

# Detailed Table of Contents

1. Introduction: A Dark Side of Comparative Constitutional Law	1
A. The Rhetorical Triumph of Liberal Democratic Constitutionalism	3
B. The New Authoritarianism and Shifting Patterns of Constitutional Borrowing	11
C. The Significance of Abusive Constitutional Borrowing	16
D. The Plan of the Rest of this Book	20
2. Democracy and Abusive Constitutional Change	23
A. Abuse and Democracy	23
B. Democracy and Liberalism	28
C. The Many Forms of Abusive Constitutional Change	31
D. Conclusion	35
3. The Concept and Scope of Abusive Constitutional Borrowing	36
A. The Who and What of Abusive Constitutional Borrowing	37
B. Constitutional Comparison and Borrowing	40
C. A Typology of Constitutional Borrowing	42
D. Four Modes of Abusive Constitutional Borrowing	45
1. Sham Borrowing	45
2. Abusive Selective Borrowing	47
3. Abusive Acontextual Borrowing	49
4. Abusive Anti-Purposive Borrowing	51
E. Conclusion	55
4. The Abuse of Constitutional Rights	56
A. Hate Speech and Memory Laws in Rwanda, Poland, and Russia	59
B. Voting Rights in Hungary and Fiji	66
C. Gender Rights and Quotas in Rwanda	71
D. Environmental Rights in Ecuador	74
E. Conclusion	80
5. Abusive Judicial Review: Abusive Borrowing by and of Constitutional Courts	81
A. Defining and Situating Abusive Judicial Review	83
B. Abusive Judicial Review as a Regime Strategy: The 'Abuse of' Judicial Review	87
C. Weak and Strong Forms of Abusive Judicial Review	94
1. Weak Abusive Judicial Review	94
2. Strong Abusive Judicial Review	96

D. Abusive Judicial Review in Action: Two Case Studies	98
1. Venezuela and the Suppression of the Congress	98
2. Cambodia, Thailand, and Militant Democracy	103
E. The Limits of a Strategy of Abusive Judicial Review	112
F. Conclusion	115
6. The Abuse of Constituent Power	116
A. Constituent Power and Constitution-Making in Latin America	117
1. Pro-Democratic Usage: Colombia (1991)	120
2. Abusive Usages: Venezuela (1999) and Ecuador (2008)	122
3. Abusive End Game: The Venezuelan ‘Constituent Assembly’ of 2017	125
B. The Unconstitutional Constitutional Amendment Doctrine and Presidential Re-Election in Latin America	129
1. Democratic Hedging in Colombia	131
2. Abusive Usage Elsewhere in Latin America	132
3. A Constitutional Right to Re-Election: The Logic of Abusive Usage	136
C. International Supports for Constituent Power	141
1. Unconstitutional Government Norms in Fiji	141
2. Constitutional Identity in Eastern Europe	144
D. Conclusion	151
7. The Abusive Borrowing of Political Constitutionalism and Weak-Form Judicial Review	152
A. Political Constitutionalism and its Relatives	153
B. The Abusive Borrowing of Political Constitutionalism in Eastern Europe	158
C. Israel and the Abusive Borrowing of the New Commonwealth Model	166
D. Conclusion	174
8. Can Abusive Borrowing Be Stopped?	176
A. Monitoring and Sanctioning Abuse	180
1. Toward Global Legal Realism	182
2. The Design of Monitoring Institutions	186
3. The Level of Response: Transnational Norms vs International Law	188
4. Avoiding Anti-Imperialist Backlash and Other Pitfalls	190
B. Abuse-Proofing Liberal Democratic Norms	193
1. Abuse as Grounds for Elimination?	193
2. How to Abuse-Proof	196
3. The Problem of (Proto-)Abuse by Liberal Democratic States	200
C. Debating and Defending Liberal Democracy: Contestation and Respect for the Democratic Minimum Core	203
<i>Index</i>	209