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European and US Constitutionalism

Some of the most exciting and innovative legal scholarship has been driven by historical curiosity. Legal history today comes in a fascinating array of shapes and sizes, from microhistory to global intellectual history. Legal history has expanded beyond traditional parochial boundaries to become increasingly international and comparative in scope and orientation. Drawing on scholarship from around the world, and representing a variety of methodological approaches, areas of expertise, and research agendas, this timely compendium takes stock of legal history and methodology and reflects on the various modes of the historical analysis of law, past, present, and future. Part I explores the relationship between legal history and other disciplinary perspectives including economic, philosophical, comparative, literary, and rhetorical analysis of law. Part II considers various approaches to legal history, including legal history as doctrinal, intellectual, or social history. Part III focuses on the interrelation between legal history and jurisprudence by investigating the role and conception of historical inquiry in various models, schools, and movements of legal thought. Part IV traces the place and pursuit of historical analysis in various legal systems and traditions across time, cultures, and space. Finally, Part V narrows the Handbooks focus to explore several examples of legal history in action, including its use in various legal doctrinal contexts.

European Constitutional Law

Leading scholars of European constitutionalism highlight different facets of the constitutional discussion.

EU Federalism and Constitutionalism

In the past few years, constitutional courts have been presented with new challenges. The world financial crisis, the new wave of terrorism, mass migration and other country-specific problems have had wide-ranging effects on the old and embedded constitutional standards and judicial constructions. This book examines how, if at all, these unprecedented social, economic and political problems have affected constitutional review in Europe. As the courts' response must conform with EU law and in some cases international law, analysis extends to the related jurisprudence of the European Court of Justice and the European Court of Human Rights. The collection adopts a common analytical structure to examine how the relevant challenges have been addressed in ten country specific case studies. Alongside these, constitutional experts frame the research within the theoretical understanding of the constitutional difficulties of the day in Europe. Finally, a comparative chapter examines the effects of multilevel constitutionalism and identifies general European trends. This book will be essential reading for academics and researchers working in the areas of constitutional law, comparative law and jurisprudence.

Fundamental Rights in Europe

European constitutionalisation has met with scepticism - this book analyses the steps necessary to move to EU's 'Second Constitution'.

Rule of Law, Common Values, and Illiberal Constitutionalism

This book compiles the papers and comments delivered at the Conférence on "European and American constitutionalism" which took place in Göttingen in 2003. Through topics like freedom of speech, human dignity, the protective function of the state, adjudication and democracy and international influences, the conference papers identify salient features of the constitutional systems on both sides of the Atlantic and address recent developments following the end of the soviet era in eastern Europe and the terrorists attacks of 11 September 2001.

European Constitutionalism Beyond the State

After the fall of Communism in Central and Eastern Europe (CEE), the newly democratized countries of this region joined two main pan-European political and legal structures: the Council of Europe and the European Union. This book shows how the Eastward enlargement of these two structures fostered the 'constitutionalization' both of the Council of Europe and of the EU. Prompted by the enlargement of the Council of Europe and the admission of a number of countries which brought unique and often more substantial problems onto the Court's agenda, the main judicial body of the Council of Europe, the European Court of Human Rights, became a quasi 'constitutional court' of Europe. This book demonstrates that this was primarily as a result of the widening of its agenda and

the resulting need to make activist decisions about the compatibility of national laws with the European Convention. In terms of the EU, the book shows that the enlargement (first prospective, and then, actual) has been an important agenda-setter for the constitutionalization of the EU; in particular, for openly placing the issue of fundamental rights on the EU agenda as a legitimate and indispensable matter of concern for the EU. But the 'constitutional synergies' were a two-way street: the accession to both pan-European structures has also affected the development of democratic constitutionalism in CEE states. It has raised difficult issues regarding the relationships between national sovereignty, democracy, and human rights that CEE policy makers have grappled with; these issues and responses by CEE member states have had implications for the 'old' EU member states as well. These dynamics are explored through various case studies, providing a new perspective on the development of legal norms and institutions within European supranational bodies.

Three Generations of European Constitutional Courts in Transition to Democracy

The European architecture for the protection of fundamental rights combines the legal regimes of the states, the European Union, and the European Convention on Human Rights. The purpose of this book is to analyse the constitutional implications of this multilevel architecture and to examine the dynamics that spring from the interaction between different human rights standards in Europe. The book adopts a comparative approach, and through a comparison with the federal system of the United States, it advances an analytical model that systematically explains the dynamics at play in the European multilevel human rights architecture. It identifies two recurrent challenges in the interplay between different state and transnational human rights standards - a challenge of ineffectiveness, when transnational law operates as a ceiling of protection for a specific human right, and a challenge of inconsistency when transnational law operates as a floor - and considers the most recent transformations taking place in the European human rights regime. The book tests the model of challenges and transformations by examining in depth four case studies: the right to due process for suspected terrorists, the right to vote for non-citizens, the right to strike and the right to abortion. In light of these examples, the book then concludes by reassessing the main theories on the protection of fundamental rights in Europe and making the case for a new vision - a "neo-federal" theory - which is able to frame the dilemmas of identity, equality and supremacy behind the European multilevel architecture for the protection of human rights.

The European Union

This book considers whether the potential of democracy following the end of the Cold War was diminished by technocratic, judicial control of politics in the new democracies of Central and Eastern Europe. It explores the complexities and drawbacks of modern constitutionalism by offering a comprehensive theoretical and comparative-empirical assessment of the status and role of constitutionalism in five new EU Member States. The democratization of countries in Central and Eastern Europe has been guarded by constitutions and constitutional courts. This

book examines the implications of powerful courts and rigid constitutions for the democratic engagement of citizens and the political authority of politicians. Using an interdisciplinary and comparative approach, the book analyses the historical emergence of powerful constitutional institutions in the Czech Republic, Hungary, Poland, Romania and Slovakia. The author argues that the democratic promise of 1989 largely lost out to a technocratic and top-down view of judicial control of politics – a state of affairs reinforced by EU accession. The current backlash in countries such as Hungary and Romania indicates that the realization of democratization to the extent initially expected might be ever more remote in some new democracies. *New Democracies in Crisis?* will be of interest to students and scholars of European Union politics, democratization studies, European constitutionalism, socio-legal studies, governance and comparative politics.

The Many Constitutions of Europe

Despite the outpouring of works on constitutional theory in the past several decades, no general introduction to the field has been available. Stephen Griffin provides here an original contribution to American constitutional theory in the form of a short, lucid introduction to the subject for scholars and an informed lay audience. He surveys in an unpolemical way the theoretical issues raised by judicial practice in the United States over the past three centuries, particularly since the Warren Court, and locates both theory and practices that have inspired dispute among jurists and scholars in historical context. At the same time he advances an argument about the distinctive nature of our American constitutionalism, regarding it as an instance of the interpenetration of law and politics. American Constitutionalism is unique in considering the perspectives of both law and political science in relation to constitutional theory. Constitutional theories produced by legal scholars do not usually discuss state-centered theories of American politics, the importance of institutions, behaviorist research on judicial decision making, or questions of constitutional reform, but this book takes into account the political science literature on these and other topics. The work also devotes substantial attention to judicial review and its relationship to American democracy and theories of constitutional interpretation.

American Constitutionalism Heard Round the World, 1776-1989

EU Federalism and Constitutionalism: The Legacy of Altiero Spinelli is the first book-length study devoted not only to how Spinelli's advocacy for a federal Europe shaped European integration but also how Spinelli's ideas are essential to understanding the EU constitutional system today. The volume integrates perspectives from law, history, and political science to offer a comprehensive and up-to-date analysis of the history, evolution, and future of federal principles and institutions in the European integration process.

The Constitution of Europe

Constitutionalism and democracy have been interpreted as both intimately related and intrinsically opposed. On the one hand constitutions are said to set out the rules of the democratic game, on the other as constraining the power of the demos

and their representatives to rule themselves - including by reforming the very processes of democracy itself. Meanwhile, constitutionalists themselves differ on how far any constitution derives its authority from, and should itself be subject to democratic endorsement and interpretation. They also dispute whether constitutions should refer solely to democratic processes, or also define and limit democratic goals. Each of these positions produces a different view of judicial review, the content and advisability of a Bill of Rights and the nature of constitutional politics. These differences are not simply academic positions, but are reflected in the different types of constitutional democracy found in the United States, continental Europe, Britain and many commonwealth countries. The selected essays explore these issues from the perspectives of law, philosophy and political science. A detailed and informative introduction sets them in the context of contemporary debates about constitutionalism.

Political Science

This book challenges the idea that the Rule of Law is still a universal European value given its relatively rapid deterioration in Hungary and Poland, and the apparent inability of the European institutions to adequately address the illiberalization of these Member States. The book begins from the general presumption that the Rule of Law, since its emergence, has been a universal European value, a political ideal and legal conception. It also acknowledges that the EU has been struggling in the area of value enforcement, even if the necessary mechanisms are available and, given an innovative outlook and more political commitment, could be successfully used. The authors appreciate the different approaches toward the Rule of Law, both as a concept and as a measurable indicator, and while addressing the core question of the volume, widely rely on them. Ultimately, the book provides a snapshot of how the Rule of Law ideal has been dismantled and offers a theory of the Rule of Law in illiberal constitutionalism. It discusses why voters keep illiberal populist leaders in power when they are undeniably acting contrary to the Rule of Law ideal. The book will be of interest to academics and researchers engaged with the foundational questions of constitutionalism. The structure and nature of the subject matter covered ensure that the book will be a useful addition for comparative and national constitutional law classes. It will also appeal to legal practitioners wondering about the boundaries of the Rule of Law.

The Tangled Complexity of the EU Constitutional Process

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.

National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law

Constitutional Politics in Europe: Governing with Judges elaborates a theory of constitutional politics, the process through which the discursive practices and techniques of constitutional adjudication come to structure the work of governments, parliaments, judges, and administrators. Focusing on the cases of France, Germany, Italy, Spain, and the European Union, the book examines the sources and consequences of the pan-European movement to confer constitutional review authority on a new governmental institution, the constitutional court. Detailed case studies illustrate how and to what extent legislative processes have been placed under the influence of constitutional judges. In a growing number of policy domains, these judges function as powerful, adjunct legislators. As constitutional courts have consolidated their position as authoritative interpreters of the constitutional law, and especially of human rights provisions, the work of the judiciary, too, has gradually been constitutionalised. Today, ordinary judges seek to detect violations of the constitution in their application of the various codes, and to rewrite statutes that they deem unconstitutional. Constitutional politics have not only provoked the demise of traditional notions of parliamentary sovereignty, they have organized profound transformations in the very nature of European governance. Stone Sweet argues that constitutional adjudication constructs complex causal linkages between rule systems and normativity, on the one hand, and the strategic behaviour of individuals, on the other. The theory constitutes a novel synthesis of normative and rational approaches to politics. The book also addresses central questions raised by a wide range of ongoing theory projects, including the 'new institutionalism,' rational choice, principal-agent theories of delegation, and the new constitutionalism in Continental legal theory.

Global Technology and Legal Theory

Europe is in crisis. With rising unrest among citizens of EU member states exemplified by the UK's decision to leave the EU, and the growing popularity of anti-EU political parties, Dieter Grimm presents the argument that Europe has to change its method of further integration or risks failure. This book, containing essays many of which have not been published in the English language to date,

explores how the EU has become over-constitutionalized. Grimm argues that this has left the EU with a democratic deficit leading to the alienation of citizens. This book highlights Europe's democracy problem. The most prominent argument running throughout is that the EU and its decision-making processes have become over-constitutionalized. This is due to the constitutionalization of European treaties, which has occurred by raising them to the eminence of a constitution as a result of the jurisprudence of the European Court of Justice. However, the treaties contain provisions that would be ordinary law in member states. The fact that they enjoy constitutional status in Europe detaches them from the democratic processes in the member states and the EU itself, and contributes to the growing independence of the EU's executive and judicial institutions. The book also asserts that currently the EU does not have enough sources of legitimation to uphold itself, surviving solely on the legitimation provided by member states. One popular remedy is the suggestion of "parliamentarization" of the EU, giving the European Parliament the powers typically possessed by national parliaments as a means of heightening its legitimation. This is criticized by Grimm as expanding the Parliament's powers would not change the effects of over-constitutionalization as the Parliament is inferior to the constitution. In order to reduce the EU's legitimacy deficit, Grimm makes several recommendations. The repoliticization of the decision-making processes, which can be achieved by reducing treaties to the capacity necessary for their constitutional function; the reinvigoration of European Parliament elections, by having "Europeanized" parties to increase engagement with European society and give voters the opportunity to more immediately influence European politics; and a new division of powers based on subject matter to restrain European expansionism, reserving particular areas of policy to the responsibility of member states even if this affects the common market.

The Constitution's Gift

The Constitution of European Democracy

"In this fine book, Gary McDowell shows that the Constitution is our fundamental law---not our master, but our guide and mentor. Only at our peril do we try to make it our servant."---Harvey Mansfield, Harvard University "Erudite and lucid: McDowell's book is a must-read for those who wish to understand the philosophical and linguistic roots of the originalist tradition of constitutional interpretation."-R. Kent Newmyer, University of Connecticut School of Law "This book adds a major dimension of depth to the case for guiding judicial interpretation of the Constitution by the original intent of the framers. McDowell articulates a deeply thought-provoking meditation, informed by a fertile understanding of key foundations for originalism articulated by major figures in political philosophy, in the common law, and among the Founders themselves who shaped the theorizing that informs our constitutional order."---Thomas Pangle, University of Texas at Austin "For several decades, Gary McDowell has been one of our most brilliant and learned students of law and political philosophy. This book is his summa, a profound defense of originalism as a moral Constitutional philosophy, a brilliant discourse on the framers and their philosophical forbears and successors, and a powerful handbook of strategy in what McDowell calls `the contemporary war for the Constitution.' This work is essential reading for anyone who cares about the

Supreme Court and the Constitution, but it is more. It is, simply stated, one of this generation's most important contributions toward preserving the rule of law itself."---Stephen Presser, Northwestern University School of Law "In this timely book, the case against the so-called 'living' constitution is so powerfully argued and so clearly presented that it cannot be ignored."---Gordon S. Wood, Brown University

Courts, Politics and Constitutional Law

Several years after the first Greek bailout, the integration project of the European Union faces an interlocking set of political, economic, legal and social challenges that go to the very core of its existence. Austerity is the order of the day, and citizens in both debtor and creditor states increasingly turn to the political movements of the far left and right, anti-politics and street protests to vent their frustration. This book demonstrates the limits of constitutionalism in the EU. It explores the 'twin crises' - the failure of the Constitutional Treaty in 2005 and the more recent Eurozone crisis - to illuminate both the possibilities and pitfalls of the integration project. It argues that European integration overburdened law in an attempt to overcome deep-seated political deficiencies. It further contends that the EU shifted from an unsuccessful attempt at democratisation via politicisation (the Constitutional Treaty), to an unintended politicisation without democratisation (the Eurozone crisis) only a few years later. The book makes the case that this course is unsustainable and threatens the goal of European unity. This text will be of key interest to students and scholars in the fields of EU studies, EU law, democracy studies, constitutional studies and international relations.

Europe's Functional Constitution

Human dignity is one of the most challenging and exciting ideas for lawyers and political philosophers in the twenty-first century. Even though it is rapidly emerging as a core concept across legal systems, and is the first foundational value of the European Union and its overarching human rights commitment under the Lisbon Treaty, human dignity is still little understood and often mistrusted. Based on extensive comparative and cross-disciplinary research, this path-breaking monograph provides an innovative and critical investigation of human dignity's origins, development and above all its potential at the heart of European constitutionalism today. Grounding its analysis in the connections among human dignity, human rights, constitutional law and democracy, this book argues that human dignity's varied and increasing uses point to a deep transformation of European constitutionalism. At its heart are the construction and protection of constitutional time, and the multi-dimensional definition of humanity as human beings, citizens and workers. Anchored in a detailed comparative study of case law, including the two European supranational courts and domestic constitutional courts, especially those of Germany, the UK, France and Hungary, this monograph argues for a new understanding of European constitutionalism as a form of humanism.

A Europe of Rights

This book provides a general introduction to the European Union (EU) and describes how, from its origin in 1952, it has grown into a polity of 25 states with a population of more than 450 million.

New Democracies in Crisis?

Over the last decade the regulatory evaluation of environmental and public health risks has been one of the most legally controversial areas of contemporary government activity. Much of that debate has been understood as a conflict between those promoting 'scientific' approaches to risk evaluation and those promoting 'democratic' approaches. This characterization of disputes has ignored the central roles of public administration and law in technological risk evaluation. This is problematic because, as shown in this book, legal disputes over risk evaluation are disputes over administrative constitutionalism in that they are disputes over what role law should play in constituting and limiting the power of administrative risk regulators. This is shown by five case studies taken from five different legal cultures: an analysis of the bifurcated role of the Southwood Working Party in the UK BSE crisis; the development of doctrines in relation to judicial review of risk evaluation in the US in the 1970s; the interpretation of the precautionary principle by environmental courts and generalist tribunals carrying out merits review in Australia; the interpretation of the WTO Sanitary and Phytosanitary Agreement as part of the WTO dispute settlement process; and the interpretation of the precautionary principle in the EU context. A strong argument is thus made for re-orienting the focus of scholarship in this area.

American Constitutionalism

This two-volume book, published open access, brings together leading scholars of constitutional law from twenty-nine European countries to revisit the role of national constitutions at a time when decision-making has increasingly shifted to the European and transnational level. It offers important insights into three areas. First, it explores how constitutions reflect the transfer of powers from domestic to European and global institutions. Secondly, it revisits substantive constitutional values, such as the protection of constitutional rights, the rule of law, democratic participation and constitutional review, along with constitutional court judgments that tackle the protection of these rights and values in the transnational context, e.g. with regard to the Data Retention Directive, the European Arrest Warrant, the ESM Treaty, and EU and IMF austerity measures. The responsiveness of the ECJ regarding the above rights and values, along with the standard of protection, is also assessed. Thirdly, challenges in the context of global governance in relation to judicial review, democratic control and accountability are examined. On a broader level, the contributors were also invited to reflect on what has increasingly been described as the erosion or 'twilight' of constitutionalism, or a shift to a thin version of the rule of law, democracy and judicial review in the context of Europeanisation and globalisation processes. The national reports are complemented by a separately published comparative study, which identifies a number of broader trends and challenges that are shared across several Member States and warrant wider discussion. The research for this publication and the comparative study were carried out within the framework of the ERC-funded project 'The Role and Future of National Constitutions in European and Global

Governance'. The book is aimed at scholars, researchers, judges and legal advisors working on the interface between national constitutional law and EU and transnational law. The extradition cases are also of interest to scholars and practitioners in the field of criminal law. Anneli Albi is Professor of European Law at the University of Kent, United Kingdom. Samo Bardutzky is Assistant Professor of Constitutional Law at the University of Ljubljana, Slovenia.

The Power of Separation

An authoritative legal critique of the attractions and demerits of European integration.

The Science and Philosophy of Politics

Despite the rejection of the EU Constitutional Treaty eventually leading to the adoption of the Lisbon Treaty, the debates concerning the European Union's constitutional framework continue. This book builds on the discourse in European Union constitutionalism in order to offer a novel analysis of the EU's constitutional developments. Giuseppe Martinico sets out a unique account of EU constitutionalism which argues that the EU legal order is a complex entity which shares some features with natural systems. The book is soundly anchored in the theory and methodology of legal science and based on a deep knowledge of judicial practices. The author contends that Europe is still suffering from the failure of the Constitutional Treaty and is practicing the new institutional equilibrium afforded by the coming into force of the Reform Treaty. The book goes on to explore the methodological implications of such constitutional complexity for the study of EU law. *The Tangled Complexity of the EU Constitutional Process* will be of particular interest to academics and students in the disciplines of Law, International Relations and Political Science.

The Language of Law and the Foundations of American Constitutionalism

This book analyses emerging constitutional principles addressing the regulation of the internet at both the national and the supranational level. These principles have arisen from cases involving the protection of fundamental rights. This is the reason why the book explores the topic thorough the lens of constitutional adjudication, developing an analysis of Courts' argumentation. The volume examines the gradual consolidation of a "constitutional core" of internet law at the supranational level. It addresses the European Court of Human Rights and the Court of Justice of the European Union case law, before going on to explore Constitutional or Supreme Courts' decisions in individual jurisdictions in Europe and the US. The contributions to the volume discuss the possibility of the "constitutionalization" of internet law, calling into question the thesis of the so-called anarchic nature of the internet.

Governance and Constitutionalism

Author Jessica Korn challenges the notion that the 18th-century principles underlying the American separation of powers system are incompatible with the

demands of 20th-century governance by questioning the dominant scholarship on the legislative veto. Korn's analysis shows that commentators have exaggerated the legislative veto's significance as a result of their incorrect assumption that the separation of powers was designed solely to check governmental authority. Copyright © Libri GmbH. All rights reserved.

New Challenges to Constitutional Adjudication in Europe

This book traces the development of political science from ancient influences such as Plato and Aristotle to modern political shapers such as Robert A. Dahl. It covers changes to the field in both thought and practice due to the rise and fall of political regimes, world wars, colonialism, and social media. The book also includes thorough examinations of international relations, systems of government, constitutions, domestic policy, public opinion, and administration. The book ends with brief biographies of important people in the field of political science that specifies their various contributions.

The Age of Dignity

Winner of the 2010 Book Award from the New England Historical Association American constitutionalism represents this country's greatest gift to human freedom, yet its story remains largely untold. For over two hundred years, its ideals, ideas, and institutions influenced different peoples in different lands at different times. American constitutionalism and the revolutionary republican documents on which it is based affected countless countries by helping them develop their own constitutional democracies. Western constitutionalism—of which America was a part along with Britain and France—reached a major turning point in global history in 1989, when the forces of democracy exceeded the forces of autocracy for the first time. Historian George Athan Billias traces the spread of American constitutionalism—from Europe, Latin America, and the Caribbean region, to Asia and Africa—beginning chronologically with the American Revolution and the fateful "shot heard round the world" and ending with the conclusion of the Cold War in 1989. The American model contributed significantly by spearheading the drive to greater democracy throughout the Western world, and Billias's landmark study tells a story that will change the way readers view the important role American constitutionalism played during this era.

Governing with Judges

This book examines how the judicialization of politics, and the politicization of courts, affect representative democracy, rule of law, and separation of powers. This volume critically assesses the phenomena of judicialization of politics and politicization of the judiciary. It explores the rising impact of courts on key constitutional principles, such as democracy and separation of powers, which is paralleled by increasing criticism of this influence from both liberal and illiberal perspectives. The book also addresses the challenges to rule of law as a principle, preconditioned on independent and powerful courts, which are triggered by both democratic backsliding and the mushrooming of populist constitutionalism and illiberal constitutional regimes. Presenting a wide range of case studies, the book

will be a valuable resource for students and academics in constitutional law and political science seeking to understand the increasingly complex relationships between the judiciary, executive and legislature.

Euroconstitutionalism and Its Discontents

Complementary and mutually reinforcing, political science and political philosophy lie at the heart of the study of governance. The concept of how government could or should operate in the abstract is the province of political philosophy, while political science concerns itself with the concrete. Readers will chronicle the history and development of both fields and introduces readers to the major thinkers—including Aristotle, Machiavelli, and Weber—whose works have informed the study of politics the world over.

The Rise and Fall of the EU's Constitutional Treaty

This textbook on European constitutional law offers a coherent and scholarly analysis presented within a clear structure.

The Internet and Constitutional Law

This book accounts for the content and negotiation of the EU's Constitutional Treaty of 2004 as well as the failure of ratification of the treaty in France and the Netherlands in 2005. It discusses the implications of the abandonment of the treaty for the process of European integration and our understanding of that process.

Europe's Second Constitution

This collection studies the rise of neutral bodies as a challenge to the constitutional paradigm of the nation state. Administrative entities such as commissions, agencies, councils, authorities or 'independent agencies' as they are sometimes known, are relatively autonomous from majoritarian democratic control and by their institutional design fall outside the classical triad of powers or branches of government. They may even fall outside the confines of the nation state itself as with the EU Commission. The book is divided into theoretical-historical and empirical parts. Part I approaches the phenomenon through the rigorous normative conceptual lens of constitutionalism and constitutional law, questioning the implications of political neutrality on inherited normative categories, both at national and supranational level. Part II comprises case-studies reflecting the full spectrum of theoretical frameworks and concerns developed and explored by the theory-oriented chapters in the first part. The work explores a wide range of issues including the balance between autonomy, legitimacy and accountability, the taxonomy of agencies, the role and limits of expertise as a paramount justification for independence, 'agentification' as a result of internationalisation, and 'agentification' as a reflex and consequence of transnational polity-building within the EU.

Risk Regulation and Administrative Constitutionalism

This authoritative study considers all aspects of the European Union's distinctive constitution since its inception. A unique political animal, the EU has given rise to important constitutional conundrums and paradoxes that the authors explore in detail. Their analysis illuminates the distinctive features of the Union's pluralist constitutional construct and provides the tools to understand the Union's development, especially during the Laeken (2001–2005) and Lisbon (2007–2009) processes of constitutional reform and spells out the parallels between the European and the Canadian constitutional experiences. Offering the first history of European constitutional law that is both theoretically informed and normatively grounded, the authors have developed an original theory of constitutional synthesis that will be essential reading for all readers interested in the process and theory of European integration.

Constitutionalism and the Enlargement of Europe

This book addresses the question of social constitutionalism, especially with regard to its role in the contemporary European project. For reasons of history and democracy, Europeans share a deep commitment to social constitutionalism. But in the contemporary European constitutional debate, constitutionalism and social democracy have become antagonists, with the survival of the one seeming to require sacrifice of the other. This book challenges the common view that constitutionalization means de-politicization. It argues that courts can exert a more indirect, creative, and agenda-setting role in the process of an ongoing clarification of the meaning of a right. The CJEU and the ECtHR - as courts beyond the nation state - are able to constructively re-open and re-politicize controversies that may appear settled at the national level in their constitutionalizing jurisprudence. And, crucially, our understanding of shared European constitutional principles is itself subject to revision and reconsideration as we accumulate experiences of dealing with diverse national contexts. By examining the jurisprudence of the CJEU and the ECtHR, the book demonstrates that in domain after domain, ranging from the protection of the vulnerable in the European social market to the guarantee of freedom of conscience, which in Europe emerged after many centuries of religious persecution, both courts can enhance and deepen democracy and thereby encourage the liberal project of constitutionalism beyond the state. Over time, once interpretive answers have become established in practice, courts can then move towards stronger forms of judicial intervention that consolidate best practice. It is this democratic and experimental process which lies at the heart of the distinctive model of contemporary Euroconstitutionalism.

Constitutionalism and Democracy

A comparative perspective of role played by three generations of European Constitutional Courts in the process of transition to democracy.

Catalogue of Publications

European Union Constitutionalism in Crisis

Constitutionalism has become a byword for legitimate government, but is it fated to lose its relevance as constitutional states relinquish power to international institutions? This book evaluates the extent to which constitutionalism, as an empirical idea and normative ideal, can be adapted to institutions beyond the state by surveying the sophisticated legal and political system of the European Union. Having originated in a series of agreements between states, the EU has acquired important constitutional features like judicial review, protections for individual rights, and a hierarchy of norms. Nonetheless, it confounds traditional models of constitutional rule to the extent that its claim to authority rests on the promise of economic prosperity and technocratic competence rather than on the democratic will of citizens. Critically appraising the European Union and its legal system, this book proposes the idea of 'functional constitutionalism' to describe this distinctive configuration of public power. Although the EU is the most advanced instance of functional constitutionalism to date, understanding this pragmatic mode of constitutional authority is essential for assessing contemporary international economic governance.

The Oxford Handbook of Legal History

The European Convention on Human Rights has evolved into a sophisticated legal system, whose formal reach into the domestic law and politics of the Contracting States is limited only by the ever-widening scope of the Convention itself, as determined by a transnational court. In this book, a team of distinguished scholars trace and evaluate, comparatively, the impact of the ECHR and the European Court of Human Rights on law and politics in eighteen national systems: Ireland-UK; France-Germany, Italy-Spain, Belgium-Netherlands, Norway-Sweden, Greece-Turkey, Russia-Ukraine, Poland-Slovakia, and Austria-Switzerland. Although the Court's jurisprudence has provoked significant structural, procedural, and policy innovation in every State examined, its impact varies widely across States and legal domains. The book charts this variation and seeks to explain it. Across Europe, national officials - in governments, legislatures, and judiciaries - have chosen to incorporate the ECHR into domestic law, and they have developed a host of mechanisms designed to adapt the national legal system to the ECHR as it evolves. But how and why State actors have done so varies in important ways, and these differences heavily determine the relative status and effectiveness of Convention rights in national systems. Although problems persist, the book shows that national officials are, gradually but inexorably, being socialized into a Europe of rights, a unique transnational legal space now developing its own logics of political and juridical legitimacy.

European and American Constitutionalism in the Eighteenth Century

This volume makes a contribution to the ongoing lively discussion on European constitutionalism by offering a new perspective and a new interpretation of European constitutional plurality. The book combines diverse disciplinary approaches to the constitutional debate. It brings together complementing contributions from scholars of European politics, economics, and sociology, as well as established scholars from various fields of law. Moreover, it provides analytical

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clarity to the discussion and combines theory with more practical and critical approaches that make use of the constitutional toolbox in analysing the tensions between the different constitutions. The collection is a valuable point of reference not only for scholars interested in European studies but also for graduate and post-graduate students.

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