

# SOUL OF A NATION

Constitution-making  
in South Africa



H A S S E N   E B R A H I M

# Soul Of A Nation Constitution Making In South Africa

**Sindre Bangstad**



## **Soul Of A Nation Constitution Making In South Africa:**

The Soul of a Nation Hassen Ebrahim,1998 Part One of this book provides a detailed account of development of the South African constitution especially between 1985 and 1996 Part Two is a collection of key documents from South Africa s constitutional history since 1902      **Constitution Making Under Occupation** Andrew Arato,2009 The attempt in 2004 to draft an interim constitution in Iraq and the effort to enact a permanent one in 2005 were unintended outcomes of the American occupation which first sought to impose a constitution by its agents This two stage constitution making paradigm implemented in a wholly unplanned move by the Iraqis and their American sponsors formed a kind of compromise between the populist democratic project of Shi ite clerics and America s external interference As long as it was used in a coherent and legitimate way the method held promise Unfortunately the logic of external imposition and political exclusion compromised the negotiations Andrew Arato is the first person to record this historic process and analyze its special problems He compares the drafting of the Iraqi constitution to similar externally imposed constitutional revolutions by the United States especially in Japan and Germany and identifies the political missteps that contributed to problems of learning and legitimacy Instead of claiming that the right model of constitution making would have maintained stability in Iraq Arato focuses on the fragile opportunity for democratization that was strengthened only slightly by the methods used to draft a constitution Arato contends that this event would have benefited greatly from an overall framework of internationalization and he argues that a better set of guidelines rather than the obsolete Hague and Geneva regulations should be followed in the future With access to an extensive body of literature Arato highlights the difficulty of exporting democracy to a country that opposes all such foreign designs and fundamentally disagrees on matters of political identity      *Building the Constitution* James Fowkes,2016-12-15 This revisionary perspective on South Africa s celebrated Constitutional Court draws on historical and empirical sources alongside conventional legal analysis to show how support from the African National Congress ANC government and other political actors has underpinned the Court s landmark cases which are often applauded too narrowly as merely judicial achievements Standard accounts see the Court as overseer of a negotiated constitutional compromise and as the looked to guardian of that constitution against the rising threat of the ANC However in reality South African successes have been built on broader and more admirable constitutional politics to a degree no previous account has described or acknowledged The Court has responded to this context with a substantially consistent but widely misunderstood pattern of deference and intervention Although a work in progress this institutional self understanding represents a powerful effort by an emerging court as one constitutionally serious actor among others to build a constitution      *Human dignity and fundamental rights in South Africa and Ireland* Anne Hughes,2014-04-11 Post apartheid South Africa has yielded enlightened judicial decisions in contrast to the limited interpretation of human rights in Ireland The value of human dignity with its central position in international law underpins both countries Constitutions but has left a more striking mark in South Africa

There it has impacted significantly on punishment for crimes family life children s rights defamation sexual violence investigations substantive equality and socio economic rights Practical guidance can be gleaned from South Africa to revitalise Irish jurisprudence While its focus is on South Africa and Ireland this book draws on the experience of many countries and regions

**Durable Peace** Taisier Mohamed Ahmed Ali,Robert O. Matthews,2004-01-01 Taisier M Ali and Robert O Matthews have brought together leading scholars to discuss the experiences of ten African countries recovering from violent civil war In this series of remarkable and thought provoking essays the contributors shed light on the process of peacebuilding

**Eternity Clauses in Democratic Constitutionalism** Silvia Suteu,2021-05-20 This book analyses unamendability in democratic constitutionalism and engages critically and systematically with its perils offering a much needed corrective to existing understandings of this phenomenon Whether formalized in the constitutional text or developed as part of judicial doctrines of implicit unamendability eternity clauses raise fundamental questions about the core democratic commitments underpinning any given constitution The book takes seriously the democratic challenge eternity clauses pose and argues that this goes beyond the old tension between constitutionalism and democracy Instead eternity clauses reveal themselves to be a far more ambivalent constitutional mechanism one with greater and more insidious potential for abuse than has been recognized The dark side of unamendability includes its propensity to insulate majoritarian exclusionary and internally incoherent values as well as its sometimes purely pragmatic role in elite bargaining The book adopts a contextual approach and brings to the fore a variety of case studies from non traditional jurisdictions These insights from the periphery illuminate the prospects of unamendability fulfilling its intended aims protecting constitutional democracy foremost among them With its promise most appealing in transitional post conflict and fragile democracies unamendability reveals itself counterintuitively to be both less potent and potentially more dangerous in precisely these contexts The book also places the rise of eternity clauses in the context of other significant trends in recent constitutional practice the transnational embeddedness of constitution making and of constitutional adjudication the rise of popular participation in constitutional reform processes and the ongoing crisis of democratic backsliding in liberal democracies

**Asymmetric Autonomy and the Settlement of Ethnic Conflicts** Marc Weller,Katherine Nobbs,2011-10-11 Throughout the world many sovereign states grant one or more of their territories greater autonomy than other areas This arrangement known as asymmetric autonomy has been adopted with greater regularity as a solution to ethnic strife and secessionist struggles in recent decades As asymmetric autonomy becomes one of the most frequently used conflict resolution methods examination of the positive and negative consequences of its implementation as well as its efficacy is vital Asymmetric Autonomy and the Settlement of Ethnic Conflicts assesses the ability of such power distribution arrangements to resolve violent struggles between central governments and separatist groups This collection of new case studies from around the world covers a host of important developments from recentralization in Russia to one country two systems in China to constitutional innovation in

Iraq As a whole these essays examine how well asymmetric autonomy agreements can bring protracted and bloody conflicts to an end satisfy the demands of both sides guarantee the physical integrity of a state and ensure peace and stability Contributors to this book also analyze the many problems and dilemmas that can arise when autonomous regions are formed For example powers may be loosely defined or unrealistically assigned to the state within a state Redrawn boundaries can create new minorities and make other groups vulnerable to human rights violations Given the number of limited self determination systems in place the essays in this volume present varied evaluations of these political structures Asymmetric state agreements have the potential to remedy some of humanity s most intractable disputes In *Asymmetric Autonomy and the Settlement of Ethnic Conflicts* leading political scientists and diplomatic experts shed new light on the practical consequences of these settlements and offer sophisticated frameworks for understanding this path toward lasting peace

Global Canons in an Age of Contestation ,2024-07-12 Comparative constitutionalism emerged in its current form against the backdrop of the fall of the Berlin Wall and the end of the Cold War As that backdrop recedes into the past it is being replaced by a more multi polar and confusing world and the current state of the discipline of comparative constitutionalism reflects this fragmentation and uncertainty This has opened up space for new more varied and increasingly critical voices seeking to improve the project of democratic constitutionalism But it also raises questions What of the past if anything is worth preserving Which more recent parts should be defining of the field In this context this book asks which are or should be the canonical texts of comparative constitutionalism The theoretical scope of the contributions is broad and ambitious selecting primary material from beyond the existing textbooks to engage the concept of a canon This framework provides significant insights about inclusion and exclusion and proposes candidates for canonical and anti canonical materials The result is a wide ranging discussion among many voices of how particular judgments and other primary texts have shaped or should shape our understanding of central elements of democratic constitutionalism from a comparative law perspective This book is not a prescription of one universal understanding but a broader conversation about the field and the future of constitutional democracy

**Women's Rights in Democratizing States** Denise M. Walsh,2010-11-15 This study offers an explanation for why advances in women s rights rarely occur in democratizing states Drawing on deliberative theory Denise Walsh argues that the leading institutions in the public sphere are highly gendered meaning women s ability to shape the content of public debate and put pressure on the state to advance their rights is limited She tests this claim by measuring the openness and inclusiveness of debate conditions in the public sphere during select time periods in Poland Chile and South Africa Through a series of structured focused comparisons the book confirms the importance of just debate for securing gender justice The comparisons also reveal that counter publics in the leading institutions in the public sphere are crucial for expanding debate conditions The book concludes with an analysis of counter publics and suggests an active role for the state in the public sphere

**Constituting Economic and Social Rights** Katharine G. Young,2012-08-23 Food water health

housing and education are as fundamental to human freedom and dignity as privacy religion or speech Yet only recently have legal systems begun to secure these fundamental individual interests as rights This book looks at the dynamic processes that render economic and social rights in legal form It argues that processes of interpretation enforcement and contestation each reveal how economic and social interests can be protected as human and constitutional rights and how their protection changes public law Drawing on constitutional examples from South Africa Colombia Ghana India the United Kingdom the United States and elsewhere the book examines innovations in the design and role of institutions such as courts legislatures executives and agencies in the organization of social movements and in the links established with market actors This comparative study shows how legal systems protect economic and social rights by shifting the focus from minimum bundles of commodities or entitlements to processes of value based deliberative problem solving Theories of constitutionalism and governance inform the potential of this approach to reconcile economic and social rights with both democratic and market principles while addressing the material inequality poverty and social conflict caused in part by law itself

Constitutional Identity and Constitutionalism in Africa Charles M. Fombad, Nico Steytler, 2024-01-23 In its modern history Africa has experienced different waves of constitutional ordering The latest democratisation wave which began in the 1990s has set the stage over the past decade for what is now a hotly debated issue do recent new or fundamentally revised constitutions truly reflect an African constitutional identity Thoughtfully navigating a contested field this volume brings to the fore a number of foundational questions about African constitutionalism Constitutional Identity and Constitutionalism in Africa asks whether the concept of constitutional identity clarifies our understanding of constitutional change in Africa including an exploration of the relationship between constitutional identity and a country's unique culture's and histories Building on this contributions examine the persistent role of colonial heritages in shaping constitutional identity in post Independence African nations and the question of path dependency Given the enduring influence of the colonial experience the volume asks how why and to what end African constitutions must be decolonised to form an authentic constitutional identity This theoretical insight is supplemented and further deepened by detailed case studies of South Africa Ethiopia Cape Verde Cameroon and Egypt and their diverse experience of constitutional continuity and change This volume in the Stellenbosch Handbooks in African Constitutional Law series brings together contributions from established scholars and emerging voices on the study of constitutional processes They provide an urgent critical analysis of existing paradigms concepts and normative ideologies of modern African constitutionalism in the context of constitutional identity

*Revolutionary Constitutionalism* Richard Albert, 2020-04-02 This book the result of a major international conference held at Yale Law School contains contributions from leading scholars in public law who engage critically with Bruce Ackerman's path breaking book Revolutionary Constitutions Charismatic Leadership and the Rule of Law The book also features a rebuttal chapter by Ackerman in which he responds directly to the contributors essays Some advance Ackerman's theory others attack it and still others refine it but

all agree that the ideas in his book reset the terms of debate on the most important subjects in constitutionalism today from the promise and perils of populism to the causes and consequences of democratic backsliding from the optimal models of constitutional design to the forms and limits of constitutional amendment and from the role of courts in politics to how we identify when the mythical people have spoken A must read for all interested in the current state of constitutionalism

*Laws: Rigidity And Dynamics* Eliezer Rabinovici, 2024-09-10 Laws are they a human invention or are they independent and indifferent to our existence Are they there to be discovered dictated and enforced Are they absolute and rigid or do they evolve Are they applicable in some cases and irrelevant in others A group of multidisciplinary fellows and world leading mentors from all habitable continents met at the Nanyang Technological University Singapore and the IAS University of Birmingham UK to share and challenge their opinions on the subject The results of their deliberations are to be found in the chapters of this book The existence dynamics and flexibility of laws are analyzed in the arts economy engineering history philosophy and science The role of law in real life applications such as the historic transformations of laws in South Africa the construction of dynamic cities within the law potential insurmountable obstacles to building quantum computers as well as charting the best route to low or even zero carbon emissions are addressed by the fellows and mentors The meetings were held within the framework of the Inter Continental Academia of the University Based Institutes of Advanced Studies The concept is also described in this book

**Modern Constitutions** Rogers M. Smith, Richard R. Beeman, 2020-08-14 More than two millennia ago Aristotle is said to have compiled a collection of ancient constitutions that informed his studies of politics For Aristotle constitutions largely distilled and described the varied and distinctive patterns of political life established over time What constitutionalism has come to mean in the modern era on the other hand originates chiefly in the late eighteenth century and primarily with the U S Constitution written in 1787 and made effective in 1789 and the various French constitutions that first appeared in 1791 In the last half century more than 130 nations have adopted new constitutions half of those within the last twenty years These new constitutions are devoted to many of the same goals found in the U S Constitution the rule of law representative self government and protection of rights But by canvassing constitutional developments at the national and state level in the United States alongside modern constitutions in Eastern and Western Europe Africa and Asia the contributors to *Modern Constitutions* all leading scholars of constitutionalism show that modern constitutions often seek to protect social rights and to establish representative institutions forms of federalism and courts charged with constitutional review that depart from or go far beyond the seminal U S example Partly because of their innovations however many modern constitutional systems now confront mounting authoritarian pressures that put fundamental commitments to the rule of law in jeopardy The contributions in this volume collectively provide a measure of guidance for the challenges and prospects of modern constitutions in the rapidly changing political world of the twenty first century Contributors Richard R Beeman Valerie Bunce Tom Ginsburg Heinz Klug David S Law Sanford Levinson Jaime Llach

Christopher McCrudden Kim Lane Scheppelle Rogers M Smith Mila Versteeg Emily Zackin      **International Mediation in the South African Transition** Zwelethu Jolobe, 2019-04-09 This book challenges the conventional understanding of South Africa's transition to democracy as a home grown process through a comparative analysis of Commonwealth and United Nations mediation attempts Approaching power transition through the lens of South Africa Zwelethu Jolobe raises questions about how methods and types of mediation are understood and their appropriateness for certain stages of negotiation processes International Mediation in the South African Transition calls into question the generalisations about the determinants of success by international third parties in resolving internal conflicts It moves from the position that the success of a mediation effort depends on the examination of the time horizon of a conflict and on the contribution the mediation effort plays in improving the relationship between the belligerents The book argues that the international community particularly the Commonwealth and the United Nations played a profound and beneficial role in the political transition to end apartheid International Mediation in the South African Transition will be of interest to students and scholars of African politics conflict resolution international relations and global governance      *American Indian Constitutional Reform and the Rebuilding of Native Nations* Eric D. Lemont, 2009-08-17 Since 1975 when the U S government adopted a policy of self determination for American Indian nations a large number of the 562 federally recognized nations have seized the opportunity to govern themselves and determine their own economic political and cultural futures As a first and crucial step in this process many nations are revising constitutions originally developed by the U S government to create governmental structures more attuned to native people's unique cultural and political values These new constitutions and the governing institutions they create are fostering greater governmental stability and accountability increasing citizen support of government and providing a firmer foundation for economic and political development This book brings together for the first time the writings of tribal reform leaders academics and legal practitioners to offer a comprehensive overview of American Indian nations constitutional reform processes and the rebuilding of native nations The book is organized in three sections The first part investigates the historical cultural economic and political motivations behind American Indian nations recent reform efforts The second part examines the most significant areas of reform including criteria for tribal membership citizenship and the reform of governmental institutions The book concludes with a discussion of how American Indian nations are navigating the process of reform including overcoming the politics of reform maximizing citizen participation and developing short term and long term programs of civic education      **Mobile People, Mobile Law** Franz von Benda-Beckmann, Keebet von Benda-Beckmann, 2017-03-02 Demonstrating how users of law who often operate in multi sited situations are forced to deal with increasingly complex legal circumstances this volume focuses on political and social processes through which people appropriate use and create legal forms in multiple legal settings It provides new insights into social and political processes through which transnational law is locally appropriated by different actors and presents



empirical studies of confrontation adaptation vernacularization and hybridization of law due to its transplantation across the borders of national states The contributors offer insights into modern dynamics of legal change challenging assumptions about increasing homogeneity in law with a keen eye for the historical situations in which current legal changes stand

**Private Law and Human Rights** Daniel Visser, 2013-07-31 A comparative investigation into the revolution in private law in the era of human rights Scotland and South Africa are mixed jurisdictions combining features of common law and civil law traditions Over the last decade a shared feature in both Scotland

**Global Flows, Local Appropriations** Sindre Bangstad, 2025-10-01 Global Flows Local Appropriations Facets of Secularisation and Re Islamization Among Contemporary Cape Muslims is the first ethnographic study of muslims in Cape Town South Africa at this level in 25 years It explores processes of secularisation and re islamization among Cape Muslims in the context of a post apartheid South Africa in which liberal and secular values have attained considerable purchase in the new political and social elites Fractured by status ethnicity and religious orientation Cape muslims have responded to these changes through an ambiguous accomodation with the new order This study explores this development through chapters on conversions to Islam among black Africans in Cape Town Cape women s experiences with polygyny Cape muslims and HIV AIDS the status of Islam in a prison Cape Town in the post apartheid era and on contestation over rituals among Cape muslims

**From Words to Worlds** Beau Breslin, 2009-01-26 In the 225 years since the United States Constitution was first drafted no single book has addressed the key questions of what constitutions are designed to do how they are structured and why they matter In From Words to Worlds constitutional scholar Beau Breslin corrects this glaring oversight singling out the essential functions that a modern written constitution must incorporate in order to serve as a nation s fundamental law Breslin lays out and explains the basic functions of a modern constitution including creating a new citizenry structuring the institutions of government regulating conflict between layers and branches of government and limiting the power of the sovereign He also discusses the theoretical concepts behind the fundamentals of written constitutions and examines in depth some of the most important constitutional charters from around the world In assaying how states put structural ideas into practice Breslin asks probing questions about why and if constitutions matter Solidly argued and engagingly written this comparative study in constitutional thought demonstrates clearly the key components that a state s foundational document must address Breslin draws a critically important distinction between constitutional texts and constitutional practice

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