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LAW, STATE, AND PRACTICAL REASON

Questioning Sovereignty Law State And Nation In The European Commonwealth

Neil Walker



Questioning Sovereignty Law State And Nation In The European Commonwealth:

Questioning Sovereignty Neil MacCormick, 1999 This is a controversial work of applied legal theory addressing urgent contemporary questions about law and the state about the character of the UK as a state and about the juridical character of the European Union

Questioning Sovereignty Neil MacCormick, 1999 **Questioning Sovereignty** Neil MacCormick, 1999 *Law and Democracy in Neil MacCormick's Legal and Political Theory* Agustín José Menéndez, John Erik Fossum, 2011-03-29 This volume offers a collection of articles by leading legal and political theorists Originally intended as a celebration of MacCormick's work on the occasion of the completion of the four volume series on Law State and Practical Reason it has turned into a homage and salute after MacCormick's passing Cast in MacCormick's reflexive spirit the book presents a critical reconstruction of the Scottish philosopher's work with the aim of revealing the connections between law and democracy in his writings and furthering his insights in each specific field Neil MacCormick made outstanding contributions to the understanding of law and democracy under conditions of pluralism His institutional theory of law has elucidated the close connection between the normative character of law as a means of social integration and legal social practices This has produced a synthesis of the key insights of the legal and political theories of Kelsen Hart Alexy and Dworkin and has broken new ground by undermining the monolithic and nation state centered character of standard legal theories

The Impact of European Rights on National Legal Cultures Miriam Aziz, 2004-07-01 This book contributes to the debate about the impact of European Community Law on the national constitutional orders and cultures of the respective Member States The author examines the doctrine of sovereignty as a mechanism within which this impact may be best assessed and in particular how it underwrites the tension between European Union rights and the rights provided by the respective legal orders of the Member States In particular the book focuses on political social and civil rights drawing from T H Marshall's typology In endorsing an appropriate analytical framework the book challenges both existing law and secondary literature in order to argue that the terminology the concepts and the tools which are used to assess the impact of the EC law on the national constitutional orders are to be selected with great care This is particularly apposite given the complexity of constitutional diversity in terms of national constitutions and their reception of EC law It is also important because of the variety of approaches involved in the constitutional adjustment of the *acquis* of the Union within the context of the increasing drive to constitutionalisation of the Union on the one hand and enlargement on the other

Sovereignty and the Law Richard Rawlings, Peter Leyland, Alison Young, 2013-11 Grounded firmly in the disciplines of law this collection explores the twin elements of continuity and change in conceptions of sovereignty in recent times The collection as a whole illuminates the enduring strength of sovereignty as a foundational concept and the continuing widespread appeal of sovereignty as an idea

Popular Sovereignty in the West Geneviève Nootens, 2013-04-12 This book is an inquiry into the history of the idea of popular sovereignty as it has been shaped by the struggles between rulers and ruled It builds on the notion that a thorough

analysis of how the idea of popular sovereignty emerges from and interacts with a political history of contention within changing polities can help us to draw similarities and differences with our own age Providing a historical perspective to the present day Nootens pays strong attention to the role of democratization processes and to the relationship between meanings conveyed by the idea of popular sovereignty political contention and changing representations of the governing relationship The latter has been undergoing significant transformations in the last decades and these transformations impact significantly upon people's rights interests wealth and capacity to decide for themselves In order to understand popular sovereignty in an era of globalization this book argues that focus should be put on current struggles between rulers and ruled as well as on current transformations of the relationship between public and private spheres Understanding the claims involved in current processes of contention over decision making processes is key to understanding popular sovereignty in an era of globalization Making an important contribution to debates on sovereignty Popular Sovereignty in the West will be of interest to students and scholars of modern political theory sovereignty and democratization studies

The Question of Competence in the European Union Loïc Azoulay, 2014-02-20 The classic debate surrounding the prolific role of the European Union in defining spheres of competence and power relationships has long divided scholarly opinion However in recent years the long standing acquiescence to the broad powers of the Union has given way to the emerging perception of a competence problem in Europe For a long period it was taken for granted that the European Community could act whenever its action was justified on the basis of the widely interpreted objectives of the Treaties However this context has since changed There is a widespread perception of a competence problem in Europe and the overabundance of provisions limiting the Union's competences is one of the most obvious marks left by the Lisbon Treaty This book discusses the extent to which the parameters of power throughout the Union and its Member States have been recast by the recent implementation of the Lisbon Treaty and doctrines developed by the European Court of Justice Comprised of contributions from a vast array of leading practitioners and academics in the field of EU Law this volume assesses the debate surrounding the political identity of the European Union and further illustrates the relevance of the Federal theory of sharing competences for the development of EU Law Finally the question of new potential limits to Union's competence is addressed If anything this broad reflection on the notion of competence in the EU law context is a way of opening up the question of the nature and contours of the political identity of the European Union

Authoritarian Liberalism and the Transformation of Modern Europe Michael A. Wilkinson, 2021-06-10 This title recounts the transformation of Europe from the post war era until the Euro crisis using the tools of constitutional analysis and critical theory The central claim is twofold Europe has been gradually reconstituted in a manner that combines political authoritarianism with economic liberalism and that this order is now in a critical condition Authoritarian liberalism is constructed supranationally through a taming of inter state relations in the project of European integration at the domestic level through the depoliticization of state society relations and socially

through the emergence of a new constitutional imaginary based on liberal individualism In the language of constitutional theory this transformation can be captured by the substitution of supranationalism for internationalism technocracy for democracy and economic for political freedom Sovereignty is restrained democracy curtailed and class struggle repressed This constitutional trajectory takes time to unfold and develop and it presents continuities and discontinuities On the one hand authoritarian liberalism is deepened by the neoliberalism of the Maastricht era and the creation of Economic and Monetary Union On the other hand counter movements then also begin to emerge geopolitically in the return of the German question domestically in the challenges to the EU presented by constitutional courts and informally in the rise of anti systemic political parties and movements Sovereignty democracy and political freedom resurface but are then more actively suppressed through the harsher authoritarian liberalism of the Euro crisis phase This leads now to an impasse Anti systemic politics return but remain uneasily within the EU suggesting authoritarian liberalism has reached its limits if just about managing to maintain constitutional order As yet there has been no definitive rupture with the possible exception of Brexit

Relocating Sovereignty Neil Walker, 2018-02-06 This volume brings together a collection of classic and contemporary texts which engage with the core problem of sovereignty from the perspective of various legal and law related sub disciplines legal history and theory constitutional law international law and relations and EU law Many of the highlights from the intense debates about the continuing relevance or otherwise of the internal sovereignty of national legal orders and the external sovereignty of states in a rapidly globalizing world are reproduced here c Northern Europe and the Future of the EU Helge Hoibraaten, Jochen Hille, 2012-01-01 Hauptbeschreibung The current relationship between the Nordic countries and the European Union appears complex and confusing Although Denmark in 1973 and Sweden and Finland in 1995 joined the European Union the entry of Norway into the Union was rejected in the plebiscites of 1972 and 1994 Furthermore Nordic EU members enjoy permanent exceptions to their integration into the EU Denmark and Sweden like the U K have declined to become part of the monetary union Finland is essentially the only Nordic country that entered the EU without substantial exceptions A membership bid from Iceland was unthinkable after the financial crisis which is not the topic of this book Iceland applied for membership in 2010 and has been in discussions with the European Commission ever since In other words the European Union divides Nordic societies which has resulted in a series of national exceptions to the integration process Taken together these exceptions have created an integration process whose overall geometry is contradictory and paradoxical Considering this melange this book will discuss the actual state of Nordic integration into the EU from many different perspectives and illuminate future developments in the field of integration Where is the North relative to Europe today How can the geometry of Northern Europe's integration developed over a long time be characterised What are the challenges that threaten further development of Nordic European relationships **Constitutional Imaginaries** Jiří Přibáň, 2021-09-30 This book offers a social theoretical analysis of imaginaries as constituent social forces of positive law and

politics Constitutional imaginaries invite constitutional and political theorists philosophers and sociologists to rethink the concept of constitution as the normative legal limitation and control of political power They show that political constitutions include societal forces impossible to contain by legal norms and political institutions The constitution of society as one polity defined by the unity of topos ethnos nomos that is the unity of territory people and their laws informed the rise of modern nations and nationalisms as much as constitutional democratic statehood and its liberal and republican regimes However the imaginary of polity as one nation living on a given territory under the constitutional rule of law is challenged by the process of European integration and its imaginaries informed by transnational legal and societal pluralism administrative governance economic performativity and democratically mobilised polity This book discusses the sociology of imagined communities and the philosophy of modern social imaginaries in the context of transnational European constitutionalism and its recent theories most notably the theory of societal constitutions It offers a new approach to the legal constitutions as societal power formations evolving at national European and global levels The book will be of interest to scholars and students interested in constitutional and European law theory and philosophy as much as interdisciplinary and socio legal studies of transnational law and society

Unstable Constitutionalism Mark Tushnet, Madhav Khosla, 2015-09-17 Although the field of constitutional law has become increasingly comparative in recent years its geographic focus has remained limited South Asia despite being the site of the world's largest democracy and a vibrant if turbulent constitutionalism is one of the important neglected regions within the field This book remedies this lack of attention by providing a detailed examination of constitutional law and practice in five South Asian countries India Pakistan Sri Lanka Nepal and Bangladesh Identifying a common theme of volatile change it develops the concept of unstable constitutionalism studying the sources of instability alongside reactions and responses to it By highlighting unique theoretical and practical questions in an underrepresented region Unstable Constitutionalism constitutes an important step toward truly global constitutional scholarship

Constitutional Pluralism in the European Union and Beyond Matej Avbelj, Jan Komárek, 2012-02-29 Constitutional pluralism has become immensely popular among scholars who study European integration and issues of global governance Some of them believe that constitutionalism traditionally thought to be bound to a nation state can emerge beyond state borders most importantly in the process of European integration but also beyond that for example in international regulatory regimes such as the WTO or international systems of fundamental rights protection such as the European Convention At the same time the idea of constitutional pluralism has not gone unchallenged Some have questioned its compatibility with the very nature of law and the values which law brings to constitutionalism The critiques have come from both sides from those who believe in the traditional European constitutionalism based on a hierarchically superior authority of the European Union as well as from scholars focusing on constitutions of particular states The book collects contributions taking opposing perspectives on constitutional pluralism some defending and promoting the concept of constitutional pluralism some

criticising and opposing it While some authors can be called the founding fathers of constitutional pluralism others are young academics who have recently entered the field Together they offer fresh perspectives on both theoretical and practical aspects of constitutional pluralism enriching our existing understanding of the concept in current scholarship

The Human Rights Challenge to Immunity in International Law Selman Özdan, 2022-02-12 This book focuses on the tension between the protection of human rights recognised as *jus cogens* peremptory norms on the one hand and the bestowal of immunity on the state and its representatives on the other to ascertain how these immunities can be eroded if not fully abolished to maintain full protection of *jus cogens* human rights under international law The book argues that immunity should not equate to impunity when violations of *jus cogens* human rights are committed by States Heads of State or diplomatic agents To make the case the organic structures of the concepts of sovereignty and fundamental human rights are examined Then the human rights based challenge to immunity is presented with respect to State Head of State and diplomatic immunity and the transition from a state centric system to a human centric system is explored *Jus cogens* norms are at the centre of the impunity versus immunity debate

Central Bank Independence Jan Kleineman, 2021-10-18 In December 1999 prior to the forming of a Stockholm Centre for Commercial Law an international symposium entitled Central Bank Independence was held at the Department of Law at Stockholm University in co operation with the Swedish Central Bank The Riksbank and Queen Mary and Westfield College London University The participants were principally political economic and legal specialists in the field all with considerable international experience This led to the topic being examined in detail from many different perspectives This publication includes contributions by the participants and contains many important facts for those readers who wish to study and understand the different consequences of the yielding of control over financial policymaking by the traditional political organisations to a body of experts For readers in some countries who realise that the subject will revolutionise traditional Constitutional and Administrative Law the topic and therefore this publication cannot be ignored

The Law & Politics of Brexit: Volume IV Federico Fabbrini, 2022-05-02 This book examines the law and politics of the Protocol on Ireland Northern Ireland attached to the Withdrawal Agreement which regulates the terms of Brexit The Protocol on Ireland Northern Ireland deals with the most complex issue which emerged during the withdrawal negotiations between the United Kingdom UK and the European Union EU namely how to avoid a hard border in the island of Ireland and preserve the peace process started in Northern Ireland with the 1998 Belfast Good Friday Agreement To this end the Protocol which was agreed in its final form in October 2019 establishes a bespoke solution notably by keeping Northern Ireland aligned to EU customs and internal market rules Nevertheless the operation of the Protocol which has formally entered into force in January 2021 has stirred political controversies in the Unionist community in Northern Ireland and caused diplomatic confrontation between the EU and the UK The purpose of this book is therefore to provide the first interdisciplinary overview of the Protocol shedding light on its context content and challenges This book

which brings together contributions by leading legal scholars political scientists sociologists and trade experts from Northern Ireland Ireland Great Britain Europe and the United States provides a comprehensive and contextual assessment of the Protocol It examines its setting including constitutional trends in the UK and Ireland focuses on its substantive clauses dealing with human rights and cross border cooperation as well as on those related to trade and analyses its governance mechanisms including democratic consent and safeguards

The Pursuit of Europe Anthony Pagden, 2022 The story of the evolution of the European project from the end of the Napoleonic Wars through to Brexit this is also the story of how and why it became possible to imagine that the diverse peoples of Europe might be united in a single political community

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

The Constitutionalization of European Budgetary Constraints Maurice Adams, Federico Fabbrini, Pierre Larouche, 2014-12-01 The recently enacted Treaty on the Stability Coordination and Governance of the Economic and Monetary Union generally referred to as the Fiscal Compact has introduced a golden rule which is a detailed obligation that government budgets be balanced Moreover it required the 25 members of the EU which signed the Treaty in March 2012 to incorporate this golden rule within their national Constitutions This requirement represents a major and unprecedented development raising formidable challenges to the nature and legitimacy of national Constitutions as well as to the future of the European integration project This book analyses the new constitutional architecture of the European Economic and Monetary Union EMU examines in a comparative perspective the constitutionalization of budgetary rules in the legal systems of the Member States and discusses the implications of these constitutional changes for the future of democracy and integration in the EU By combining insights from law and economics comparative institutional analysis and legal theory the book offers a comprehensive survey of the constitutional incorporation of new fiscal and budgetary rules across Europe and a systematic normative discussion of the legitimacy issues at play It thus contributes to a better understanding of the Euro crisis of the future of the EU and the reforms needed towards a deeper and

genuine EMU

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