



Transconstitutionalism

MARCELO NEVES

TRANSLATED BY KEVIN MUNDY

HART MONOGRAPHS IN
TRANSNATIONAL & INTERNATIONAL LAW

Transconstitutionalism Hart Monographs In Transnational And International Law

Lisa Harms



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Transconstitutionalism Marcelo Neves, 2013-05-01 Transconstitutionalism is a concept used to describe what happens to constitutional law when it is emancipated from the state in which can be found the origins of constitutional law Transconstitutionalism does not exist because a multitude of new constitutions have appeared but because other legal orders are now implicated in resolving basic constitutional problems A transconstitutional problem entails a constitutional issue whose solution may involve national international supranational and transnational courts or arbitral tribunals as well as native local legal institutions Transconstitutionalism does not take any single legal order or type of order as a starting point or ultima ratio It rejects both nation statism and internationalism supranationalism transnationalism and localism as privileged spaces for solving constitutional problems The transconstitutional model avoids the dilemma of monism versus pluralism From the standpoint of transconstitutionalism a plurality of legal orders entails a complementary and conflicting relationship between identity and alterity constitutional identity is rearticulated on the basis of alterity Rather than seeking a Herculean Constitution transconstitutionalism tackles the many headed Hydra of constitutionalism always looking for the blind spot in one legal system and reflecting it back against the many others found in the world's legal orders The Institutional Problem in Modern International Law Richard Collins, 2016-11-03 Modern international law is widely understood as an autonomous system of binding legal rules Nevertheless this claim to autonomy is far from uncontroversial International lawyers have faced recurrent scepticism as to both the reality and efficacy of the object of their study and practice For the most part this scepticism has focussed on international law's peculiar institutional structure with the absence of centralised organs of legislation adjudication and enforcement leaving international legal rules seemingly indeterminate in the conduct of international politics Perception of this institutional problem has therefore given rise to a certain disciplinary angst or self defensiveness fuelling a need to seek out functional analogues or substitutes for the kind of institutional roles deemed intrinsic to a functioning legal system The author of this book believes that this strategy of accommodation is however deeply problematic It fails to fully grasp the importance of international law's decentralised institutional form in securing some measure of accountability in international relations It thus misleads through functional analogy and in doing so potentially exacerbates legitimacy deficits There are enough conceptual weaknesses and blindspots in the legal theoretical models against which international law is so frequently challenged to show that the perceived problem arises more in theory than in practice *The Law's Ultimate Frontier: Towards an Ecological Jurisprudence* Horatia Muir Watt, 2023-05-18 This important book offers an ambitious and interdisciplinary vision of how private international law or the conflict of laws might serve as a heuristic for reworking our general understandings of legality in directions that respond to ever deepening global ecological crises Unusual in legal scholarship the author borrows in bricolage mode from the work of Bruno Latour alongside indigenous cosmologies extinction theories and Levinassian phenomenology to demonstrate why this field's specific frontier

location at the outpost of the law where it is viewed from the outside as obscure and from the inside as a self contained normative world generates its potential power to transform law generally and globally Combining pragmatic and pluralist theory with an excavation of shadow ecological dimensions of law the author a recognised authority within the field as conventionally understood offers a truly global view Put simply it is a generational magnum opus All international and transnational lawyers be they in the private or public field should read this book Liability for Transboundary Pollution at the Intersection of Public and Private International Law Guillaume Laganière, 2022-02-24 This book focuses on how public and private international law address civil liability for transboundary pollution In public international law civil liability treaties promote the implementation of minimum procedural standards in domestic tort law This approach implicitly relies on private international law to facilitate civil litigation against transboundary polluters Yet this connection remains poorly understood Filling the gap this book engages in a meaningful dialogue between the two areas and explores how domestic private international law can reflect the policies developed in international environmental law It begins with an investigation of civil liability in international environmental law It then identifies preferable rules of civil jurisdiction foreign judgments and choice of law for environmental damage using Canadian private international law as a case study and making extensive references to European law Liability for transboundary pollution is a contentious issue of the law both in scholarship and practice international lawyers both private and public as well as environmental lawyers will welcome this important work

Faith in Courts Lisa Harms, 2022-12-01 The judicialisation of religious freedom conflicts is long recognised But to date little has been written on the active role that religious actors and advocacy groups play in this process This important book does just that It examines how Jehovah's Witnesses Muslims Sikhs Evangelicals Christian conservatives and their global support networks have litigated the right to freedom of religion at the European Court of Human Rights over the past 30 years Drawing on in depth interviews with NGOs religious representatives lawyers and legal experts it is a powerful study of the social dynamics that shape transnational legal mobilisation and the ways in which legal mobilisation shapes discourses and conflict lines in the field of transnational law Transconstitutionalism Marcelo Neves, 2013-05-01

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plurality of legal orders entails a complementary and conflicting relationship between identity and alterity constitutional identity is rearticulated on the basis of alterity Rather than seeking a Herculean Constitution transconstitutionalism tackles the many headed Hydra of constitutionalism always looking for the blind spot in one legal system and reflecting it back against the many others found in the world's legal orders *Hart Monographs in Transnational and International Law* Craig Scott (juriste), 200? Rough Consensus and Running Code Galf-Peter Calliess, Peer Zumbansen, 2010-05-31 Private law has long been the focus of efforts to explain wider developments of law in an era of globalisation As consumer transactions and corporate activities continue to develop with scant regard to legal and national boundaries private law theorists have begun to sketch and conceptualise the possible architecture of a transnational legal theory Drawing a detailed map of the mixed regulatory landscape of hard and soft laws official unofficial direct and indirect modes of regulation rules recommendations and principles as well as exploring the concept of governance through disclosure and transparency this book develops a theoretical framework of transnational legal regulation Rough Consensus and Running Code describes and analyses different law making regimes currently observable in the transnational arena Its core aim is to reassess the transnational regulation of consumer contracts and corporate governance in light of a dramatic proliferation of rule creators and compliance mechanisms that can no longer be clearly associated with either the state or the market The chosen examples from two of the most dynamic legal fields in the transnational arena today serve as backdrops for a comprehensive legal theoretical inquiry into the changing institutional and normative landscape of legal norm creation **Interlocking Constitutions**, 2012 The existence of interactions between different but overlapping legal systems has always presented challenges to black letter law In this book P rez analyses the inter ordinal instabilities which arise at the European level focusing on three main strands of case law and their implications Solange Bosphorus and Kadi *Good Faith in Transnational Law* Frédéric Gilles Sourgens, 2022-09-12 Transnational law currently appears fragmented and captured by self interested corporate actors Good faith is at the heart of this fragmentation To defend transnational law thus requires an account of good faith Good Faith in Transnational Law explains and recasts fragmentation and capture as something valuable and casts good faith as an obligation of other regarding communicative conduct Fr d ric Gilles Sourgens argues that the fragmentation we experience is a virtue for communication across vastly different commercial economic social cultural and linguistic contexts to remain legally meaningful we must translate our different expectations into a shared context bound idiom He argues that law harnesses stress of such translations through stress fields that reintegrate the different experiences in a shared transnational discourse

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