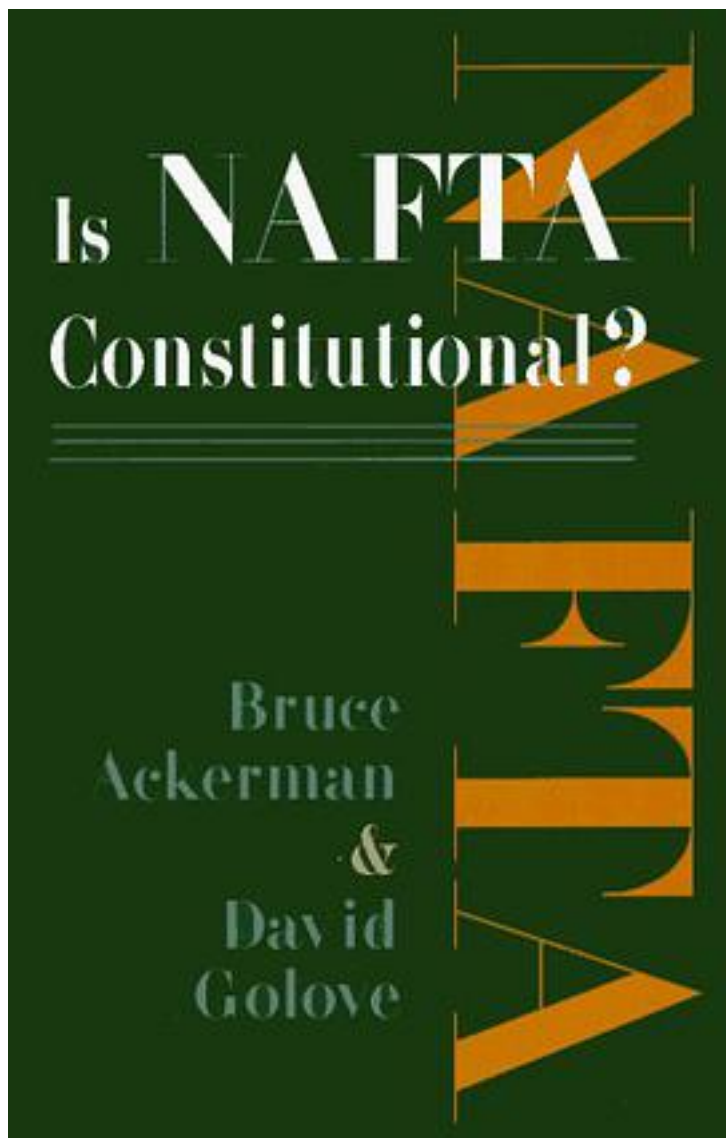


Is NAFTA Constitutional?



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著者:Bruce Ackerman

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By a vote of 61 to 38, the Senate joined the House in declaring that "Congress approves...the North American Free Trade Agreement." The vote was virtually unnoticed, since the real battle over NAFTA was in the House. But there is a puzzle here. The President, the Framers assure us, "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." Whatever happened to the Treaty Clause?

Bruce Ackerman and David Golove tell the story of the Treaty Clause's being displaced in the twentieth century by a modern procedure in which the House of Representatives joins the Senate in the process of consideration, but simple majorities in both Houses suffice to commit the nation. This is called the Congressional-Executive Agreement, and is a response to a sea change in public opinion during and after World War II.

This agreement substituted for a failed constitutional amendment that would have required all treaties to be approved by majorities in both Houses rather than by two-thirds of the Senate. The modern Congressional-Executive Agreement was self-consciously developed in order to make formal constitutional amendment unnecessary. So, is NAFTA constitutional?

作者介绍:

Bruce Ackerman is Sterling Professor of Law and Political Science at Yale, and the author of fifteen books that have had a broad influence in political philosophy, constitutional law, and public policy. His major works include *Social Justice in the Liberal State* and his multivolume constitutional history, *We the People*. His most recent books are *The Failure of the Founding Fathers* (2005) and *Before the Next Attack* (2006). His book, *The Stakeholder Society* (with Anne Alstott), served as a basis for Tony Blair's recent introduction of child investment accounts in the United Kingdom. Professor Ackerman is a member of the American Law Institute and the American Academy of Arts and Sciences. He is a Commander of the French Order of Merit, and the recipient of the American Philosophical Society's Henry Phillips Prize for Lifetime Achievement in Jurisprudence. He received his B.A. from Harvard University and his LL.B from Yale Law School.

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