

OXFORD CONSTITUTIONAL THEORY



The Twilight of Constitutionalism?

Edited by PETRA DOBNER AND MARTIN LOUGHLIN

The Twilight Of Constitutionalism Oxford Constitutional Theory

Victor M. Muniz-Fraticelli



The Twilight Of Constitutionalism Oxford Constitutional Theory:

The Twilight of Constitutionalism? Petra Dobner, Martin Loughlin, 2012-01-26 The concepts and values that underpin traditional constitutionalism are increasingly being challenged by political realities that place substantial power beyond the state Among the few certainties of a global economy is the growing incongruity between the political the world of things that need to be ordered collectively in order to sustain society and the state the major institution of authoritative political decision making during modern times The consequences and possible remedies of this double disjunction of politics and state and of state and constitution form the centre of an open debate about constitutionalism beyond the state The essays gathered in this collection explore the range of issues raised by this debate The effects of recent changes on two of the main building blocks of constitutionalism statehood and democracy are examined in Parts I and II Since the movement of overcoming statehood has arguably been advanced furthest in the European context the question of the future of constitutionalist ideas in the framework of the EU provides the key theme of Part III The remaining parts consider possible transformations or substitutes The engagement of constitutions with international law offers one line of transmutation of constitutionalism Part IV and the diffusion of constitutionalism into separate social spheres provides an alternative way of pursuing constitutionalism in a new key Part VI Finally the ability of the theory of global administrative law examined in Part V to offer an alternative account of the potential of jurisdictional control of global governing processes is examined Through these explorations the book offers cross disciplinary insights into the impact of recent political and economic changes on modern constitutionalism and an assessment of the prospects for constitutionalism in a transnational environment **Constitutional Theory: Schmitt After**

Derrida Jacques de Ville, 2017-04-21 Cover Title Copyright Dedication Contents Acknowledgements Note on translations and references List of abbreviations 1 Introduction Schmitt and Derrida Constitutional theory Reading Schmitt Sequence and overview of chapters 2 The concept of the political A Pol mios Introduction Plato Schmitt Freud Heidegger The structure of the political B Partisan Introduction Criteria The question of technology Philosophy and the Acheron The brother as double Woman as the absolute partisan Today s terror and the structure of the political C Self Introduction Defining man nakedness Stirner and his ego Modern technology Being placed in question Self deception Descartes and the self as enemy Hegel and the enemy Echo The concept of the political 3 Constituent power Introduction Political unity Political theology Fear and the Leviathan Demos without sovereignty Conclusion 4 Identity and representation Introduction The formation of identity Representation reconceived Conclusion 5 The concept of the constitution A Kh ra Introduction Derrida s reading of the Timaeus Kh ra and the political Constitutions as giving place B Crypt Introduction The Wolf Man The Wolf Man s crypt Constitution memory and trauma 6 Human rights Introduction Freedom Equality Living together 7 State Gro beta raum nomos Introduction Nomos Man space nomos Conclusion 8 Conclusion Schmitt before Derrida Derrida reading Schmitt Schmitt after Derrida Bibliography Index **The Oxford Handbook of International Law in Europe** , 2024-11-19 This

handbook provides a comprehensive account of how international law is understood and practiced in Europe which is defined for the purposes of the book as Council of Europe countries in the past and in the present It is separated into parts covering Europe's values intellectual traditions and institutions as well as examinations of European countries and regions A diverse group of leading scholars and practitioners of international law are led by three overarching focus points the success and failures of the pacifying effect of international law the diversity of international legal experiences and traditions within Europe and the impact of European ideas on international law globally By examining these areas the book also analyses Europe's changing role in the world and the impact of global influences on the understanding of international law in European countries The book is a study of regionalism in international law but also a study of the impact of a region which at least historically has had an overwhelming influence on the development and interpretations of international law **Carl**

Schmitt's State and Constitutional Theory Benjamin A. Schupmann, 2017 Can a constitutional democracy commit suicide Can an illiberal antidemocratic party legitimately obtain power through democratic elections and amend liberalism and democracy out of the constitution entirely In Weimar Germany these theoretical questions were both practically and existentially relevant By 1932 the Nazi and Communist parties combined held a majority of seats in parliament Neither accepted the legitimacy of liberal democracy Their only reason for participating democratically was to amend the constitution out of existence This book analyses Carl Schmitt's state and constitutional theory and shows how it was conceived in response to the Weimar crisis Right wing and left wing political extremists recognized that a path to legal revolution lay in the Weimar constitution's combination of democratic procedures total neutrality toward political goals and positive law Schmitt's writings sought to address the unique problems posed by mass democracy Schmitt's thought anticipated constrained or militant democracy a type of constitution that guards against subversive expressions of popular sovereignty and whose mechanisms include the entrenchment of basic constitutional commitments and party bans Schmitt's state and constitutional theory remains important the problems he identified continue to exist within liberal democratic states Schmitt offers democrats today a novel way to understand the legitimacy of liberal democracy and the limits of constitutional change **The Metaethics of Constitutional Adjudication** Bosko Tripkovic, 2018-01-11 In this book Bosko

Tripkovic develops a theory of value based arguments in constitutional adjudication In contrast to the standard question of constitutional theory that asks whether the courts get moral answers wrong it asks a more fundamental question of whether the courts get the morality itself wrong Tripkovic argues for an antirealist conception of value one that does not presuppose the existence of mind independent moral truths and accounts for the effect this ought to have on existing value based arguments made by constitutional courts The book identifies three dominant types of value based arguments in comparative constitutional practice arguments from constitutional identity common sentiment and universal reason and explains why they fail as self standing approaches to moral judgment It then suggests that the appropriate moral judgments emerge from the

dynamics between practical confidence which denotes the inescapability of the self and the evaluative attitudes it entails and reflection which denotes the process of challenging and questioning these attitudes The book applies the notions of confidence and reflection to constitutional reasoning and maintains that the moral inquiry of the constitutional court ought to depart from the emotive intuitions of the constitutional community and then challenge these intuitions through reflective exposure to different perspectives in order to better understand and develop the underlying constitutional identity The book casts new light on common constitutional dilemmas and allows us to envisage new ways of resolving them The Global

Model of Constitutional Rights Kai Möller, 2012-10-25 The rapid spread of judicially enforced constitutional rights has been one of the most dramatic developments in modern law This book argues that there is now a global model for how such rights should function and develops an original philosophically grounded account of their nature and scope *New Constitutional Horizons* Cormac Mac Amhlaigh, 2022 This book examines the conceptual puzzles that multilevel pluralism poses for our constitutional theories It offers fresh perspectives by addressing the pluralism of norms and authorities from the viewpoint of legality and legitimacy proposing novel solutions for pluralizing constitutional theory in the light of multilevel governance

Constituent Power and the Law Joel Colón-Ríos, 2020-03-26 Constituent power is the power to create new constitutions Frequently exercised during political revolutions it has been historically associated with extra legality and violations of the established legal order This book examines the relationship between constituent power and the law It considers the place of constituent power in constitutional history focusing on the legal and institutional implications that theorists politicians and judges have derived from it Commentators and citizens have relied on the concept of constituent power to defend the idea that electors have the right to instruct representatives to negate the doctrine of parliamentary sovereignty and to argue that the creation of new constitutions must take place through extra legislative processes including primary assemblies open to all citizens More recently several Latin American constitutions explicitly incorporate the theory of constituent power and allow citizens acting through popular initiative to trigger constitution making episodes that may result in the replacement of the entire constitutional order Constitutional courts have also at times employed constituent power to justify their jurisdiction to invalidate constitutional amendments that alter the fundamental structure of the constitution and thus amount to a constitution making exercise Some governments have used it to defend the legality of attempts to transform the constitutional order through procedures not contemplated in the constitution s amendment rule but considered participatory enough to be equivalent to the people in action sometimes sanctioned by courts Building on these findings *Constituent Power and the Law* argues that constituent power unlike sovereignty should be understood as ultimately based on a legal mandate to produce a particular type of juridical content In practice this makes it possible for a constitution making body to be understood as legally subject to popularly ratified substantive limits Constituting Economic and Social Rights Katharine G. Young, 2012-08-23 Food water health housing and education are as fundamental to human freedom and dignity as privacy

religion or speech Yet only recently have legal systems begun to secure these fundamental individual interests as rights This book looks at the dynamic processes that render economic and social rights in legal form It argues that processes of interpretation enforcement and contestation each reveal how economic and social interests can be protected as human and constitutional rights and how their protection changes public law Drawing on constitutional examples from South Africa Colombia Ghana India the United Kingdom the United States and elsewhere the book examines innovations in the design and role of institutions such as courts legislatures executives and agencies in the organization of social movements and in the links established with market actors This comparative study shows how legal systems protect economic and social rights by shifting the focus from minimum bundles of commodities or entitlements to processes of value based deliberative problem solving Theories of constitutionalism and governance inform the potential of this approach to reconcile economic and social rights with both democratic and market principles while addressing the material inequality poverty and social conflict caused in part by law itself

Reflections on the Constitutionalisation of International Economic Law, 2013-12-09 This book collects a large number of essays written in honour of Professor Ernst Ulrich Petersmann by his friends colleagues and former students The respective contributions cover the fields of international economic law international constitutional law transnational constitutionalism EU law and human rights The broad thematic scope of this book mirrors the extremely large field of interests of the jubilarian Paying tribute to a particular trait of Professor Petersmann s character who was always both a dogmatic thinker and a curious researcher the authors try to cover both structural issues of law as well as most recent developments in particular in the field of international economic law Construing the constitution of international economic law in both senses of this activity was an aim throughout Professor Petersmann s academic career and this goal stands also at the heart of this book

Handbook on Global Constitutionalism Anthony F. Lang, Jr.,Antje Wiener,2017-10-27 This Handbook introduces scholars and students to the history philosophy and evidence of global constitutionalism Contributors provide their insights from law politics international relations philosophy and history drawing on diverse frameworks and empirical data sets Across them all however is a recognition that the international order cannot be understood without an understanding of constitutional theory The Handbook will define this field of inquiry for the next generation by bringing together some of the leading contemporary scholars

The Structure of Pluralism Victor M. Muniz-Fraticelli,2014-02-27 Pluralism proceeds from the observation that many associations in liberal democracies claim to possess and attempt to exercise a measure of legitimate authority over their members They assert that this authority does not derive from the magnanimity of a liberal and tolerant state but is grounded rather on the common practices and aspirations of those individuals who choose to take part in a common endeavor As an account of the authority of associations pluralism is distinct from other attempts to accommodate groups like multiculturalism subsidiarity corporatism and associational democracy It is consistent with the explanation of legal authority proposed by contemporary legal positivists and recommends that the formal

normative systems of highly organized groups be accorded the status of fully legal norms when they encounter the laws of the state In this book Muniz Fraticelli argues that political pluralism is a convincing political tradition that makes distinctive and radical claims regarding the sources of political authority and the relationship between associations and the state Drawing on the intellectual tradition of the British political pluralists as well as recent developments in legal philosophy and social ontology the book argues that political pluralism makes distinctive and radical claims regarding the sources of political authority and the relationship between associations and the state

Making Human Rights Intelligible Mikael Rask Madsen, Gert Verschraegen, 2013-03-20 Human rights have become a defining feature of contemporary society permeating public discourse on politics law and culture But why did human rights emerge as a key social force in our time and what is the relationship between rights and the structures of both national and international society By highlighting the institutional and socio cultural context of human rights this timely and thought provoking collection provides illuminating insights into the emergence and contemporary societal significance of human rights Drawn from both sides of the Atlantic and adhering to refreshingly different theoretical orientations the contributors to this volume show how sociology can develop our understanding of human rights and how the emergence of human rights relates to classical sociological questions such as social change modernisation or state formation Making Human Rights Intelligible provides an important sociological account of the development of international human rights It will be of interest to human rights scholars and sociologists of law and anyone wishing to deepen their understanding of one of the most significant issues of our time

The Cosmopolitan State H Patrick Glenn, 2013-05-23 The idea of the nation state has failed Glenn argues and a major shift in our understanding of the state is needed He provides an original approach by situating cosmopolitanism in its historical context and demonstrating that the state is necessarily cosmopolitan in character and has always been subject to transnational law making

Constitutional Semiotics Martin Belov, 2022-06-30 This book offers an outline of the foundations of a theory of constitutional semiotics It provides a systematic account of the concept of constitutional semiotics and its role in the representation and signification of meaning in constitution constitutional law and constitutionalism The book explores the constitutional signification of meaning that is stretched between rational entrenchment and constitutional imagination It provides a critical assessment of the rationalist entrapment of constitutional modernity and justifies the need to turn to shadow constitutionalisms textual symbolic imaginary and visual constitutionalism The book puts forward innovative incentives for constitutional analysis based on constitutional semiotics as a paradigm for representation of meaning in rational textual symbolic imaginary and visual constitutionalism The book focuses on the textual imaginative and visual discourse of constitutionalism which is built upon collective constitutional imaginaries and on the peculiar normativity of constitutional geometry and constitutional mythology as borderline phenomena entrenched in rational textual symbolic imaginary and visual constitutionalism The book analyses concepts such as constitutional text and texture authoritative

constitutional narratives and authoritative constitutional narrators constitutional semiotic community constitutional utopia constitutional taboo normative ideology and normative ideas constitutional myth and mythology constitutional symbolism constitutional code and constitutional geometric form It explores the textual entrenchment of constitutionalism and its repercussions for representation and signification of meaning Principled Reasoning in Human Rights Adjudication Se-shauna Wheatle, 2017-04-20 Implied constitutional principles form part of the landscape of the development of fundamental rights in common law jurisdictions affecting issues ranging from the remuneration of judges to the appropriation of property by the state Principled Reasoning in Human Rights Adjudication offers thematic analysis of the use of the implied constitutional principles of the rule of law and separation of powers in human rights cases The book examines the functions played by those principles in rights adjudication in Australia Canada the Commonwealth Caribbean and the United Kingdom It argues that a complete understanding of implied constitutional principles requires thoroughgoing analysis of the sources and methods of implication and of the specific roles played by such principles in the adjudicative process By disaggregating particular functions and placing those functions within their respective institutional contexts this book develops an understanding of the features of cases in which implied constitutional principles are invoked and the work done by those principles **Multinationals and the Constitutionalization of the World Power System** Jean-Philippe Robé, Antoine Lyon-Caen, Stéphane Vernac, 2016-06-03 This collection offers a powerful and coherent study of the transformation of the multinational enterprise as both an object and subject of law within and beyond States The study develops an analysis of the large firm as being a system of organization exercising vast powers through various instruments of private law such as property rights contracts and corporations The volume focuses on the firm as the operational unit of governance within emerging systems of globalization whilst exploring in depth the forms within which the firm might be regulated as against the inhibiting parameters of national law It connects through the ordering concept of the firm in globalization the distinct regimes of constitutionalization national and international law The study will be of interest to students and academics in globalization and the regulation of multinational corporations as well as law economics and politics on a global scale It will also interest government leaders and NGOs working in the areas of MNE regulations **Advanced Introduction to Legal Research Methods** Ernst H. Ballin, 2020-10-30 Written by Ernst Hirsch Ballin this original Advanced Introduction uncovers the foundations of legal research methods an area of legal scholarship distinctly lacking in standardisation The author shows how such methods differ along critical empirical and fundamental lines and how our understanding of these is crucial to overcoming crises and restoring trust in the law Key topics include a consideration of law as a normative language and an examination of the common objects of legal research **The Cosmopolitan Constitution** Alexander Somek, 2014-07-31 Originally the constitution was expected to express and channel popular sovereignty It was the work of freedom springing from and facilitating collective self determination After the Second World

War this perspective changed the modern constitution owes its authority not only to collective authorship it also must commit itself credibly to human rights Thus people recede into the background and the national constitution becomes embedded into one or other system of peer review among nations This is what Alexander Somek argues is the creation of the cosmopolitan constitution Reconstructing what he considers to be the three stages in the development of constitutionalism he argues that the cosmopolitan constitution is not a blueprint for the constitution beyond the nation state let alone a constitution of the international community rather it stands for constitutional law reaching out beyond its national bounds This cosmopolitan constitution has two faces the first political face reflects the changed circumstances of constitutional authority It conceives itself as constrained by international human rights protection firmly committed to combating discrimination on the grounds of nationality and to embracing strategies for managing its interaction with other sites of authority such as the United Nations The second administrative face of the cosmopolitan constitution reveals the demise of political authority which has been traditionally vested in representative bodies Political processes yield to various and often informal strategies of policy co ordination so long as there are no reasons to fear that the elementary civil rights might be severely interfered with It represents constitutional authority for an administered world *Global Technology and Legal Theory* Guilherme Cintra Guimarães, 2019-06-05 The rise and spread of the Internet has accelerated the global flows of money technology and information that are increasingly perceived as a challenge to the traditional regulatory powers of nation states and the effectiveness of their constitutions The acceleration of these flows poses new legal and political problems to their regulation and control as shown by recent conflicts between Google and the European Union EU This book investigates the transnational constitutional dimension of recent conflicts between Google and the EU in the areas of competition taxation and human rights More than a simple case study it explores how the new conflicts originating from the worldwide expansion of the Internet economy are being dealt with by the institutional mechanisms available at the European level The analysis of these conflicts exposes the tensions and contradictions between on the one hand legal and political systems that are limited by territory and on the other hand the inherently global functioning of the Internet The EU s promising initiatives to extend the protection of privacy in cyberspace set the stage for a broader dialogue on constitutional problems related to the enforcement of fundamental rights and the legitimate exercise of power that are common to different legal orders of world society Nevertheless the different ways of dealing with the competition and fiscal aspects of the conflicts with Google also indicate the same limits that are generally attributed to the very project of European integration showing that the constitutionalization of the economy tends to outpace the constitutionalization of politics Providing a detailed account of the unfolding of these conflicts and their wider consequences to the future of the Internet this book will appeal to scholars working in EU law international law and constitutional law as well as those in the fields of political science and sociology

The Twilight Of Constitutionalism Oxford Constitutional Theory Book Review: Unveiling the Magic of Language

In an electronic era where connections and knowledge reign supreme, the enchanting power of language has are more apparent than ever. Its ability to stir emotions, provoke thought, and instigate transformation is actually remarkable. This extraordinary book, aptly titled "**The Twilight Of Constitutionalism Oxford Constitutional Theory**," published by a very acclaimed author, immerses readers in a captivating exploration of the significance of language and its profound effect on our existence. Throughout this critique, we shall delve into the book is central themes, evaluate its unique writing style, and assess its overall influence on its readership.

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