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POPULAR
CONSTITUTIONALISM
AND
JUDICIAL REVIEW

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LARRY D. KRAMER

The People Themselves Popular Constitutionalism And Judicial Review

Larry D. Kramer



The People Themselves Popular Constitutionalism And Judicial Review:

The People Themselves Larry Kramer, 2004 This book makes the radical claim that rather than interpreting the Constitution from on high the Court should be reflecting popular will or the wishes of the people themselves **The People Themselves : Popular Constitutionalism and Judicial Review** Larry D. Kramer Dean and Richard E. Lang Professor of Law Stanford Law School, 2004-06-10 The United States Constitution is the foundation of the longest and most successful democratic experiment in modern human history It serves not only as legal bedrock for the world s most powerful nation state but also more broadly it reflects that nation s fundamental aspirations and commitments as a society Who then has the authority to interpret a blueprint of such extraordinary influence Americans have come to treat the Constitution as something beyond their competence something whose meaning should be decided by judges assisted by a cadre of trained lawyers and academics Yet this submission to a lawyerly elite is a radical and troublesome departure from what was originally the case For America s founding generation celebrated the central role of the people in supplying government with its energy and direction In this groundbreaking interpretation of America s founding and its concept of constitutionalism Larry Kramer reveals how the first generations of Americans fought for and gave birth to a very different system from our current one and held a very different understanding of citizenship from that of most Americans today Popular sovereignty was more than an empty abstraction more than a mythic philosophical justification for government and the idea of the people was more than a flip rhetorical gesture to be used on the campaign trail Ordinary Americans exercised active control and sovereignty over their Constitution The constitutionality of governmental action met with vigorous public debate in struggles whose outcomes might be greeted with celebratory feasts and bonfires or with belligerent resistance The Constitution remained fundamentally an act of popular will the people s charter made by the people And it was the people themselves who were responsible for seeing that it was properly interpreted and implemented With this book Larry Kramer vaults to the forefront of constitutional theory and interpretation In the process he rekindles the original spark of *We the People* inviting every citizen to join him in reclaiming the Constitution s legacy as in Franklin D Roosevelt s words a layman s instrument of government and not a lawyer s contract **The People Themselves: Popular Constitutionalism and Judicial Review** Larry D. Kramer, 2004-06-10 The United States Constitution is the foundation of the longest and most successful democratic experiment in modern human history It serves not only as legal bedrock for the world s most powerful nation state but also more broadly it reflects that nation s fundamental aspirations and commitments as a society Who then has the authority to interpret a blueprint of such extraordinary influence Americans have come to treat the Constitution as something beyond their competence something whose meaning should be decided by judges assisted by a cadre of trained lawyers and academics Yet this submission to a lawyerly elite is a radical and troublesome departure from what was originally the case For America s founding generation celebrated the central role of the people in supplying government with its energy and

direction In this groundbreaking interpretation of America's founding and its concept of constitutionalism Larry Kramer reveals how the first generations of Americans fought for and gave birth to a very different system from our current one and held a very different understanding of citizenship from that of most Americans today Popular sovereignty was more than an empty abstraction more than a mythic philosophical justification for government and the idea of the people was more than a flip rhetorical gesture to be used on the campaign trail Ordinary Americans exercised active control and sovereignty over their Constitution The constitutionality of governmental action met with vigorous public debate in struggles whose outcomes might be greeted with celebratory feasts and bonfires or with belligerent resistance The Constitution remained fundamentally an act of popular will the people's charter made by the people And it was the people themselves who were responsible for seeing that it was properly interpreted and implemented With this book Larry Kramer vaults to the forefront of constitutional theory and interpretation In the process he rekindles the original spark of We the People inviting every citizen to join him in reclaiming the Constitution's legacy as in Franklin D Roosevelt's words a layman's instrument of government and not a lawyer's contract

Constitutional Courts and Judicial Review Dieter Grimm, 2025-01-09 This collection of essays from Dieter Grimm Germany's most renowned constitutional scholar shines a light on the jurisprudence of the German Constitutional Court and constitutional adjudication in general Established in 1951 the court has become a blueprint for new courts ever since and its jurisprudence particularly in the field of fundamental rights has influenced the decisions of judges throughout the world After the seismic constitutional changes of the years 1989-90 in Germany and beyond many countries adopted new democratic constitutions and established constitutional courts in order to make their constitutions effective Today many of these courts are under attack both politically and intellectually In this book Grimm considers some of the fundamental questions under academic scrutiny today are constitutional courts political or legal institutions Is judicial review a political or a legal activity Is it a threat to or a condition of democracy Should these courts be abolished or strengthened Is a rational interpretation of constitutional law possible The essays provide answers to these questions and describe how constitutional courts work if they properly fulfill their function of enforcing the constitution A special emphasis is put on the importance of constitutional interpretation something the author argues that most critics of constitutional adjudication neglect

The Will of the People Barry Friedman, 2025-09-23 In recent years the justices of the Supreme Court have ruled definitively on such issues as abortion school prayer and military tribunals in the war on terror They decided one of American history's most contested presidential elections Yet for all their power the justices never face election and hold their offices for life This combination of influence and apparent unaccountability has led many to complain that there is something illegitimate even undemocratic about judicial authority In *The Will of the People* Barry Friedman challenges that claim by showing that the Court has always been subject to a higher power the American public Judicial positions have been abolished the justices' jurisdiction has been stripped the Court has been packed and unpopular decisions

have been defied For at least the past sixty years the justices have made sure that their decisions do not stray too far from public opinion Friedman s pathbreaking account of the relationship between popular opinion and the Supreme Court from the Declaration of Independence to the end of the Rehnquist court in 2005 details how the American people came to accept their most controversial institution and shaped the meaning of the Constitution **Institutions of American Democracy:**

The Judicial Branch Kermit L. Hall, Kevin T. McGuire, 2005-10-27 Presents a collection of essays that provide an examination of the judicial branch of the American government including its history its impact and its future *The*

Constitutional Origins of the American Civil War Michael F. Conlin, 2019-07-18 Demonstrates the crucial role that the Constitution played in the coming of the Civil War **Making We the People** Chaihark Hahm, Sung Ho Kim, 2015-12-10

What does it mean to say that it is We the People who ordain and establish a constitution Who are those sovereign people and how can they do so Interweaving history and theory constitutional scholar Chaihark Hahm and political theorist Sung Ho Kim attempt to answer these perennial questions by revisiting the constitutional politics of postwar Japan and Korea Together these experiences demonstrate the infeasibility of the conventional assumption that there is a clearly bounded sovereign people prior to constitution making that stands apart from both outside influence and troubled historical legacies The authors argue that We the People only emerges through a deeply transformative politics of constitutional founding and as such a democratic constitution and its putative author are mutually constitutive Highly original and genuinely multidisciplinary this book will be of interest to democratic theorists and scholars of comparative constitutionalism as well as observers of ongoing constitutional debates in Japan and Korea **The Oxford Handbook of the U.S. Constitution** Mark Tushnet, Mark A.

Graber, Sanford Levinson, 2015-07-31 The Oxford Handbook of the U S Constitution offers a comprehensive overview and introduction to the U S Constitution from the perspectives of history political science law rights and constitutional themes while focusing on its development structures rights and role in the U S political system and culture This Handbook enables readers within and beyond the U S to develop a critical comprehension of the literature on the Constitution along with accessible and up to date analysis The historical essays included in this Handbook cover the Constitution from 1620 right through the Reagan Revolution to the present Essays on political science detail how contemporary citizens in the United States rely extensively on political parties interest groups and bureaucrats to operate a constitution designed to prevent the rise of parties interest group politics and an entrenched bureaucracy The essays on law explore how contemporary citizens appear to expect and accept the exertions of power by a Supreme Court whose members are increasingly disconnected from the world of practical politics Essays on rights discuss how contemporary citizens living in a diverse multi racial society seek guidance on the meaning of liberty and equality from a Constitution designed for a society in which all politically relevant persons shared the same race gender religion and ethnicity Lastly the essays on themes explain how in a globalized world people living in the United States can continue to be governed by a constitution originally meant for a society geographically

separated from the rest of the civilized world Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U S constitutionalism today **An Examination of the Constitutional Amendment on Marriage** United States. Congress. Senate. Committee on the Judiciary. Subcommittee on the Constitution, Civil Rights, and Property Rights, 2005 Making Shelter shows readers how to prevent and deal with a large range of hazards in the wild With clear stepbystep instructions it explains what to do if you are injured lost or hungry or faced with extreme weather conditions dangerous animals or disasters Additional features include a table of contents glossary index color photographs quizzes and recommended websites for further exploration

The Constitutional Convention of 1787 John R. Vile, 2005-06-24 The first encyclopedic treatment of the personalities politics and events involved in drafting the U S Constitution This comprehensive treatment of all the personalities philosophies debates and compromises involved in drafting the U S Constitution is the first encyclopedic work on the subject compiling information into an easily accessible A Z format Biographies of all 55 delegates analysis of the competing political viewpoints procedural and substantive disputes along with a host of other details are all presented here Both the detail and the scholarship in this book are unmatched in any other work the encyclopedic presentation simply does not exist elsewhere Civil liberties the scope of authority of the three branches of government and other constitutional matters are increasingly at the forefront of public discussion Scholars citizens interested in self education and reference librarians faced with questions about the Constitution will find in this book all they require to answer their needs *Courts and Social Transformation in New Democracies* Roberto Gargarella, Theunis Roux, 2017-03-02 Using case studies drawn from Latin America Africa India and Eastern Europe this volume examines the role of courts as a channel for social transformation for excluded sectors of society in contemporary democracies With a focus on social rights litigation in post authoritarian regimes or in the context of fragile state control the authors assess the role of judicial processes in altering or perpetuating social and economic inequalities and power relations in society Drawing on interdisciplinary expertise in the fields of law political theory and political science the chapters address theoretical debates and present empirical case studies to examine recent trends in social rights litigation Law and Religion in American History Mark Douglas McGarvie, 2016-07-18 This book furthers dialogue on the separation of church and state with an approach that emphasizes intellectual history and the constitutional theory that underlies American society Mark Douglas McGarvie explains that the founding fathers of America considered the right of conscience to be an individual right to be protected against governmental interference While the religion clauses enunciated this right its true protection occurred in the creation of separate public and private spheres Religion and the churches were placed in the private sector Yet politically active Christians have intermittently mounted challenges to this bifurcation in calling for a greater public role for Christian faith and morality in American society Both students and scholars will learn much from this intellectual history of law and religion that contextualizes a four hundred year old ideological

struggle *The Law of Freedom* Jacob Eisler,2023-07-20 The Supreme Court has been at the center of great upheavals in American democracy across the last seventy years From the end of Jim Crow to the rise of wealth dominated national campaigns the Court has battled over if democracy is an egalitarian collaboration to serve the good of all citizens or a competitive struggle by private interests In *The Law of Freedom* Jacob Eisler questions why the Court has the moral authority to shape democracy at all Analyzing leading cases through the lens of philosophy and social science Eisler demonstrates how the soul of election law is a battle between two philosophical understandings of democratic freedom and popular self rule This remarkable book reveals that the Court s battle over democracy has shaped how Americans rule themselves marking election law as the most dramatic judicial intervention in constitutional history **Governance,**

Institutions and the Human Condition W. Gachenga,G. Franceschi,2009 Strathmore University organised the Fifth Annual Ethics Conference on Governance Institutions and the Human Condition Research papers were presented in four sessions corresponding to four key milestones in the crisis that almost tore Kenya apart in January February 2008 Constitutional law Institutions Education and the Land Issue This book compiles the papers presented at the Conference by outstanding scholars and renowned personalities *The Making of a Civil Rights Lawyer* Michael Meltsner,2006 As a white Yale Law School graduate Meltsner began his career with the Legal Defense Fund of the NAACP working initially under Thurgood Marshall and later under Jack Greenberg From his vantage point at LDF Meltsner witnessed and participated in litigation support of the civil rights movement in the South As the movement shifted north and the fight for desegregation gave way to black power slogans Meltsner remained involved with the LDF and later went on to teach public interest practice at Columbia Law School He watched the move from the high expectations after the Brown v Board of Education decision to the lows of subsequent resegregation He recalls his involvement in other civil rights efforts from the campaigns to abolish capital punishment to Muhammad Ali s legal battle to regain his right to box Meltsner closes with a chapter that examines the strategic possibilities of the No Child Left Behind mandate Meltsner brings a personal perspective to this assessment of the hopes potential and shifting terrain of public service law A worthy read Vernon Ford Copyright 2006 Booklist

American Credo Michael Foley,2007-09-13 If America has a claim to exceptionalism American Credo locates it in a little understood ability to engage in deep conflicts over political ideas while at the same time reducing adversarial positions to legitimate derivatives of American history and development A Doubtful and Perilous Experiment Mel A. Topf,2011-09-23 In *A Doubtful and Perilous Experiment* Advisory Opinions State Constitutions and Judicial Supremacy author Mel A Topf provides readers with a comprehensive treatment of the history concept jurisprudence and controversies relating to state Supreme Court advisory opinions *A Doubtful and Perilous Experiment* is the only comprehensive treatment of the history and controversies the law and theories about state supreme court advisory opinions This is a significant area of state constitutional law that has no parallel in federal law which bars advisory opinions from federal courts Though just ten states

have adopted such advisory opinions many others have debated but rejected them they have been implicated in major issues regarding American judicial power The book explains the so far unexplained first appearance of advisory authority in 1780 and address the persistent aura of illegitimacy that has always shadowed this authority The frequent attacks on the legitimacy of advisory opinions have been triggered by their clash with basic doctrines of our legal system including separation of powers due process judicial review judicial independence and judicial supremacy A Doubtful and Perilous Experiment shows how law of state supreme court advisory opinions in fact arose in response to the attacks resulting in an elaborate jurisprudence of advisory opinions centering on a remarkable but not entirely successful attempt to justify when the justices will advise and when they will not The book tells the story of attempts to defend advisory authority including several attempts to amend the U S Constitution to require the Supreme Court to issues them It tells the story also of the uneasy relation between advisory opinions and judicial review as well as the expansion of judicial power **Frontier**

Democracy Silvana R. Siddali, 2016 Frontier Democracy examines the debates over state constitutions in the antebellum Northwest Indiana Illinois Iowa Michigan Minnesota Ohio and Wisconsin from the 1820s through the 1850s This is a book about conversations in particular the fights and negotiations over the core ideals in the constitutions that brought these frontier communities to life Silvana R Siddali argues that the Northwestern debates over representation and citizenship reveal two profound commitments the first to fair deliberation and the second to ethical principles based on republicanism Christianity and science Some of these ideas succeeded brilliantly within forty years the region became an economic and demographic success story However some failed tragically racial hatred prevailed everywhere in the region in spite of reformers passionate arguments for justice and resulted in disfranchisement and even exclusion for non white Northwesterners that lasted for generations **Abusive Constitutional Borrowing** Rosalind Dixon, David E. Landau, 2021

Law is fast globalizing as a field and many lawyers judges and political leaders are engaged in a process of comparative borrowing But this new form of legal globalization has darksides it is not just a source of inspiration for those seeking to strengthen and improve democratic institutions and policies It is increasingly an inspiration and legitimation device for those seeking to erode democracy by stealth under the guise of a form of faux liberal democratic cover Abusive Constitutional Borrowing Legal globalization and the subversion of liberal democracy outlines this phenomenon how it succeeds and what we can do to prevent it This book address current patterns of democratic retrenchment and explores its multiple variants and technologies considering the role of legitimating ideologies that help support different modes of abusive constitutionalism An important contribution to both legal and political scholarship this book will of interest to all those working in the legal and political disciplines of public law constitutional theory political theory and political science

The Enigmatic Realm of **The People Themselves Popular Constitutionalism And Judicial Review**: Unleashing the Language is Inner Magic

In a fast-paced digital era where connections and knowledge intertwine, the enigmatic realm of language reveals its inherent magic. Its capacity to stir emotions, ignite contemplation, and catalyze profound transformations is nothing in short supply of extraordinary. Within the captivating pages of **The People Themselves Popular Constitutionalism And Judicial Review** a literary masterpiece penned by way of a renowned author, readers embark on a transformative journey, unlocking the secrets and untapped potential embedded within each word. In this evaluation, we shall explore the book's core themes, assess its distinct writing style, and delve into its lasting impact on the hearts and minds of people who partake in its reading experience.

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