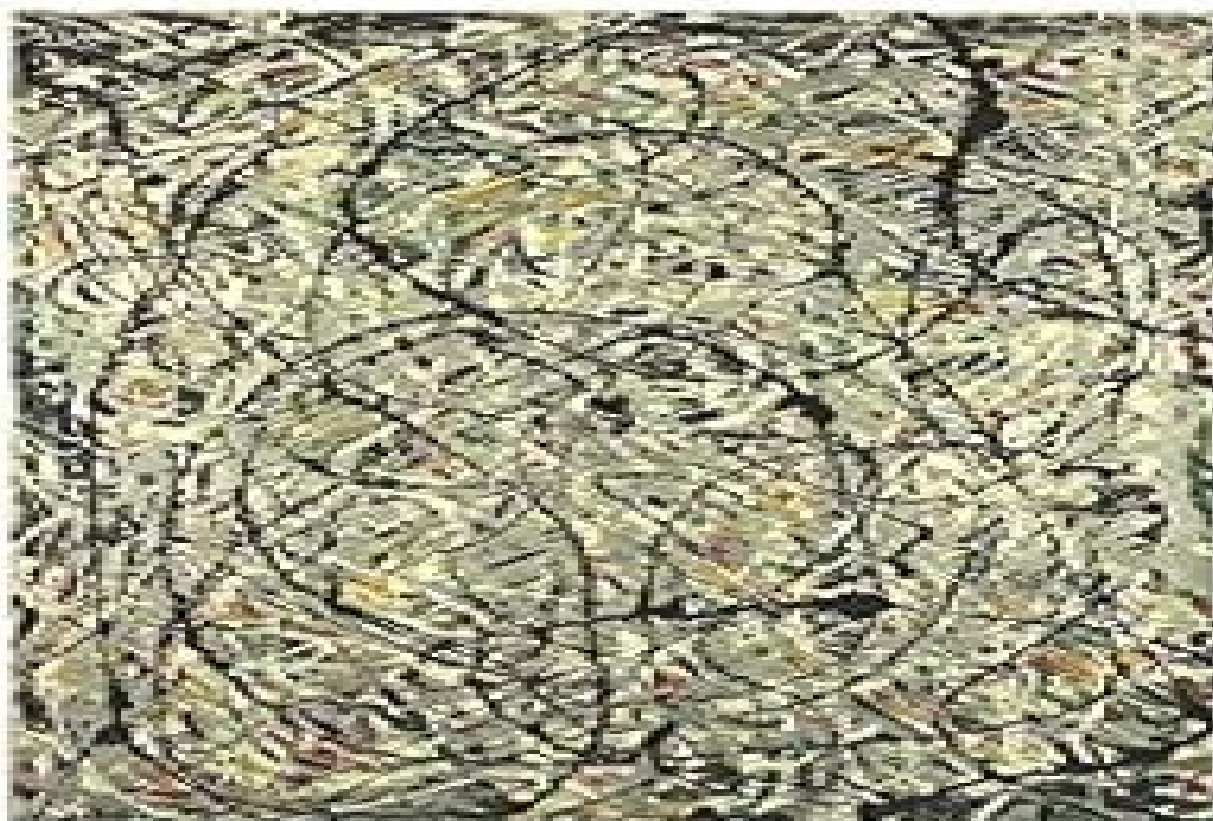


OXFORD CONSTITUTIONAL THEORY



Beyond Constitutionalism

The Pluralist Structure of Postnational Law

NICO KRISCH

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Beyond Constitutionalism Nico Krisch, 2010-10-28 Rejecting current arguments that international law should be constitutionalized this book advances an alternative pluralist vision of postnational legal orders It analyses the promise and problems of pluralism in theory and in current practice focusing on the European human rights regime the European Union and global governance in the UN

Constitutional Theory: Schmitt after Derrida Jacques de Ville, 2017-04-21 This book advances a new reading of the central works of Carl Schmitt and in so doing rethinks the primary concepts of constitutional theory In this book Jacques de Ville engages in a close analysis of a number of Schmitt's texts including Dictatorship 1921 The Concept of the Political 1927 Constitutional Theory 1928 Land and Sea 1942 Ex Captivitate Salus 1950 The Nomos of the Earth 1950 and The Theory of the Partisan 1963 This engagement takes place from the perspective of constitutional theory and focuses specifically on concepts or themes such as sovereignty the state the political constituent power democracy representation the constitution and human rights The book seeks to rethink the structure of these concepts in line with Derrida's analysis of Schmitt's texts on the concept of the political in Politics of Friendship 1993 This happens by way of an analysis of Derrida's engagement with Freud and other psychoanalysts Although the main focus in the book is on Schmitt's texts it further examines two texts of Derrida Kh ra 1993 and Fors The English Words of Nicholas Abraham and Maria Torok 1976 by reading these alongside Schmitt's own reflections on the positive concept of the constitution

Carl Schmitt's State and Constitutional Theory Benjamin A. Schupmann, 2017-11-17 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 *Handbook on Global Constitutionalism* Anthony F. Lang, Antje Wiener, 2023-11-03 This thoroughly revised Handbook presents an up to date political and philosophical history of global constitutionalism By exploring the constitutional like qualities of international affairs it provides key insight into the evolving world order Constitutional and Political Theory Ernst-Wolfgang Böckenförde, 2017 In this comprehensive edition of Ernst Wolfgang Böckenförde's definitive work in constitutionalism law and politics readers have access to the legal discourse of one of Germany's leading contemporary theorists and former judge of the federal constitutional court available in the English language for the first time **Reconceptualizing Sovereignty in the Post-National State: Statehood Attributes in the International Order** Flavio G. I. Inocencio, 2014-08-18 This book offers a multidisciplinary approach to the study of the concept of sovereignty This book outlines the origins context and evolution of the concept of sovereignty as an essential attribute of the modern territorial State since the Peace of Westphalia in 1648 The book identifies two competing traditions of the concept of sovereignty the tradition inaugurated by Jean Bodin in 1576 in his work *The Six Books of the Commonwealth* and another that started with Johannes Althusius in 1603 considered the father of federal theory in his less known work *Politica* In order to understand the concept of sovereignty it is necessary to understand the constitutional rules of each international system and the fact that the States are the primary polities in the international arena The rise of International Organizations and the increasing institutionalization of the international system challenges this state centric world considering their exercise of sovereign powers Following authors such as Daniel Elazar the book discusses the importance of federalism as political theory which offers a different understanding of the concept of sovereignty The book discusses the European Union as a paradigmatic case of a postmodern confederation which challenges the notion of sovereignty as an absolute and exclusive statehood attribute Furthermore the reconceptualization of

sovereignty in International Law should consider the rise of regional and functional legal orders the different understandings of sovereignty offered by the federalist tradition and the processes of deterritorialization and disaggregation of authority The book concludes with the idea that concept of sovereignty in International Law should be seen as a flexible concept which is not an exclusive attribute of the modern territorial state This book is required reading for all interested in the history and the evolution of the concept of sovereignty

Constituent Power and the Law Joel I. Colón-Ríos, 2020 Constituent power is the power to create new constitutions Since it is frequently exercised during or after 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 and the place of constituent power in constitutional history focusing on the legal and institutional implications that theorists politicians and judges have derived from it Since the 18th and 19th centuries commentators and citizens have relied on the concept of constituent power to defend the idea that electors have the right to instruct representatives and that the creation of new constitutions must take place through extra legislative entities such as 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 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 reverted to it to defend the legality of transforming 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 and these attempts have sometimes been sanctioned by courts Building on these findings *Constituent Power and the Law* argues that the exercise of constituent power unlike sovereignty should be understood as ultimately based on a popular mandate to produce a particular type of legal content In practice this makes it possible for a constitution making body to be understood as legally subject to the conditions arising from a constituent referendum

Legitimacy Wojciech Sadurski, Michael Sevel, Kevin Walton, 2019-03-28 Traditionally legitimacy has been associated exclusively with states But are states actually legitimate And in light of the legalization of international norms why should discussions of legitimacy focus only on the nation state The essays in this collection examine the nature of legitimacy the legitimacy of the state and the legitimacy of supranational institutions The collection begins by asking What sort of problem is legitimacy Part I considers competing theories in particular the work of John Rawls Part II looks at the legitimacy of state apparatus its institutions officials and the rule of law and the future of state sovereignty Part III expands the scope of legitimacy beyond the state to supranational institutions and international law Written by theorists of considerable standing the essays in this volume will be of interest to students and scholars of law politics and philosophy looking for ways of approaching the problem of how extra territorial affairs affect a state s written and unwritten agreements with its citizens in

a world where laws and norms with legal effect are increasingly made beyond the state **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

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Table of Contents Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory

1. Understanding the eBook Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - The Rise of Digital Reading Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Advantages of eBooks Over Traditional Books
2. Identifying Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - User-Friendly Interface
4. Exploring eBook Recommendations from Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Personalized Recommendations
 - Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory User Reviews

and Ratings

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- Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory Compatibility with Devices
- Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory Enhanced eBook Features

7. Enhancing Your Reading Experience

- Adjustable Fonts and Text Sizes of Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
- Highlighting and Note-Taking Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
- Interactive Elements Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory

8. Staying Engaged with Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory

- Joining Online Reading Communities
- Participating in Virtual Book Clubs
- Following Authors and Publishers Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford

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9. Balancing eBooks and Physical Books Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Setting Reading Goals Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Fact-Checking eBook Content of Beyond Constitutionalism The Pluralist Structure Of Postnational Law Oxford Constitutional Theory
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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