



Rethinking Borders Beyond the State¹

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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*'.²

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

Jan Komárek



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

Law Beyond the State Rainer Hofmann, Stefan Kadelbach, 2016-11-10 Dieser Band versammelt Aufsätze renommierter Völker und Europarechtler über 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 spirituellen 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

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

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

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 Develops a critical theory of postnational constitutionalism at a time when the project of integrating Europe's peoples through the rule of law is faltering Spanning many bodies of EU jurisprudence Linden Retek devotes specific attention to migration and asylum struggles where questions of solidarity and belonging are most 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

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

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

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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

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

The Triangular Constitution Tom Flynn, 2019-05-16 This book offers a new account of modern European constitutionalism It uses the Irish constitutional order to demonstrate that right across the European Union the national constitution can no longer be understood on its own in isolation from the EU legal order or from the European Convention on Human Rights The constitution is instead triangular with these three legal orders forming the

points of a triangle and the relationship and interactions between them forming the triangle's sides. It takes as its starting point the theory of constitutional pluralism which suggests that overlapping constitutional orders are not necessarily arranged on top of each other but that they may be arranged heterarchically or flatly without a hierarchy of superior and subordinate constitutions. However, it departs from conventional accounts of this theory by emphasising that we must still pay close attention to jurisdictional specificity in order to understand the norms that regulate pluralist constitutions. It shows through application of the theory to case studies that any attempt to extract universal principles from the jurisdictionally contingent interactions between specific legal orders is fraught with difficulty. The book is an important contribution to constitutional theory in general and constitutional pluralism in particular and will be of great interest to scholars in the field.

Global Climate Constitutionalism “from below” Manuela Niehaus, 2023-12-26 Global climate constitutionalism is seen as a possible legal answer to the social and political unwillingness of states to effectively tackle climate change as a global problem. The constitutionalisation of international climate law is supposed to ensure greater participation of non-state actors such as NGOs or individuals and a rollback of state sovereignty where states do not care about meeting their climate commitments. This book addresses the question of whether non-state actors such as NGOs or individuals create international climate law through so-called climate change litigation. Against the background of Peter H. Biele's theory of the open society of constitutional interpreters, four selected cases (*Urgenda v Netherlands*, *Leghari v Pakistan*, *Juliana v United States of America*, *Future Generations v Colombia*) are used to examine how actors not formally recognized as subjects of international law re-interpret national and international law and thereby contribute to the constitutionalisation of the international climate law regime.

Constitutionalism beyond Liberalism Michael W. Dowdle, Michael A. Wilkinson, 2017-01-26 Explores the possibilities of constitutionalism from diverse theoretical and comparative perspectives, particularly those from outside liberal and Anglo-European paradigms.

Constitutional Imaginaries Jiří Příbáň, 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 **Redefining Comparative Constitutional Law**, 2024-11-20 Over the past two decades the field of comparative constitutional law has emerged as a major domain of scholarly inquiry It has also been a notable feature in judicial practice Many of the world's leading courts are now composed of at least some members who engage with comparative materials and thinking comparatively has developed into one of the most significant ways of engaging in constitutional analyses Redefining Comparative Constitutional Law Essays for Mark Tushnet reflects upon the field of comparative constitutional law Among the most prominent figures in the development of the field in its ongoing renaissance has been Mark Tushnet This book uses the occasion of Professor Tushnet's recent retirement from Harvard Law School to think critically about the field Each essay takes up one of Professor Tushnet's major recent themes which focuses on variations within liberal constitutionalism and the possibility of other forms of constitutionalism that find articulation under other political regimes In this book leading scholars contribute to the debate over the nature of the field including the role of empiricism and language discussions of democracy and entrenchment analyses of rights and courts consideration of constitutional design and explorations of the extent to which there are varieties of constitutionalism At a moment of renewed stress and political debate over the relationship between democracy and constitutionalism Redefining Comparative Constitutional Law Essays for Mark Tushnet offers timely insights into comparative analyses of constitutional rights Academics and students alike will benefit from the essays that range across both methodological questions and substantive analysis in the development of constitutions throughout the globe

Constitutional Evolution in Central and Eastern Europe Alexander H.E. Morawa, 2016-12-14 This book examines EU enlargement by studying how domestic constitutional evolution in the new member states contributes to European integration In contrast to the usual top down analytical pattern it reverses the paradigm by looking at constitutional developments and dynamics from the bottom up studying how domestic constitutional evolution contributes to European integration The authors analyze constitutional trends from the perspective of new Member States as policy makers and not strictly as policy takers The issue of conditionality is also explored in a discussion of the extent to which pre 2004 and 2007 conditionality has had lasting effects at the level of constitutionalization of different areas and norms and if so of what kind The exploration of Europeanization effects in recent Member States substantiates and demonstrates how enlargement has been an important driving force for the effective export of EU legal rules in this region The book utilizes a comparative approach to highlight the merits and obstacles created by the growing diversity in the constitutional rules and patterns of the new Member States It also contains a section that places the CEE constitutionalizing map in a broader comparative European and global context establishing links with similar transitional regimes in the continent and elsewhere *Beyond*

Constitutionalism Nico Krisch, 2012-09-06 Under pressure from globalisation the classical distinction between domestic and international law has become increasingly blurred spurring demand for new paradigms to construe the emerging postnational legal order The typical response of constitutional and international lawyers as well as political theorists has been to extend domestic concepts especially constitutionalism beyond the state Yet as this book argues proposals for postnational constitutionalism not only fail to provide a plausible account of the changing shape of postnational law but also fall short as a normative vision They either dilute constitutionalism's origins and appeal to fit the postnational space or they create tensions with the radical diversity of postnational society This book explores an alternative pluralist vision of postnational law Pluralism does not rely on an overarching legal framework but is characterised by the heterarchical interaction of various suborders of different levels an interaction that is governed by a multiplicity of conflict rules whose mutual relationship remains legally open A pluralist model can account for the fragmented structure of the European and global legal orders and it reflects the competing and often equally legitimate claims for control of postnational politics However it typically provokes concerns about stability power and the rule of law This book analyses the promise and problems of pluralism through a theoretical enquiry and empirical research on major global governance regimes including the European human rights regime the contestation around UN sanctions and human rights and the structure of global risk regulation The empirical research reveals how prevalent pluralist structures are in postnational law and what advantages they possess over constitutionalist models Despite the problems it also reveals the analysis suggests cautious optimism about the possibility of stable and fair cooperation in pluralist settings

Rethinking Constitutional Law Earl M. Maltz, 1994 Maltz reformulates the justification for originalist review and refines originalist theory itself he argues that a pure originalist approach mandates excessive judicial intervention under the Constitution and he shows that most nonoriginalist theorists have failed to provide a sufficient functional justification for nonoriginalist intervention

The Twilight of Constitutionalism? Petra Dobner, Martin Loughlin, 2012-01-26 The concepts and values that underpin traditional constitutionalism are increasingly being challenged by political realities that place substantial power beyond the state Among the few certainties of a global economy is the growing incongruity between the political the world of things that need to be ordered collectively in order to sustain society and the state the major institution of authoritative political decision making during modern times The consequences and possible remedies of this double disjunction of politics and state and of state and constitution form the centre of an open debate about constitutionalism beyond the state The essays gathered in this collection explore the range of issues raised by this debate The effects of recent changes on two of the main building blocks of constitutionalism statehood and democracy are examined in Parts I and II Since the movement of overcoming statehood has arguably been advanced furthest in the European context the question of the future of constitutionalist ideas in the framework of the EU provides the key theme of Part III The remaining parts consider possible transformations or substitutes

The engagement of constitutions with international law offers one line of transmutation of constitutionalism Part IV and the diffusion of constitutionalism into separate social spheres provides an alternative way of pursuing constitutionalism in a new key Part VI Finally the ability of the theory of global administrative law examined in Part V to offer an alternative account of the potential of jurisdictional control of global governing processes is examined Through these explorations the book offers cross disciplinary insights into the impact of recent political and economic changes on modern constitutionalism and an assessment of the prospects for constitutionalism in a transnational environment

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