



RECLAIMING ACCOUNTABILITY

*Transparency, Executive Power,
and the U.S. Constitution*

HEIDI KITROSSER

Reclaiming Accountability Transparency Executive Power And The U S Constitution

Heidi B. Demarest, Erica D. Borghard



Reclaiming Accountability Transparency Executive Power And The U S Constitution:

Reclaiming Accountability Heidi Kitrosser, 2015-01-06 Americans have long treated government accountability as a birthright. However, accountability is frequently tossed about in a rhetorically effective but substantively empty way. We often feel that those in government work for us and therefore must answer to us but fail to grapple with the conditions under which we can really assess how accountable our government is. This is especially true with respect to matters of secrecy and transparency in government as while we routinely voice support for transparency and accountability we too often tolerate secrecy when associated with national security. The government plainly needs to keep some information secret and there are ways to reconcile secrecy with accountability. In Reclaiming Accountability, unchecked secrecy is the primary concern as insufficient checking breeds unnecessary even counterproductive secrecy and is also deeply antithetical to accountability. Heidi Kitrosser shows how for all of its influence presidentialism badly misreads the Constitution. The book first explains presidentialism and its major component parts: supremacy and unitary executive theory. It then details how supremacy and unitary executive theory manifest themselves as arguments for a broad presidential power to control information. The descriptive elements lay the groundwork for Kitrosser's two normative arguments. The first is that the Constitution situates the presidency within a substantive accountability framework that entails substantial congressional and judicial leeway to impose and enforce external and internal checks on presidential power to foster transparency and accountability. And closely related, the second argument is that supremacy and unitary executive theory misread the Constitution. Reclaiming Accountability Heidi Kitrosser, 2015-01-06 Americans tend to believe in government that is transparent and accountable. Those who govern us work for us and therefore they must also answer to us. But how do we reconcile calls for greater accountability with the competing need for secrecy especially in matters of national security? Those two imperatives are usually taken to be antithetical but Heidi Kitrosser argues convincingly that this is not the case and that our concern ought to lie not with secrecy but with the sort of unchecked secrecy that can result from presidentialism or constitutional arguments for broad executive control of information. In Reclaiming Accountability, Kitrosser traces presidentialism from its start as part of a decades-old legal movement through its appearance during the Bush and Obama administrations, demonstrating its effects on secrecy throughout. Taking readers through the key presidentialist arguments including supremacy and unitary executive theory, she explains how these arguments misread the Constitution in a way that is profoundly at odds with democratic principles. Kitrosser's own reading offers a powerful corrective showing how the Constitution provides myriad tools including the power of Congress and the courts to enforce checks on presidential power through which we could reclaim government accountability. **Constitutional Law for a Changing America** Lee Epstein, Kevin T.

McGuire, Thomas G. Walker, 2020-09-17 Excellent balance of case excerpts and author explanation highly appropriate for undergraduate students. Dr. Wendy Brame, Briar Cliff University. Political factors influence judicial decisions. Arguments and

input from lawyers and interest groups the ebb and flow of public opinion and especially the ideological and behavioral inclinations of the justices all combine to shape the development of constitutional doctrine Drawing on political science as much as from legal studies Constitutional Law for a Changing America A Short Course helps students realize that Supreme Court cases are more than just legal names and citations With meticulous revising the authors streamline material while accounting for recent landmark cases and new scholarship Ideal for a one semester course the Eighth Edition of A Short Course offers all the hallmarks of the Rights and Powers volumes in a more condensed format Students and instructors benefit from the online Con Law Resource Center which houses the supplemental case archive links to CQ Press reference materials a moot court simulation instructor resources and more

Official Secrets and Oversight in the EU Vigilenca Abazi, 2019-04-04 This monograph offers a uniquely comprehensive and in depth legal account of official secrets in the European Union It critically analyses their implications for oversight and fundamental rights Based on forty interviews with practitioners and other stakeholders it offers an understanding of the practices of official secrets and provides a critical and much needed perspective on how parliamentary judicial and administrative oversight institutions deal with access to classified material and the dilemma of oversight to concurrently ensure secrecy necessary for EU security policies and openness needed for democratic processes and fundamental rights The book discerns shifts in institutional practice of oversight at the European Parliament and the Court of Justice of the European Union that disproportionately favour secrecy and the protection of classified documents while creating serious limitations to open democratic deliberations and access to justice and delivers new insights on the EU s development as a security actor as well as its autonomy from Member States showing how rules on official secrets were a means for the EU to gain more autonomy in external security cooperation

Restoring the Global Judiciary Martin S. Flaherty, 2019-09-03 Why there should be a larger role for the judiciary in American foreign relations In the past several decades there has been a growing chorus of voices contending that the Supreme Court and federal judiciary should stay out of foreign affairs and leave the field to Congress and the president Challenging this idea Restoring the Global Judiciary argues instead for a robust judicial role in the conduct of U S foreign policy With an innovative combination of constitutional history international relations theory and legal doctrine Martin Flaherty demonstrates that the Supreme Court and federal judiciary have the power and duty to apply the law without deference to the other branches Turning first to the founding of the nation Flaherty shows that the Constitution s original commitment to separation of powers was as strong in foreign as domestic matters not least because the document shifted enormous authority to the new federal government This initial conception eroded as the nation rose from fledgling state to superpower fueling the growth of a dangerously formidable executive that today asserts near plenary foreign affairs authority Flaherty explores how modern international relations makes the commitment to balance among the branches of government all the more critical and he considers implications for modern controversies that the judiciary will continue to

confront At a time when executive and legislative actions in the name of U S foreign policy are only increasing Restoring the Global Judiciary makes the case for a zealous judicial defense of fundamental rights involving global affairs **Trust and Transparency in an Age of Surveillance** Lora Anne Viola,Paweł Laidler,2021-11-29 Investigating the theoretical and empirical relationships between transparency and trust in the context of surveillance this volume argues that neither transparency nor trust provides a simple and self evident path for mitigating the negative political and social consequences of state surveillance practices Dominant in both the scholarly literature and public debate is the conviction that transparency can promote better informed decisions provide greater oversight and restore trust damaged by the secrecy of surveillance The contributions to this volume challenge this conventional wisdom by considering how relations of trust and policies of transparency are modulated by underlying power asymmetries sociohistorical legacies economic structures and institutional constraints They study trust and transparency as embedded in specific sociopolitical contexts to show how under certain conditions transparency can become a tool of social control that erodes trust while mistrust rather than trust can sometimes offer the most promising approach to safeguarding rights and freedom in an age of surveillance The first book addressing the interrelationship of trust transparency and surveillance practices this volume will be of interest to scholars and students of surveillance studies as well as appeal to an interdisciplinary audience given the contributions from political science sociology philosophy law and civil society The Open Access version of this book available at www.taylorfrancis.com has been made available under a Creative Commons Attribution Non Commercial No Derivatives 4 0 license **Presidential**

Accountability in Wartime Stuart Streichler,2023-11-16 The American presidency has long tested the capacity of the system of checks and balances to constrain executive power especially in times of war While scholars have examined presidents starting military conflicts without congressional authorization or infringing on civil liberties in the name of national security Stuart Streichler focuses on the conduct of hostilities Using the treatment of war on terror detainees under President George W Bush as a case study he integrates international humanitarian law into a constitutional analysis of the repercussions of presidential war powers for human rights around the world Putting President Bush s actions in a wider context Presidential Accountability in Wartime begins with a historical survey of the laws of war with particular emphasis on the 1949 Geneva Conventions and the Nuremberg Tribunal Streichler then reconstructs the decision making process that led to the president s approval of interrogation methods that violated Geneva s mandate to treat wartime captives humanely While taking note of various accountability options from within the executive branch to the International Criminal Court the book illustrates the challenge in holding presidents personally responsible for violating the laws of war through an in depth analysis of the actions taken by Congress the Supreme Court and the public in response In doing so this book not only raises questions about whether international humanitarian law can moderate wartime presidential behavior but also about the character of the presidency and the American constitutional system of government **Thirteen Cracks** Allan J.

Lichtman,2021-11-08 For a clear eyed look at the state of US democracy read the book by Allan Lichtman that Foreword says takes a welcome nonpartisan straightforward approach America s founders feared a president like Donald Trump Through the Constitution and the Bill of Rights they erected a fortified but constrained government to secure the benchmarks of our democracy and established the guardrails designed to protect it But Trump pushed almost every one of the Framers safeguards to its limit most held but some broke under the weight of presidential abuses even the Framers did not foresee Thirteen Cracks will be the first book to expose the most vulnerable areas in our democracy explain in historical context how President Trump uniquely and outrageously exploited these weak spots and propose a fix for each challenge Historian Allan J Lichtman argues that Trump has put us at a pivot point in our history where the survival of American democracy is at stake But this is also an historic opportunity to shore up the vulnerabilities and to strengthen our democracy “A Great Power of Attorney” Gary Lawson,Guy Seidman,2017-05-05 What kind of document is the United States Constitution and how does that characterization affect its meaning Those questions are seemingly foundational for the entire enterprise of constitutional theory but they are strangely under examined Legal scholars Gary Lawson and Guy Seidman propose that the Constitution for purposes of interpretation is a kind of fiduciary or agency instrument The founding generation often spoke of the Constitution as a fiduciary document or as a great power of attorney in the words of founding era legal giant James Iredell Viewed against the background of fiduciary legal and political theory which would have been familiar to the founding generation from both its education and its experience the Constitution is best read as granting limited powers to the national government as an agent to manage some portion of the affairs of We the People and its posterity What follows from this particular conception of the Constitution and is of greater importance is the question of whether and how much and in what ways the discretion of governmental agents in exercising those constitutionally granted powers is also limited by background norms of fiduciary obligation Those norms the authors remind us include duties of loyalty care impartiality and personal exercise In the context of the Constitution this has implications for everything from non delegation to equal protection to so called substantive due process as well as for the scope of any implied powers claimed by the national government In mapping out what these imperatives might mean such as limited discretionary power limited implied powers a need to engage in fair dealing with all parties and an obligation to serve at all times the interests of the Constitution s beneficiaries Lawson and Seidman offer a clearer picture of the original design for a limited government **Spy Watching** Loch K. Johnson,2018 All democracies have had to contend with the challenge of tolerating hidden spy services within otherwise relatively transparent governments Democracies pride themselves on privacy and liberty but intelligence organizations have secret budgets gather information surreptitiously around the world and plan covert action against foreign regimes Sometimes they have even targeted the very citizens they were established to protect as with the COINTELPRO operations in the 1960s and 1970s carried out by the Federal Bureau of Investigation FBI against civil rights and antiwar activists In this sense democracy and

intelligence have always been a poor match Yet Americans live in an uncertain and threatening world filled with nuclear warheads chemical and biological weapons and terrorists intent on destruction Without an intelligence apparatus scanning the globe to alert the United States to these threats the planet would be an even more perilous place In *Spy Watching* Loch K Johnson explores the United States travails in its efforts to maintain effective accountability over its spy services Johnson explores the work of the famous Church Committee a Senate panel that investigated America's espionage organizations in 1975 and established new protocol for supervising the Central Intelligence Agency CIA and the nation's other sixteen secret services Johnson explores why partisanship has crept into once neutral intelligence operations the effect of the 9 11 attacks on the expansion of spying and the controversies related to CIA rendition and torture programs He also discusses both the Edward Snowden case and the ongoing investigations into the Russian hack of the 2016 US election Above all *Spy Watching* seeks to find a sensible balance between the twin imperatives in a democracy of liberty and security Johnson draws on scores of interviews with Directors of Central Intelligence and others in America's secret agencies making this a uniquely authoritative account

Substantive Accountability in Europe's New Economic Governance Mark Dawson, 2023-12-07 This book provides new concepts and detailed empirical research on how accountability practices in EU economic governance are evolving

Routledge Handbook of Democracy and Security Leonard Weinberg, Elizabeth Francis, Eliot Assoudeh, 2020-12-22 This handbook explores how democracies around the world seek to balance democratic values with the requirement to protect their citizens from the threat of politically motivated violence Over the past few decades the majority of the world's democracies have had to confront serious security threats and in many instances these challenges have not come from rival states but from violent groups This volume offers readers an overview of how some democracies have responded to such threats It examines the extent to which authorities have felt compelled to modify laws to evade what would ordinarily be regarded as protected rights such as personal privacy freedom of movement and freedom of speech Grounded in historical analysis each of the sections addresses past and emerging security threats legal and legislative responses to them successful and unsuccessful efforts to reconcile democracy and security and a range of theoretical questions The case studies provided vary in terms of the durability of their democratic systems level of economic development and the severity of the threats with which they have been confronted The volume is divided into three thematic parts Strong democracies United States Great Britain France Germany Italy Spain Australia New Zealand and Israel Challenged democracies India South Africa Brazil Argentina and Romania Fragile democracies the Philippines and Nigeria This book will be of much interest to students of democracy security studies political philosophy Asian politics Middle Eastern politics African politics West European politics and IR in general

No Blank Check Andrew Reeves, Jon C. Rogowski, 2022-09-22 Concerns about unaccountable executive power have featured recurrently in political debates from the American founding to today For many presidents use of unilateral power threatens American democracy No Blank Check

advances a new perspective. Instead of finding Americans apathetic towards how presidents exercise power, it shows the public is deeply concerned with core democratic values. Drawing on data from original surveys, innovative experiments, historical polls, and contexts outside the United States, the book highlights Americans' skepticism towards presidential power. This skepticism results in a public that punishes unilaterally minded presidents and the policies they pursue. By departing from existing theories of presidential power which acknowledge only institutional constraints, this timely and revealing book demonstrates the public's capacity to tame the unilateral impulses of even the most ambitious presidents. Ultimately, when it comes to exercising power, the public does not hand the president a blank check.

US National Security Reform Heidi B. Demarest, Erica D. Borghard, 2018-07-04. This collection of essays considers the evolution of American institutions and processes for forming and implementing US national security policy and offers diverse policy prescriptions for reform to confront an evolving and uncertain security environment. Twelve renowned scholars and practitioners of US national security policy take up the question of whether the national security institutions we have are the ones we need to confront an uncertain future. Topics include a characterization of future threats to national security, organizational structure and leadership of national security bureaucracies, the role of the US Congress in national security policy making and oversight, and the importance of strategic planning within the national security enterprise. The book concludes with concrete recommendations for policy makers, most of which can be accomplished under the existing and enduring National Security Act. This book will be of much interest to students of US national security, US foreign policy, Cold War studies, public policy, and International Relations in general.

Constitutional Law , Contested Ground Dan A. Farber, 2021-10-19. The Trump presidency was not the first to spark contentious debates about presidential power, but its impact on these debates will reverberate far beyond his term. The same rules must apply to all presidents, those whose abuses of power we fear as well as those whose exercises of power we applaud. In this brief but wide-ranging guide to the presidency, constitutional law expert Daniel Farber charts the limits of presidential power from the fierce arguments among the Framers to those raging today. Synthesizing history, politics, and settled law, *Contested Ground* also helps readers make sense of the gaps and gray areas that fuel such heated disputes about the limits of and checks on presidential authority. From appointments and removals to wars and emergencies, *Contested Ground* investigates the clashes between branches of government as well as between presidential power and individual freedom. Importantly, Farber lays out the substance of constitutional law and the way it is entwined with constitutional politics, a relationship that ensures an evolving institution heavily shaped by the course of history. The nature of the position makes it difficult to strike the right balance between limiting abuse of power and authorizing its exercise as needed. As we reflect on the long-tailed implications of a presidency that tested these limits of power at every turn, *Contested Ground* will be essential reading well after today's political climate stabilizes or doesn't.

Congress and U.S. Foreign Policy Ralph G. Carter, James M. Scott, 2021-06-03. In *Congress and U.S. Foreign Policy*

leading scholars examine the foreign policy activity role and influence of the U S Congress in the current polarized and partisan political context Challenging conventional views the contributors reveal how members of Congress have been active and assertive utilizing numerous different means to influence US foreign policy sometimes supporting and sometimes opposing the President The contributors provide in depth analysis and expert perspectives on the issues decisions and debates that have arisen across multiple presidential administrations in the polarized political context since the end of the Cold War This polarized environment greatly increases the conflict among and complicates the ability of policymakers to reach compromises much less consensus on the appropriate ends and means of US foreign policy This timely and cohesive reassessment of the tumultuous years of the most recent presidential administrations focuses analytical attention on the patterns of engagement between Congress and the President and the range of avenues and influence by the collective institution and its individual members It thus sheds light on the role and behavior of Congress and its members in US foreign policy as a vital aspect of understanding how and why the US chooses its policy courses toward the world

Overcoming Necessity Thomas P. Crocker, 2020-07-14 An argument for why emergencies are no excuse for extralegal action by presidents Using emergency as a cause for action ultimately leads to an almost unnoticed evolution in the political understanding of presidential powers The Constitution however was designed to function under states of exception most notably through the separation of powers and provides ample internal checks on emergency actions taken under claims of necessity Thomas Crocker urges Congress the courts and other bodies to put those checks into practice

Supreme Court Expansion of Presidential Power Louis Fisher, 2017-07-14 In the fourth of the Federalist Papers published in 1787 John Jay warned of absolute monarchs who will often make war when their nations are to get nothing by it More than two centuries later are single executives making unilateral decisions any more trustworthy And have the checks on executive power so critical in the Founders drafting of the Constitution held These are the questions Louis Fisher pursues in this book By examining the executive actions of American presidents particularly after World War II Fisher reveals how the Supreme Court through errors and abdications has expanded presidential power in external affairs beyond constitutional boundaries and damaged the nation s system of checks and balances *Supreme Court Expansion of Presidential Power* reviews the judicial record from 1789 to the present day to show how the balance of power has shifted over time For nearly a century and a half the Supreme Court did not indicate a preference for which of the two elected branches should dominate in the field of external affairs But from the mid thirties a pattern clearly emerges with the Court regularly supporting independent presidential power in times of emergency or issues linked to national security The damage this has done to democracy and constitutional government is profound Fisher argues His evidence extends beyond external affairs to issues of domestic policy such as impoundment of funds legislative vetoes item veto authority presidential immunity in the Paula Jones case recess appointments and the Obama administration s immigration initiatives Fisher identifies contemporary biases that have led to an increase in

presidential power including Supreme Court misconceptions and errors academic failings and mistaken beliefs about inherent powers and unity of office Calling to account the forces tasked with protecting our democracy from the undue exercise of power by any single executive his deeply informed book sounds a compelling alarm *Congress and the War on Terror* Darren A. Wheeler, 2018-08-17 As the U S government continues the battle against terrorism Congress representatives of the people must develop long term policies that provide for national security and protect the civil liberties of the American people Much of the conversation surrounding the War on Terror focuses on presidential power and responses to the president s exercising that power Often overlooked or downplayed is the role of Congress in directing the outcome of the war This book illustrates how Congress in conjunction with the president and the judiciary has played a key role in laying the foundation for many post 9 11 policies in areas such as surveillance and detention Instead of arguing that Congress is incapable of making successful counterterrorism policy *Congress and the War on Terror* objectively examines what Congress has done in the past to suggest what action may be needed in the future Covering controversial topics including torture interrogation drones and military tribunals it shows that only understanding previous decisions will enable Americans to determine what role Congress should play as the United States fights terror

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