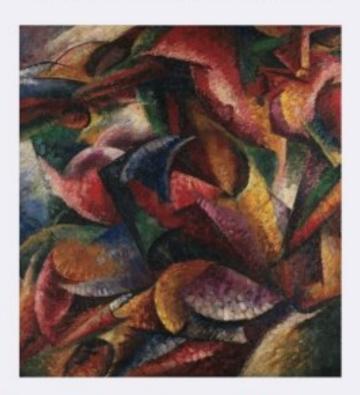


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## Constitutional Courts and Deliberative Democracy

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#### Review

"The strength of the book is in its detailed examination of what still largely remains at least from the perspective of deliberative theory a black box: the internal processes of constitutional courts. Mendes is more of a systematizer and presenter of taxonomies than a purveyor of simple answers. His language waxes metaphorical, even sometimes lyrical. By asking the questions he does, Mendes encourages us to probe the roles and possibilities of deliberation on multi-member courts." --Ron Levy, Brazilian Political Science Review

"Overall, the monograph provides a welcome insight into the omissions in wider challenges faced by scholarship concerning 'good' constitutional courts in democracies. Given the diversity in both institutional set ups and legal cultures, future work in this area will require an empirical turn." --Hayley Hooper, Law Quarterly Review

"Constitutional Courts and Deliberative Democracy is an inestimable contribution to explain what a 'forum of principle' or a 'dialogue' between powers entail and to provide a critical account of the ethical virtues, the facilitators, the legal constraints, and the political circumstances of judicial deliberation." --Thomas Bustamante, Modern Law Review

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Contemporary democracies have granted an expansive amount of power to unelected judges that sit in constitutional or supreme courts. This power shift has never been easily squared with the institutional backbones through which democracy is popularly supposed to be structured. The best institutional translation of a 'government of the people, by the people and for the people' is usually expressed through elections and electoral representation in parliaments.

Judicial review of legislation has been challenged as bypassing that common sense conception of democratic rule. The alleged 'democratic deficit' behind what courts are legally empowered to do has been met with a variety of justifications in favor of judicial review. One common justification claims that constitutional courts are, in comparison to elected parliaments, much better suited for impartial deliberation and public reason-giving. Fundamental rights would thus be better protected by that insulated mode of decision-making. This justification has remained largely superficial and, sometimes, too easily embraced.

This book analyses the argument that the legitimacy of courts arises from their deliberative capacity. It examines the theory of political deliberation and its implications for institutional design. Against this background, it turns to constitutional review and asks whether an argument can be made in support of judicial power on the basis of deliberative theory.

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