay on John Hart Ely's War and Responsibility: Constitutional Lessons of Vietnam and its Aftermath', *Michigan Law Review*, 92: 1364.
- Böckenförde, Ernst Wolfgang (1993), 'Anmerkungen zum Begriff Verfassungswandel', in: Peter Lerche, Peter Badura, Rupert Scholz, *Wege und Verfahren des Verfassungslebens: Festschrift für Peter Lerche zum 65. Geburtstag*, München: C.H. Beck, 1993.
- Boyd, Patrick J. and Richard J. Samuels (2005), *Stay With Nine Lives?: The Politics of Constitutional Reform in Japan*, East-West Center Washington.

- Bryde, Brun-Otto (2003), 'Art. 79 (Änderung des Grundgesetzes)', in: von Münch & Kunig (Hrsg.), *Grundgesetz-Kommentar*, Band 3, Art. 70-146, 5. Auflage, Verlag C.H. Beck München.
- Burgess, John (1890), *Political science and comparative constitutional law*, Volume 1, Ginn & Company, Boston and London.
- Burke, Edmund (2003), *Reflections on the Revolution in France*, New Haven and London: Yale University Press.
- Busch, Andras (1999), 'The Grundgesetz after 50 Years: Analyzing Changes in the German Constitution', Minda de Gunzburg Center for European Studies. Retrieved at: http://www.people.fas.harvard.edu/~ces/publications/docs/abs/PSGE_9_3.html (accessed 18-4-2017).
- Contiades, Xenophon (ed.) (2013), *Engineering Constitutional Change*, Routledge.
- Cooley, Thomas (1869), *A Treatise on Constitutional Limitations*, Boston: Little, Brown.
- Cooter, Robert D. (2000), *The Strategic Constitution*, Princeton University Press.
- Craig, Paul and de Búrca, Gráinne (2011), *EU Law, Text Cases and Materials*, fifth edition, Oxford University Press.
- Dannemann, G. (2006), 'Comparative Law: Study of Similarities or Differences?', in: M. Reimann and R. Zimmermann (ed.), *The Oxford Handbook of Comparative Law*, Oxford: Oxford University Press.
- Dau-Lin, Hsü (1932), *Die Verfassungswandlung*, Walter de Gruyter & Co.
- David S. Law (2008), 'The Anatomy of a Conservative Court: Judicial Review in Japan', 87 *Texas Law Review* 1545.
- Dellinger Walter E. III (1983), 'The Legitimacy of Constitutional Change: Rethinking the Amendment Process', 97 *Harvard Law Review* 386-432.
- Denning, Brannon P. and John R. Vile (2002), 'The Relevance of Constitutional Amendments: A Response to David Strauss', 77 *Tulane Law Review* 248.
- Dicey, Albert V. (1959), *An Introduction to the Study of the Law of The Constitution*, 10th edn, London: Macmillan.
- Dixon, Rosalind (2011), 'Constitutional Amendment rules: a comparative perspective', in: Ginsburg, Tom and Dixon, Rosalind (ed.), *Comparative Constitutional Law*, Edward Elgar.
- Dixon, Rosalind (2011), 'Constitutional Amendment: A Comparative Perspective', in: *Comparative Constitutional Law* (ed. with Tom Ginsburg) (Edward Elgar, 2011).
- Dorf, Michael (2006), *No Litmus Test: Law versus Politics in the Twenty-First Century*, Rowman & Littlefield Publishers.
- Dow, David R. 'The plain meaning of Article V', in: Sanford Levinson (ed.), *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, Princeton University Press.
- Eckstein, Harry (1992), *Regarding Politics: Essays on Political Theory, Stability, and Change*, University of California Press, Berkeley.
- Eisselt, Isabella and Peter Slominski (2006), 'Sub-Constitutional Engineering: Negotiation, Content and Legal Value of Interinstitutional Agreements in the EU', 12 *European Law Journal* 2, pp. 209-225.

- Elkins, Zachary, Tom Ginsburg and James Melton (2009), *The Endurance of National Constitutions*, Cambridge University Press.
- Elster, Jon (2000), *Ulysses Unbound*, Cambridge: Cambridge University Press.
- Ely, John Hart (1993), *War and Responsibility: Constitutional Lessons of Vietnam and its Aftermath*, Princeton University Press.
- Eskridge, William N. and Ferejohn, John (2001), 'Super-Statutes', 50 *Duke Law Journal* 1215.
- Fisher, Louis (2013), *Presidential War Power*, Third Edition, University of Kansas Press.
- Fisher, Robert A. (1999), 'The Erosion of Japanese Pacifism: The Constitutionality of the 1997 U.S.-Japan Defense Guidelines', 32 *Cornell International Law Journal* 2, Available at: <http://scholarship.law.cornell.edu/cilj/vol32/iss2/4> (accessed 14-4-2017).
- Fleuren, Joseph .W.A. (2015), 'Artikel 106', in: Bovend'Eert, P.P.T., Broeksteeg J.L.W., Bunschoten, D.E. et al., *Grondwet Tekst & Commentaar*, Vierde Druk, Deventer: Kluwer.
- Fukuyama, Francis (2007), 'Seymour Martin Lipset 1922-2006', *The American Interest*. Retrieved from: <https://www.the-american-interest.com/2007/01/08/seymour-martin-lipset-1922-2006/> (accessed 14-4-2017).
- Fukuyama, Francis (2011), *The Origins of Political Order – From Prehuman Times to the French Revolution*, Profile Books, London.
- Gerken, Heather K. (2007), 'The Hydraulics of Constitutional Reform: A Skeptical Response to Our Undemocratic Constitution', 55 *Drake Law Review* 925. http://digitalcommons.law.yale.edu/fss_papers/35 (accessed 19-4-2017).
- Ginsburg, Tom (2014), 'Chaining the Dog of War: Comparative Data', *Chicago Journal of International Law*, 15: 138.
- Ginsburg, Tom and James Melton (2015), 'Does the Constitutional Amendment Rule Matter at All?', 13 *International Journal of Constitutional Law* 686.
- Goldmann, Matthias (2015), *Internationale öffentliche Gewalt: Handlungsformen internationaler Institutionen im Zeitalter der Globalisierung (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht)*, Heidelberg: Springer.
- Goldsmith, Jack (2007), *The Terror Presidency: Law and Judgment Inside the Bush Administration*, W.W. Norton & Company, London and New York.
- Goldsworthy, Jeffrey (2012), 'Constitutional Interpretation', in: Michel Rosenfeld and András Sajó (ed.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press.
- Griffin, Stephen M. (1996), *American Constitutionalism: From Theory to Practice*, Princeton University Press.
- Griffin, Stephen M. (1998), 'The Nominee Is...Article V', in: William N. Eskridge Jr. and Sanford Levinson (ed.), *Constitutional Stupidities, Constitutional Tragedies*, New York University Press.
- Griffin, Stephen M. (2006), 'Constituent Power and Constitutional Change in American Constitutionalism', Tulane Public Law Research Paper No. 06-12. Available at SSRN: <https://ssrn.com/abstract=928493> (accessed 14-4-2017).
- Griffin, Stephen M. (2013), *Long Wars and the Constitution*, Harvard University Press, 2013.

- Griffin, Stephen M. (2015) 'The Executive Power', in: Mark Tushnet, Mark A. Graber and Sanford Levinson, *The Oxford Handbook of The U.S. Constitution*, Oxford: Oxford University Press.
- Griffin, Stephen M. (2016), 'Understanding Informal Constitutional Change', Tulane Public Law Research Paper No. 16-1. Available at SSRN: <https://ssrn.com/abstract=2724580> (accessed 14-4-2017).
- Grimm, Dieter S. (2010), 'The Basic Law at 60 – Identity and Change', 11 *German Law Journal* 01.
- Grimm, Dieter S. (2012), *Die Zukunft der Verfassung II: Auswirkungen von Europäisierung und Globalisierung*, Suhrkamp Verlag Berlin.
- Hamura, Shotaro and Eric Shiu (1995), 'Renunciation of war as a universal principle of mankind – a look at the Gulf War and the Japanese Constitution', 44 *International and Comparative Law Quarterly* 405, 426–443.
- Harris, William F. II (1993), *The Interpretable Constitution*, The Johns Hopkins University Press.
- Hasabe, Yasuo (2012), 'War Powers', in: Michel Rosenfeld and András Sajó (ed.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press.
- Hayashi, Mika (2004), 'The Japanese law concerning the special measures on humanitarian and reconstruction assistance in Iraq: translator's introduction', *Pacific Rim Law & Policy Journal* 13 (3), June.
- Hegel, Georg W.F. (1995), *Grundlinien der Philosophie des Rechts*, 4. Aufl., Suhrkamp Verlag Frankfurt am Main.
- Heller, Hermann (1996), 'The Nature and Function of the State', 18 *Cardozo Law Review*, 1139–1216.
- Hendrickson (2002), *The Clinton Wars: The Constitution, Congress and War Powers*, Vanderbilt University Press.
- Henhabib, Seyla (2006), *Another Cosmopolitanism*, Oxford/New York: Oxford University Press.
- Hesse, Konrad (1995), *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, Neudruck der 20. Auflage, C.F. Müller Verlag Heidelberg.
- Heun, Werner (2011), *The Constitution of Germany – A Contextual Analysis*, Hart Publishing, Oxford and Portland Oregon.
- Hinarejos, Alicia (2015), *The Euro Area Crisis in Constitutional Perspective*, Oxford: Oxford University Press.
- Hirsch Ballin, Ernst and Eva van Vugt (2014), 'De transformatie van de bevoegdheid tot ontbinding van het parlement', in: Erik Witjens, Viola Van Bogaert and Carlos Bollen, *E Hofi di Ley: Feestbundel ter gelegenheid van 25 jaar Faculteit der Rechtsgeleerdheid van de Universiteit van Aruba*, Boom Juridische uitgevers, Den Haag.
- Hirschl, Ran (2014), *Comparative Matters: The Renaissance of Comparative Constitutional Law*, Oxford University Press.
- Hixson, Walter (1994), 'What was the Cold War and How did We Win it?', *Reviews in American History*, 22(3): 507–511.
- Hoeven, van der, Johannes (1958), *De plaats van de Grondwet in het constitutionele recht*, N.V. Uitgevers-mij W.E.J. Tjeenk Willink, Zwolle.
- Hook, Glenn and Gavan McCormack (2001), *Japan's contested constitution – documents and analysis*, Routledge, London and New York.

- Hufeld, Ulrich (1997), *Die Verfassungsdurchbrechung: Rechtsproblem der Deutschen Einheit und der europäischen Einigung: Ein Beitrag zur Dogmatik der Verfassungsänderung*, Duncker & Humblot Berlin.
- Hufeld, Ulrich (2011), 'Europäische Integration und Verfassungsänderung', in: Andreas von Arnould & Ulrich Hufeld (Hrsg.), *Systematischer Kommentar zu den Lissabon-Begleitgesetzen*, Nomos.
- Hughes, Charles Evans (1908), 'Speech before the Chamber of Commerce, Elmira, New York (3 May 1907)', published in: *Addresses and Papers of Charles Evans Hughes, Governor of New York, 1906–1908*.
- Ipsen, Hans Peter (1966), 'Als Bundesstaat in der Gemeinschaft', in: Ernst Caemmerer et al. (eds.): *Probleme des europäischen Rechts. Festschrift für Walter Hallstein zu seinem 65. Geburtstag*. 1966.
- Jackson, Vicki C. (2012), 'Comparative Constitutional Law: Methodologies', in: Michel Rosenfeld and András Sajó (ed.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press.
- Jackson, Vicky (2015), 'The (myth of un)amendability of the US Constitution and the democratic component of constitutionalism', *International Journal of Constitutional Law*, 13(3).
- Jacobsohn, Gary Jeffrey (2009), *Constitutional Identity*, Harvard University Press.
- Jacobson, Arthur and Schlink, Bernard (2000), *Weimar: A jurisprudence of crisis*, University of California Press.
- Janse de Jonge, E.J. (2017), 'Commentaar op artikel 106 van de Grondwet', in: E.M.H. Hirsch Ballin en G. Leenknecht (ed.), *Artikelsgewijs commentaar op de Grondwet*, webeditie 2017. At: www.Nederlandrechtsstaat.nl (accessed 19-4-2017).
- Jellinek, Georg (1906), *Verfassungsänderung und Verfassungswandlung*, Verlag von O. Häring, Berlin.
- Jellinek, Georg (2000), 'Constitutional amendment and constitutional transformation', in: Arthur Jacobson and Schlink, Bernard (2000), *Weimar: A jurisprudence of crisis*, University of California Press.
- Jennings, Ivor (1967), *The Law and The Constitution*, 5th ed., University of London Press.
- Jones, Charles O. (2007), *The American Presidency: A Very Short Introduction*, Oxford University Press.
- Kämmerer, Jörn Axel (2003), 'Art. 88 (Bundesbank)', in: von Münch & Kunig (Hrsg.), *Grundgesetz-Kommentar*, Band 3, Art. 70-146, 5. Auflage, Verlag C.H. Beck München.
- Kelsen, Hans (2007), *General Theory of Law & State*, Transaction Publishers.
- Klaidman, Daniel (2012), *Kill or Capture: The War on Terror and the soul of the Obama presidency*, Houghton Mifflin Harcourt.
- Kneip, Sascha (2011), 'Spiel über Bande. Intendierte und nicht-intendierter Verfassungswandel durch Klagen vor dem Bunderverfassungsgericht', in: Christoph Hönnige, Sascha Kneip and Astrid Lorentz (ed.), *Verfassungswandel im Mehrebenensystem*, VS Verlag.
- Kokott, Juliane (2010), 'The Basic Law at 60 – From 1949 to 2009: The Basic Law and Supranational Integration', 11 *German Law Journal* 01, pp. 99–114.

- Koopmans, Tim (2003), *Courts and Political Institutions: A Comparative View*, Cambridge: Cambridge University Press.
- Kortmann, Constantijn Joseph Fleuren and Wim Voermans (2006), *Constitutional Law of 10 EU Member States*, Kluwer.
- Koseki, Shoichi (1998), *The Birth of Japan's Postwar Constitution*, translated by Ray A. Moore, Westview Press, Colorado and Oxford.
- Kotzur, Markus (2013), 'Constitutional amendments and constitutional changes in Germany', in: *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada and the USA*, Routledge, London and New York.
- Lederman, Martin S. and David Jeremiah Barron (2008), 'The Commander In Chief at The Lowest Ebb – Framing The Problem, Doctrine, And Original Understanding', *Harvard Law Review*, 3(121): 689.
- Lederman, Martin S. and David Jeremiah Barron, 'The Commander in Chief at the Lowest Ebb – A Constitutional History', *Harvard Law Review*, 3(121): 941.
- Leenknecht, Gert-Jan, 'Commentaar op artikel 64 van de Grondwet', in: E.M.H. Hirsch Ballin and G. Leenknecht (ed.), *Artikelsgewijs commentaar op de Grondwet*, webeditie 2017. At: www.Nederlandrechtstaat.nl (accessed 19-4-2017).
- Levinson, Sanford (1995), 'How Many Times Has the United States Constitution Been Amended? (A) < 26; (B) 26; (C) 27; (D) > 27: Accounting for Constitutional Change', in: Sanford Levinson (ed.), *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, Princeton University Press.
- Levinson, Sanford (2006), *Our Undemocratic Constitution: Where the Constitution goes wrong (and how we the people can correct it)*, Oxford University Press.
- Levinson, Sanford (2012), *Framed – America's 51 Constitutions and the Crisis of Governance*, Oxford University Press.
- Lijphart, Arend (2012), *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Second Edition, Yale University Press.
- Livingston, William S. (1956), *Federalism and Constitutional Change*, Oxford: At the Clarendon Press.
- Llewellyn, Karl N. (1934), 'The Constitution as an Institution', 34(1) *Columbia Law Review*.
- Loewenstein, Karl (1951), 'Reflections on the Value of Constitutions in Our Revolutionary Age', in: Arnold J. Zurcher (ed.), *Constitutions and Constitutional Trends Since World War II: An Examination of Significant Aspects of Postwar Public Law with Particular Reference to the New Constitutions of Western Europe*, New York: New York University Press.
- Loughlin, Martin (2010), *Foundations of Public Law*, Oxford University Press.
- Loughlin, Martin (2013), *The British Constitution: a very short introduction*, Oxford: Oxford University Press.
- Lummis, C. Douglas (2013), 'It Would Make No Sense for Article 9 to mean what it Says, Therefore It Doesn't: The Transformation of Japan's Constitution', 11 *The Asia Pacific Journal: Japan Focus* 39(2).
- Lutz, Donald S. (1995), 'Towards a Theory of Constitutional Amendment', in: Levinson, Sanford (ed.), *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, Princeton University Press.

- Lutz, Donald S. (2006), *Principles of Constitutional Design*, Cambridge: Cambridge University Press.
- Madison (1987a), 'Number XLIII' (Federalist Nr. 43), in: Isaac Kramnick (ed.), *James Madison, Alexander Hamilton and John Jay: The Federalist Papers*, London: Penguin Books.
- Madison (1987b), 'Number XLIX' (Federalist Nr. 49), in: Isaac Kramnick (ed.), *James Madison, Alexander Hamilton and John Jay: The Federalist Papers*, London: Penguin Books.
- Markides, Alecos (2006), 'The Republic of Cyprus' in: Voermans Wim J.M., Kortmann, Constantijn J.A.M. & Fleuren, Joseph (ed.), *Constitutional Law of 10 EU Member States; the 2004 Enlargement*, Deventer: Kluwer.
- Marshall, Geoffrey (1984), *Constitutional Conventions*, Oxford University Press.
- Martin, Craig (2007), 'The Case Against 'Revising Interpretations' of the Japanese Constitution', *The Asia-Pacific Journal: Japan Focus* 5(0).
- Martin, Craig (2008), 'Binding the Dogs of War: Japan and the Constitutionalizing of Jus Ad Bellum', 30 *University of Pennsylvania Journal International Law Journal* 267. Available at: <http://scholarship.law.upenn.edu/jil/vol30/iss1/4> (accessed 14-4-2017).
- Martin, Craig (2012), 'A Constitutional Case for Amending Article 9', in: Bryce Wakefield (ed.), *A Time for Change? Japan's 'peace' constitution at 65*, Woodrow Wilson International Center for Scholars, Washington D.C.
- Martin, Craig (2017), 'The legitimacy of informal constitutional amendment and the 'reinterpretation' of Japan's war powers', 40(2) *Fordham International Law Journal* 427.
- Martin, Craig and Bryce Wakefield (2014), 'Reexamining "Myths" About Japan's Collective Self-Defense Change – What critics (and the Japanese public) do understand about Japan's constitutional reinterpretation', *Asia-Pacific Journal: Japan Focus*.
- Masing, Johannes (2008), 'Zwischen Kontinuität und Diskontinuität: Die Verfassungsänderung', in: Rainer Wahl (Hrsg.), *Verfassungsänderung, Verfassungswandel, Verfassungsinterpretation: Vorträge bei deutsch-japanischen Symposien in Tokyo 2004 und Freiburg 2005*, Duncker & Humblot Berlin.
- Matsui, Shigenori (2011), *The Constitution of Japan: A Contextual Analysis*, Hart Publishing, Oxford and Portland, Oregon.
- Maurer, Harmut (2007), *Staatsrecht I: Grundlagen, Verfassungsorgane, Staatsfunktionen*, 5. Auflage, Verlag C.H. Beck.
- Mazzetti, Mark (2015), 'Killing of Americans Deepens Debate over Use of Drone Strikes', *The New York Times*, April 23, 2015.
- McCormack, Gavan (2004), 'Koizumi's Japan in Bush's World: After 9/11', 2 *The Asia-Pacific Journal Japan Focus* 12(0).
- McIlwain, Charles Howard (2009), *Constitutionalism: ancient and modern*, Liberty Fund, Indianapolis.
- Meyer, Wolfgang (2003), 'Art. 100 (Verfassungswidrigkeit von Gesetzen)', in: von Münch & Kunig (Hrsg.), *Grundgesetz-Kommentar*, Band 3, Art. 70-146, 5. Auflage, Verlag C.H. Beck München.
- Moïse, Edward (1996), *Tonkin Gulf and the Escalation of the Vietnam War*, The University of North Carolina Press.

- Möllers, Christoph (2007), 'Pouvoir Constituant-Constitution-Constitutionalisation', in: Jurgen Bast and Armin von Bogdandy (ed.), *Principles of European Constitutional Law*, Hart Publishing.
- Möllers, Christoph (2013), *The Three Branches: A Comparative Model of Separation of Powers*, Oxford: Oxford University Press.
- Moore Ray A. and Donald R. Robinson (2002), *Partners for Democracy – Crafting the New Japanese State under MacArthur*, Oxford University Press.
- Murphy, Walter F. (1993), 'Constitutions, Constitutionalism and Democracy', in: Greenberg, Douglas, Katz Stanley N., Olivier, Melanie Beth (ed.), *Constitutionalism & Democracy Transitions in the Contemporary World*, Oxford University Press.
- Murphy, Walter F. (2007), *Constitutional Democracy – Creating and Maintaining a Just Political Order*, Princeton University Press.
- Nettesheim, Martin (2002), 'EU-Recht und nationales Verfassungsrecht', Deutscher Bericht für die XX. FIDE-Tagung 2002. Retrieved from: <http://www.europawissen-schaften-berlin.de/media/pdf/Publikationen/Nettesheim.pdf> (accessed 29-3-2017).
- Nishikawa, Toshiyuki (2009), 'The Future of the Japanese Constitution', *Unknown Journal*, retrieved from <http://www.surugadai.ac.jp/sogo/media/bulletin/Hikaku17/Hikaku17Nishikawa.pdf> (accessed 15-2-2017).
- Oliver, Dawn (2003), *Constitutional reform in the UK*, Oxford: Oxford University Press.
- Oliver, Dawn and Carlo Fusaro (2011), 'Towards A Theory of Constitutional Change', in: Dawn Oliver and Carlo Fusaro (ed.), *How Constitutions Change – A Comparative Study*, Hart Publishing, Oxford and Portland, Oregon.
- Oliver, Dawn and Carlo Fusaro (ed.) (2011), *How Constitutions Change – A Comparative Study*, Oxford: Hart Publishing.
- Passchier, Reijer (2015), 'The Constitution of the Netherlands at 200: Adaptive Capacity and Constitutional Rigidity'. Available at SSRN: <https://ssrn.com/abstract=2608435> (accessed 29-3-2017).
- Passchier, Reijer (2015b), 'Review of Vicki Jackson's "The (myth of un)amendability of the US Constitution and the democratic component of constitutionalism"', *International Journal of Constitutional Law Blog*, Nov. 17, 2015, at: <http://www.iconnectblog.com/2015/11/article-review-reijer-passchier-on-vicki-jacksons-the-myth-of-unamendability-of-the-us-constitution-and-the-democratic-component-of-constitutionalism> (accessed 29-3-2017).
- Passchier, Reijer (2017a), 'De ontwikkeling van het Japanse pacifisme en defensiebeleid als informele constitutionele verandering', *Tijdschrift voor Constitutioneel Recht* 2017(3).
- Passchier, Reijer (2017b), 'Als Commander in Chief kan Trump straks bijna alles', *92 Nederlands Juristenblad*, 1: 6–13.
- Passchier, Reijer (2017, forthcoming), 'Quasi-Constitutional Change Without Intent – A Response to Richard Albert', *Buffalo Law Review* 65(5). Available at SSRN: <https://ssrn.com/abstract=3020668>
- Passchier, Reijer (2018, forthcoming), 'Formal and Informal Constitutional Change in the Netherlands', in: Giuseppe Ferrari, Reijer Passchier and Wim Voermans eds., *The Dutch Constitution beyond 200: tradition and innovation in a Multilevel Legal*

- Order*, The Hague: Eleven International Publishers. Available at SSRN: <https://ssrn.com/abstract=2975751>
- Passchier, Reijer and Maarten Stremmer (2016), 'Unconstitutional Constitutional Amendments in European Union Law: Considering the Existence of Substantive Constraints on Treaty Revision', *The Cambridge Journal of International and Comparative Law* 5(2).
- Passchier, Reijer and Wim Voermans (2016), 'Going Against the Consociational Grain: The Debate on the Dutch Advisory Referendum Act and the Ukraine-EU Association Agreement Referendum', *International Journal of Constitutional Law Blog*. At: <http://www.iconnectblog.com/2016/06/going-against-the-consociational-grain-the-debate-on-the-dutch-advisory-referendum-act-and-the-ukraine-eu-association-agreement-referendum>
- Paulsen, Michael Stokes (2010), 'The War Power', *Harvard Journal of Law and Public Policy* 2010, U of St. Thomas Legal Studies Research Paper No. 09-23. Available at SSRN: <https://ssrn.com/abstract=1488964> (accessed 14-4-2017).
- Pernice, Ingolf (1998), 'Constitutional Law Implications for a State Participating in a Process of Regional Integration. German Constitution and „Multilevel Constitutionalism'', in: Eibe Riedel (ed.), *German Reports on Public Law. Presented to the XV. International Congress on Comparative Law, Bristol 26 July to 1 August 1998*, NOMOS, Baden-Baden, pp. 40–66.
- Pernice, Ingolf (2009), 'The Treaty of Lisbon Multilevel Constitutionalism in Action', 14 *The Columbia Journal of European Law* 3.
- Perret, Geoffrey (2007), *Commander in Chief: How Truman, Johnson and Bush Turned a Presidential Power into a Threat to America's Future*, Farrar, Straus and Giroux, New York.
- Peters, Jit (2003), *Wie beschermt onze Grondwet?*, UvA, Vossiuspers, Amsterdam.
- Petersohn, Bettina & Rainer-Olaf Schultze (2011), 'Ziele, Formen und Prozessstrukturen des Verfassungswandels in Mehrebenensystemen', in: Christoph Hönnige, Sacha Kneip and Astrid Lorentz (ed.), *Verfassungswandel im Mehrebenensystem*, VS Verlag.
- Philips, O. Hood (1966), 'Constitutional Conventions: Dicey's Predecessors' (1966) 29 *MLR* 137.
- Port, Kenneth L. (2005), 'Article 9 of the Japanese Constitution and the Rule of Law', William Mitchell Legal Studies Research Paper No. 4. Available at SSRN: <https://ssrn.com/abstract=685118> (accessed 29-3-2017).
- Posner, Eric A. and Adrian Vermeule (2007), *Terror in the Balance: Security, Liberty and the Courts*, Oxford University Press.
- Posner, Eric A. and Adrian Vermeule (2010), *The Executive Unbound – After the Madisonian Republic*, Oxford University Press.
- Prakke, Lucas & Constantijn Kortmann (2006), *Constitutional Law of 15 EU Member States*, Deventer: Kluwer.
- Repeta, Lawrence (2015), 'Japan's Proposed National Security Legislation – Will This Be the End of Article 9?' 13 *The Asia-Pacific Journal* 24(3).
- Rojahn, Ondolf (2003), 'Art. 23 (Europäische Union)', in: von Münch & Kunig (Hrsg.), *Grundgesetz-Kommentar*, Band 2, Art. 20-69, 5. Auflage, Verlag C.H. Beck München.

- Royer, Kendrick F. (1993), 'The Demise of the World's First Pacifist Constitution: Japanese Constitutional Interpretation and the Growth of Executive Power to Make War', 26 *Vanderbilt Journal of Transnational Law* 749.
- Roznai, Yaniv (2013), 'Unconstitutional Constitutional Amendments: The Migration and Success of a Constitutional Idea', 61 *American Journal of Comparative Law* 657.
- Roznai, Yaniv (2017), *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, Oxford: Oxford University Press.
- Roznai, Yaniv and Silvia Suteu (2015), 'The Eternal Territory? The Crimean Crisis and Ukraine's Territorial Integrity as an Unamendable Constitutional Principle', 16(3) *The German Law Journal* 542-580.
- Sajó, Andras (1999), *Limiting Government: An Introduction to Constitutionalism*, Central European University Press, Budapest.
- Sakaguchi, Shojiro (2014), 'Major constitutional developments in Japan in the first decade of the twenty-first century', in: Albert H.Y. Chen (ed.), *Constitutionalism in Asia in the early twenty-first century*, Cambridge University Press.
- Samuels, Richard J. (2004), 'Politics, Security Policy, and Japan's Cabinet Legislation Bureau: Who Elected These Guys, Anyway?' JPRI Working Paper No. 99. Available at: <http://www.jpri.org/publications/workingpapers/wp99.html> (accessed 29-3-2017).
- Saunders, Cheryl (2006), 'The Use and Misuse of Comparative Constitutional Law', 13(1) *Indiana Journal of Global Legal Studies* 37.
- Schauer, Frederick (1995), 'Amending the Presuppositions of a Constitution', in: Levinson, Sanford (ed.), *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, Princeton University Press.
- Scheuerman, William E. (2002), 'Constitutionalism in an age of speed', 19 *Constitutional Commentary* 353.
- Schorkopf, Frank (2010), 'The European Union as An Association of Sovereign States: Karlsruhe's Ruling on the Treaty of Lisbon', 10 *German Law Journal* 8, pp. 1219-1240.
- Schulze-Fielitz, Helmuth (2008), 'Verfassung als Prozeß von Verfassungsänderungen ohne Verfassungstextänderungen', in: Rainer Wahl (Hrsg.), *Verfassungsänderung, Verfassungswandel, Verfassungsinterpretation: Vorträge bei deutsch-japanischen Symposien in Tokyo 2004 und Freiburg 2005*, Duncker & Humblot Berlin.
- Schütze, Robert (2016), *European Constitutional Law*, Cambridge University Press.
- Sen, Sarbani (2007), *The Constitution of India: Popular sovereignty and Democratic Transformations*, Oxford: Oxford University Press.
- Shapiro, Martin (1981), *Courts. A Comparative and Political Analysis*, Chicago: University of Chicago Press.
- Sheips, Paul J. (1950), 'The significance and Adoption of Article 5 of the Constitution', 26 *Notre Dame Lawyer* 46.
- Sherry, Michael S. (1997), *In the Shadow of War: The United States since the 1930s*, Yale University Press.
- Shibata, Akiho (1994), 'Japanese Peacekeeping Legislation and Recent developments in U.N. Operations', 19 *The Yale Journal of International Law* 307.
- Siedentop, Larry (2001), *Democracy in Europe*, Columbia University Press, New York.

- Skowronek, Stephen (1993), *The Politics Presidents Make: Leadership from John Adams to Bill Clinton*, The Belknap Press of Harvard University Press.
- Strauss (2001), 'The Irrelevance of Constitutional Amendments', 114 *Harvard Law Review*, 1457.
- Strauss, David (1996), 'Common Law Constitutional Interpretation', 63 *University of Chicago Law Review* 877.
- Strauss, David (2010), *The Living Constitution*, Oxford: Oxford University Press.
- Streinz, Rudolf (2007), 'Zur Europäisierung des Grundgesetzes', in: Peter M. Huber (Hrsg.), *Das Grundgesetz zwischen Stabilität und Veränderung*, Mohr Siebeck.
- Streinz, Rudolf (2011), 'Wandlungen des Grundgesetzes unter dem Einfluss der Ebenen des Europarechts und des Völkerrechts', in: Christoph Hönnige, Sasscha Kneip & Astrid Lorenz (Hrsg.), *Verfassungswandel im Mehrebenensystem*, VS Verlag.
- Sullivan, Kathleen M. (2001), 'Constitutional Amendmentitis', Am. Prospect (Dec. 19, 2001), available at http://www.prospect.org/cs/articles?article=constitutional_amendmentitis (accessed 29-3-2017).
- Tribe, Laurence (2000), *American Constitutional Law*, vol 1 (3rd edn), Foundation Press.
- Tushnet, Mark (2009), *The Constitution of the United States of America: A Contextual Analysis*, Hart Publishing.
- Tushnet, Mark (2014), *Advanced Introduction to Comparative Constitutional Law*, Cheltenham: Edward Elgar.
- Vermeule, Adrian (2004), 'Constitutional Amendments and the Constitutional Common Law', University of Chicago, Public Law Working Paper No. 73. Available at SSRN: <https://ssrn.com/abstract=590341> (accessed 13-4-2017).
- Vermeule, Adrian (2012), 'The Atrophy of Constitutional Powers', 32(3) *Oxford Journal of Legal Studies* 421-444.
- Vile, J. (1990), 'Legally Amending the United States Constitution: The Exclusivity of Article V's Mechanisms', 21(2) *Cumberland Law Review* 271.
- Vile, M.J.C. (1998), *Constitutionalism and the Separation of Powers*, Second edition, Indianapolis: Liberty Fund.
- Voermans, Wim J.M. (2009), 'Constitutional Reserves and Covert Constitutions', 3 *Indian Journal of Constitutional Law*.
- Vogel, Klaus (1964), 'Die Verfassungsentscheidung des Grundgesetzes für eine internationale Zusammenarbeit: ein Diskussionsbeitrag zu einer Frage der Staatstheorie sowie des Geltenden Deutschen Staatsrecht', Mohr, Tübingen.
- Voßkuhle, Andreas (2008), 'Gibt es und wozu nutzt eine Lehre von Verfassungswandel?', in: Rainer Wahl (Hrsg.), *Verfassungsänderung, Verfassungswandel, Verfassungsinterpretation: Vorträge bei deutsch-japanischen Symposien in Tokyo 2004 und Freiburg 2005*, Duncker & Humblot Berlin.
- Weiler, Joseph H.H. (2009), 'The "Lisbon Urteil" and the Fast Food Culture', 20 *European Journal of International Law* 505.
- Wheare, Kenneth C. (1966), *Modern Constitutions*, Oxford University Press.
- Whittington, Keith E. (1999), *Constitutional Construction – Divided Powers and Constitutional Meaning*, Harvard University Press, Cambridge, Massachusetts.

- Woelk, Jens (2011), 'Germany', in: Dawn Oliver and Carlo Fusar, *How Constitutions Change: a Comparative study*, Hart Publishing.
- Wolff, Heinrich Amadeus (2000), *Ungeschriebenes Verfassungsrecht unter dem Grundgesetz*, Mohr Siebeck Tübingen.
- Wood, Gordon S. (1969), *The Creation of the American Republic 1776-1787*, The University of North Carolina Press, Chapel Hill and London.
- Wood, Gordon S. (2005), 'The Founders Rule!', *The New Republic* Nov. 7.
- Wood, Gordon S. (2011), *The Idea of America – Reflections on the Birth of the United States*, The Penguin Press, New York.
- Wright, Benjamin F. Jr. (1936), 'The Early History of Written Constitutions in America', in: Carl Wittke (ed.), *Essays in History and Political Theory in Honor of Charles Howard McIlwain*, Cambridge, MA: Harvard University Press.
- Yoo, John C. (1996), 'The Continuation of Politics by Other Means: The Original Understanding of the War Powers', *California Law Review*, 84(167): 174.
- Yoo, John C. (2006), *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11*, The University of Chicago Press.
- Young, Ernest A. (2005), 'The Constitution Outside the Constitution', 117 *The Yale Law Journal* 408.
- Zeisberg, Mariah (2013), *War Powers: The Politics of Constitutional Authority*, Princeton University Press.
- Zippelius, Reinhold & Thomas Würtenberger (2005), *Deutsches Staatsrecht*, 31. Auflage, Verlag C.H. Beck.

