



# Rethinking Borders Beyond the State<sup>1</sup>

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This paper explores three ways of imagining borders in Europe. The first is the most common. It sees borders in relation to an emergent European region-state or polity. The second looks beyond conventional political figures and uses the gated community to think about the complex political affects and social identities that invest the border. The third also breaks with standard political images, but this time by drawing upon the realm of information technology. Here I thematize the firewall — a non-geographical, non-territorial figure, and non-linear form of border. My second and third images are closer to Foucault's idea of a diagram. The point of the exercise is not to establish which is the most accurate. If borders are multiplicities then we need a plurality of concepts to think their different dimensions and changing functions.

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If the fortified town is an immobile machine, the military engineer's specific task is to fight against its inertia. 'The goal of fortification is not to stop armies, to contain them, *but to dominate, even facilitate their movements*'.<sup>2</sup>

## On the Borders of Europe

For a long while the study of state borders and border regions was quite marginal to the discipline of political science. Largely confined to specialist sub-disciplines like political geography (Prescott, 1965) and the realm of diplomatic know-how (Curzon, 1908), when questions of borders did arise within political science it was typically in relation to nationalist projects of territorial acquisition and interstate conflict.

This is clearly no longer the case. If political science has begun to confront what Agnew has called the 'territorial trap' (Agnew, 1994) — the set of geographical assumptions that have combined to obscure the historicity and mutability of political space and territory within international relations and comparative politics — then one consequence has been to move the border from the periphery of the study of politics and international relations and to accord it a more prominent location within research agendas (Ruggie, 1993;

# Rethinking Constitutionalism Beyond The State

**Carmen E. Pavel**



## **Rethinking Constitutionalism Beyond The State:**

European Constitutionalism Beyond the State J. H. H. Weiler, Marlene Wind, 2003-09-04 Some of the most innovative scholars in the field of European constitutionalism come together in this book to highlight different facets of the new constitutional discussion Provoking deep analysis of the different ideas of constitution and constitutionalism it delineates new ways of thinking about the future of Europe In particular it aims to challenge the idea of the European Union as an evolving federal polity This book will appeal to anyone interested in the timely subject of constitutionalism including student and practitioners of law politics and philosophy

**European Constitutional Imaginaries** Jan Komárek, 2023 What does it mean to say that the European Union has a constitution theoretically but more importantly practically What sort of possibilities such assertion opens for various actors politicians legal professionals or the general public And what is the role of constitutional thinkers in establishing constitutional discourse as the dominant way in which European law is or was conceived after 1989 This volume seeks to answer such questions with a special emphasis on the last one European Constitutional Imaginaries are the central focus of the book These are sets of ideas and beliefs that help to motivate and at the same time justify the practice of government and collective self rule established by the constitution written or unwritten Such imaginaries are as important as institutions and office holders They provide political action with an overarching sense and purpose recognized by those governed as legitimate The book brings together reflections by lawyers philosophers sociologists or political economists who shed light on various constitutional imaginaries of Europe They provide critical intellectual histories of particular legal approaches to European integration and look behind the language of law to reach deeper insights into the contested history and political economy of Europe They ask us to think about European law differently

**Law Beyond the State** Carmen E. Pavel, 2021-03-30 Despite growing skepticism about the value of international law and its compatibility with state sovereignty states should improve and strengthen international law because it makes a critical contribution to an international order characterized by peace and justice In recent years international agreements and institutions have become particularly contentious China is refusing to abide by the decision of an international arbitration decision implementing UNCLOS rules in the South China Sea and Donald Trump has withdrawn the US from international agreements including the Paris Agreement on Climate Change of 2015 Such retreats expose widespread ambivalence towards cooperation through international law and reverse the gains made by long standing processes of legalization In Law Beyond the State Carmen Pavel responds to the ambivalent attitude states have with respect to international law by offering moral and legal reasons for them to improve strengthen and further institutionalize its capacity She argues that the same reasons which support the development of law at the domestic level namely the cultivation of peace the protection of individual rights the facilitation of complex forms of cooperation and the resolution of collective action problems also support the development of law at the international level The argument thus engages in institutional

moral reasoning Pavel shows why it should matter to individuals that their states are part of a rule governed international order When states are bound by common rules of behavior their citizens reap the benefits International law encourages states to protect individual rights and provides a forum where they can communicate negotiate and compromise on their differences in order to protect themselves from outside interference and pursue their domestic policies more effectively including those directed at enhancing their citizens welfare Thus Pavel shows that international law makes a critical irreplaceable and defining contribution to an international order characterized by peace and justice At a time when challenges of cooperation beyond state boundaries include climate change health epidemics and large scale human rights violations **Law Beyond the State** issues a powerful reminder of the tools we have to address them

**Law Beyond the State** Rainer Hofmann, Stefan Kadelbach, 2016-11-10 Dieser Band versammelt Aufsätze renommierter Völker und Europarechtler der Vergangenheit und Zukunft des internationalen Rechts die aus Anlass des 100 jährigen Gründungsjubiläums der Frankfurter Universität entstanden sind Es geht um die Geschichte von Völker und Europarecht die zentrale Bedeutung der spiritual dimension der europäischen Rechtsordnung und um das Internet als Chance alle von globaler Rechtsetzung betroffenen Personen am Entscheidungsprozess zu beteiligen Mit Beiträgen von Michael Bothe Stefan Kadelbach Martti Koskeniemi Joseph H H Weiler und Ingolf Pernice

*Constituent Power Beyond the State* Geneviève Nootens, 2021-12-30 The concept of constituent power plays a major part in modern political and legal theory in how we think about the political This book tackles the twofold issue of public authority and public autonomy in the modern conception of the political by analysing the notion of constituent power its function in the modern political apparatus and debates about its meaning and function in our own context Focusing on contemporary debates on constitutionalism beyond the state Geneviève Nootens assesses the prospects for recasting the notion of constituent power in a polycentric setting that challenges state sovereignty as embodying the autonomy of the political She argues that constituent power belongs with the conceptual apparatus of a theory of government peculiar to a statist way of knowing and being into the world and that it is too much dependent upon the statist framework for it to have critical purchase on the new mappings of public authority Nootens stresses the critical need to frame public authority appropriately if we are to conceptualize a conception of collective political agency that can sustain public autonomy in the current era *Constituent Power Beyond the State* will be of interest to students and scholars of political theory democratic theory law and constitutionalism

**Reconsidering EU Citizenship** Sandra Seubert, Oliver Eberl, Frans van Waarden, 2018-04-27 25 years after the introduction of EU citizenship this book reconsiders its contradictions and constraints as well as promises and prospects Analyzing a disputed concept and evaluating its implementation and social effects *Reconsidering EU Citizenship* contributes to the lively debate on European and transnational citizenship It offers new insights for the ongoing theoretical debates on the future of EU citizenship a future that will be determined by the transformative path the EU is going to take vis vis the centrifugal forces of the current

economic and political crisis      *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      *Postnational Constitutionalism* Paul Linden-Retek, 2023-03-29 At a time when the integration of the European Union's peoples through the rule of law is faltering this book develops a critical theory of postnational constitutionalism Today widely held conceptions of EU law continue to mislead citizens about the nature of political identity sovereignty and agency They lose sight of a critical idea on which post nationalism depends that constitutional self authorship is narrative and the polity is a subject whose identity history and legacy are still in formation Absent this vision EU law reproduces crises of legitimacy the depoliticization of public life emergency rule by executive decree a collapse of solidarity and the rise of nativist movements The book diagnoses this impasse as the product of a problem familiar to modernity reification a process in which social and historical relationships are misattributed as timeless relations among things Reification's shrinking of social dilemmas moral principles and political action to narrow perceptions of the present explains law's role in perpetuating crisis But this diagnosis also points to a remedy It suggests that to sustain the emancipatory potential of EU constitutionalism we must recover law's relationship to time Postnational Constitutionalism Europe and the Time of Law proposes a temporally attuned constitutional theory with principles of anti reification narrative interpretation and non sovereign agency at its centre These principles reimagine essential domains of constitutional order social integration constitutional adjudication and constituent power Spanning

various bodies of EU jurisprudence the book devotes particular attention to migration and asylum struggles where questions of solidarity law and belonging are most generative and acute *Europe's Functional Constitution* Turkuler Isiksel,2016 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 *Rethinking Europe's Constitution* A. A. M. Kinneging,2007 *Constitutionalism beyond Liberalism* Michael W. Dowdle,Michael A. Wilkinson,2017-01-26 Constitutionalism beyond Liberalism bridges the gap between comparative constitutional law and constitutional theory The volume uses the constitutional experience of countries in the global South China India South Africa Pakistan Indonesia and Malaysia to transcend the liberal conceptions of constitutionalism that currently dominate contemporary comparative constitutional discourse The alternative conceptions examined include political constitutionalism societal constitutionalism state based Rousseau ian conceptions of constitutionalism and geopolitical conceptions of constitutionalism Through these examinations the volume seeks to expand our appreciation of the human possibilities of constitutionalism exploring constitutionalism not merely as a restriction on the powers of government but also as a creating collective political and social possibilities in diverse geographical and historical settings *Legal Authority beyond the State* Patrick Capps,Henrik Palmer Olsen,2018-03-01 In recent decades new international courts and other legal bodies have proliferated as international law has broadened beyond the fields of treaty law and diplomatic relations This development has not only triggered debate about how authority may be held by institutions beyond the state but has also thrown into question familiar models of authority found in legal and political philosophy The essays in this book take a philosophical approach to these developments debates and questions In doing so they seek to clarify the relevant issues underpinning as well as develop possible solutions to the problem of how legal authority may be constructed beyond the state **The Oxford Handbook of Global Legal Pluralism** Paul Schiff Berman,2020 Abstract Global legal pluralism has become one of the leading analytical frameworks for understanding and conceptualizing law in the twenty first century **The Oxford Handbook of Comparative Constitutional Law** Michel Rosenfeld,András Sajó,2012-05-17 The field of comparative

constitutional law has grown immensely over the past couple of decades. Once a minor and obscure adjunct to the field of domestic constitutional law, comparative constitutional law has now moved front and centre. Driven by the global spread of democratic government and the expansion of international human rights law, the prominence and visibility of the field among judges, politicians and scholars has grown exponentially. Even in the United States, where domestic constitutional exclusivism has traditionally held a firm grip, use of comparative constitutional materials has become the subject of a lively and much publicized controversy among various justices of the U.S. Supreme Court. The trend towards harmonization and international borrowing has been controversial. Whereas it seems fair to assume that there ought to be great convergence among industrialized democracies over the uses and functions of commercial contracts, that seems far from the case in constitutional law. Can a parliamentary democracy be compared to a presidential one? A federal republic to a unitary one? Moreover, what about differences in ideology or national identity? Can constitutional rights deployed in a libertarian context be profitably compared to those at work in a social welfare context? Is it perilous to compare minority rights in a multi-ethnic state to those in its ethnically homogeneous counterparts? These controversies form the background to the field of comparative constitutional law, challenging not only legal scholars but also those in other fields such as philosophy and political theory. Providing the first single volume comprehensive reference resource, the Oxford Handbook of Comparative Constitutional Law will be an essential road map to the field for all those working within it or encountering it for the first time. Leading experts in the field examine the history and methodology of the discipline, the central concepts of constitutional law, constitutional processes and institutions, from legislative reform to judicial interpretation, rights and emerging trends.

**Entangled Legalities Beyond the State** Nico Krisch, 2021-11-11. Law is usually understood as an orderly coherent system, but this volume shows that it is often better understood as an entangled web. Bringing together eminent contributors from law, political science, sociology, anthropology, history and political theory, it also suggests that entanglement has been characteristic of law for much of its history. The book shifts the focus to the ways in which actors create connections and distance between different legalities in domestic, transnational and international law. It examines a wide range of issue areas, from the relationship of state and indigenous orders to the regulation of global financial markets, from corporate social responsibility to struggles over human rights. The book uses these empirical insights to inform new theoretical approaches to law and, by placing the entanglements between norms from different origins at the centre of the study of law, it opens up new avenues for future legal research. This title is also available as Open Access.

**Constitutionalism of Australian First Nations** Maria Salvatrice Randazzo, 2022-07-29. The book considers Australian First Nations constitutionalism by drawing on the chthonic constitutional traditions of three distinct Australian First Nations legal orders: the Warlpiri, Yolngu and Pintupi. Legal orders in the endeavour of identifying, via a comparative analysis, a core of similarities to be drawn upon and articulate an emergent legal theory common to the three legal orders. The comparative analysis is undertaken at the most foundational

levels of their legal traditions via the prism of a legal paradigm elaborated with reference to an Australian Indigenous cosmological ontological and epistemological standpoint The proposed legal theory comprises a broad overview general concepts normative principles and general working principles In so doing the book expounds how Australian First Nations constitutionalism unfolds into holistic orders of spiritual political and legal authority that are explainable in terms of legal theory At the most foundational level such elaboration may help delineate normative and legal constitutional patterns throughout Indigenous Australia

**Demoicratic Authority** Josef Weinzierl, 2024-01-11 What is the nature of EU s authority This fascinating book explores this question and is much needed given the increased scrutiny of the EU s actions in the face of growing nationalism and various other internal and external challenges By setting out an original account of the preferred moral standard to evaluate such authority ie demoicratic authority it illustrates how that standard affects the practical reasoning of those subject to the EU s authority Theoretically significant the book also has important practical value as legitimacy challenges in the EU increase Constitutional lawyers and theorists as well as political scientists will welcome this innovative new work

**Issues in Law Research: 2013 Edition** , 2013-05-01 Issues in Law Research 2013 Edition is a ScholarlyEditions book that delivers timely authoritative and comprehensive information about Social Science The editors have built Issues in Law Research 2013 Edition on the vast information databases of ScholarlyNews You can expect the information about Social Science in this book to be deeper than what you can access anywhere else as well as consistently reliable authoritative informed and relevant The content of Issues in Law Research 2013 Edition has been produced by the world s leading scientists engineers analysts research institutions and companies All of the content is from peer reviewed sources and all of it is written assembled and edited by the editors at ScholarlyEditions and available exclusively from us You now have a source you can cite with authority confidence and credibility More information is available at [http www ScholarlyEditions com](http://www.ScholarlyEditions.com)

**Transnational Narratives and Regulation of GMO Risks** Giulia Claudia Leonelli, 2021-11-04 This book provides an innovative insight into the regulatory conundrum of genetically modified organisms GMOs deploying transnational legal analysis as a methodological framework to explore the most controversial area of risk governance The book deconstructs hegemonic and counter hegemonic transnational narratives on the governance of GMO risks cutting across US law EU law the WTO Agreement on Sanitary and Phytosanitary Measures and hybrid standard setting regimes Should uncertain risks be run unless adverse effects have been conclusively established and should regulators only act where this is cost benefit effective Should risk managers make a convincing case that a product or process is safe enough for the relevant uncertain risks to be socially acceptable How can intractable transnational regulatory conflicts be solved The book complements a close analysis of regulatory frameworks and case law with a more encompassing perspective on the political socio economic and distributional implications of different approaches to the regulation of health and environmental risks at times of globalisation The GMO deadlock thus becomes a lens through which to investigate the underlying value systems



goals and impacts of transnational discourses on risk governance Against this backdrop the normative strand of analysis points to the limited ability of science and procedural deliberation to generate authentic agreement and to identify normatively legitimate solutions in the absence of pre existing shared perspectives      Research Handbook on the Politics of Constitutional Law Mark Tushnet,Dimitry Kochenov,2023-11-03 This Research Handbook deals with the politics of constitutional law around the world using both comparative and political analysis delivering global treatment of the politics of constitutional law across issues regions and legal systems Offering an innovative critical approach to an array of key concepts and topics this book will be a key resource for legal scholars and political science scholars Students with interests in law and politics constitutions legal theory and public policy will also find this a beneficial companion

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