CONSTITUTIONALIZING THE PRIVATE SPHERE

Do private actors have constitutional duties? While traditionally only government actors are responsible for upholding constitutional rights, courts and constitution-makers increasingly do assign constitutional duties to private actors as well. Therefore, a landlord may have constitutional duties to their tenants, and a sports club may even have duties to its fans. This book argues that this phenomenon of applying rights "horizontally" can be understood through the lens of republican political theory. Themes echoing such concepts as the common good and civic duty from republican thought recur in discourses surrounding horizontal application. Christina R. Bambrick traces republican themes in debates from the United States, India, Germany, South Africa, and the European Union. While these contexts have vastly different histories and aspirations, constitutional actors in each place have considered the horizontal application of rights and, in doing so, made republican arguments.

CHRISTINA R. BAMBRICK is an assistant professor of political science at the University of Notre Dame. She studies constitutional theory and comparative constitutionalism. She previously taught at Clemson University and holds a PhD from the University of Texas at Austin.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 05:05:47, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009293723

CAMBRIDGE STUDIES IN CONSTITUTIONAL LAW

The aim of this series is to produce leading monographs in constitutional law. All areas of constitutional law and public law fall within the ambit of the series, including human rights and civil liberties law, administrative law, as well as constitutional theory and the history of constitutional law. A wide variety of scholarly approaches is encouraged, with the governing criterion being simply that the work is of interest to an international audience. Thus, works concerned with only one jurisdiction will be included in the series as appropriate, while, at the same time, the series will include works which are explicitly comparative or theoretical – or both. The series editors likewise welcome proposals that work at the intersection of constitutional and international law, or that seek to bridge the gaps between civil law systems, the US, and the common law jurisdictions of the Commonwealth.

Series Editors
David Dyzenhaus
Professor of Law and Philosophy, University of Toronto, Canada
Thomas Poole
Professor of Law, London School of Economics and Political Science

Books in the series

Constitutionalizing the Private Sphere: A Comparative Inquiry Christina R. Bambrick

Beyond Expropriation Without Compensation: Law, Land Reform and Redistributive Justice in South Africa Edited by Olaf Zenker, Cherryl Walker and Zsa-Zsa Boggenpoel

Trust, Courts and Social Rights: A Trust-Based Framework for Social Rights Enforcement David Vitale

The Collaborative Constitution Aileen Kavanagh

Non-Statutory Executive Powers and Judicial Review Jason Grant Allen

The Law as a Conversation among Equals Roberto Gargarella

Micronations and the Search for Sovereignty Harry Hobbs and George Williams

Fundamental Rights and the Legal Obligations of Business David Bilchitz

Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pakistan Moeen Cheema

Ruling by Cheating: Governance in Illiberal Democracy András Sajó

Local Meanings of Proportionality Afroditi Marketou

Property Rights and Social Justice: Progressive Property in Action Rachael Walsh

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 05:05:47, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009293723

Carl Schmitt's Early Legal-Theoretical Writings: Statute and Judgment and the Value of the State and the Significance of the Individual Lars Vinx and Samuel Garrett Zeitlin

Remedies for Human Rights Violations: A Two-Track Approach to Supranational and National Law Kent Roach

Europe's Second Constitution: Crisis, Courts and Community Markus W. Gehring

A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind Mark D. Walters

Administrative Competence: Reimagining Administrative Law Elizabeth Fisher and Sidney A. Shapiro

Legal Sabotage: Ernst Fraenkel in Hitler's Germany Douglas Morris

Proportionality in Action: Comparative and Empirical Perspectives on the Judicial Practice Edited by Mordechai Kremnitzer, Tayla Steiner and Andrej Lang

Constitutional Dialogue: Democracy, Rights, Institutions Edited by Geoffrey Sigalet, Grégoire Webber and Rosalind Dixon

The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems Anne Twomey

Vigilance and Restraint in the Common Law of Judicial Review Dean Knight

The Alchemists: Questioning Our Faith in Courts as Democracy-Builders Tom Gerald Daly

Australia's Constitution after Whitlam Brendan Lim

Building the Constitution: The Practice of Constitutional Interpretation in Post-Apartheid South Africa James Fowkes

Dimensions of Dignity: The Theory and Practice of Modern Constitutional Law Jacob Weinrib

Reason of State: Law, Prerogative, Empire Thomas Poole

Bills of Rights in the Common Law Robert Leckey

The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law Translated by Lars Vinx, with an introduction and notes by Lars Vinx

Parliamentary Bills of Rights: The Experiences of New Zealand and the United Kingdom Janet L. Hiebert and James B. Kelly

Lawyering for the Rule of Law: Government Lawyers and the Rise of Judicial Power in Israel Yoav Dotan

Balancing Constitutional Rights: The Origins and Meanings of Postwar Legal Discourse Jacco Bomhoff

Judges on Trial: The Independence and Accountability of the English Judiciary Shimon Shetreet and Sophie Turenne

Proportionality and Constitutional Culture Moshe Cohen-Eliya and Iddo Porat

The Politics of Principle: The First South African Constitutional Court, 1995–2005 Theunis Roux

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 05:05:47, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009293723

The New Commonwealth Model of Constitutionalism: Theory and Practice Stephen Gardbaum

Searching for the State in British Legal Thought: Competing Conceptions of the Public Sphere Janet McLean

Judging Social Rights Jeff King

Proportionality: Constitutional Rights and their Limitations Aharon Barak

Parliamentary Sovereignty: Contemporary Debates Jeffrey Goldsworthy

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 05:05:47, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009293723

CONSTITUTIONALIZING THE PRIVATE SPHERE

A Comparative Inquiry

CHRISTINA R. BAMBRICK
University of Notre Dame

CAMBRIDGE UNIVERSITY PRESS

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 05:05:47, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009293723

CAMBRIDGE UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781009293730

DOI: 10.1017/9781009293723

© Christina R. Bambrick 2024

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press & Assessment.

When citing this work, please include a reference to the DOI 10.1017/9781009293723

First published 2024

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data
Names: Bambrick, Christina R, author.
Title: Constitutionalizing the private sphere : a comparative inquiry / Christina R Bambrick, University of Notre Dame, Indiana.
Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2024. | Includes bibliographical references and index.
Identifiers: LCCN 2024015836 (print) | LCCN 2024015837 (ebook) | ISBN 9781009293730 (hardback) | ISBN 9781009293709 (paperback) | ISBN 9781009293723 (epub)
Subjects: LCSH: Constitutional law–Philosophy. | Civil rights–Philosophy. | Equality before the law–Philosophy. | Republicanism–Philosophy. | Social change–Philosophy. | Local government. | Civil society.
Classification: LCC K3240 .B3595 2024 (print) | LCC K3240 (ebook) | DDC 342.08/501–dc23/eng/20240409
LC record available at https://lccn.loc.gov/2024015836
LC ebook record available at https://lccn.loc.gov/2024015837

ISBN 978-1-009-29373-0 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 15 Nov 2026 at 05:05:47, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009293723