European Constitutional Law | d3f30907ad64a0e61cab74660e1331c6


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

Constitutional Crisis in the European Constitutional Area 'Dagmar Schiek has written a timely and vital book. Following financial and sovereign debt crises, the European Union is in crisis. As responses to crisis – for example fiscal union – appear to be couched in wholly technocratic terms, a European public is entitled to ask whether the European Union has any respect for established national traditions of social constitutionalism and social welfare. Dagmar Schiek addresses these questions, both in a historical and contemporary context of social constitutionalism, arguing forcefully for the need to establish social legitimacy within Europe. I recommend this book to all researchers and students of European Union.' – Michelle Everson, Birkbeck College, University of London, UK 'Is there a "European social space"? What is the place of "social integration" alongside "economic integration" in the EU? Has a "socially embedded constitutionalism" been developed in parallel with the internal market case law of the CJEU? Dagmar Schiek in her comprehensive and interdisciplinary study gives refreshing new
answers under the recent Lisbon Treaty.' – Norbert Reich, Universität Bremen, Germany 'At a time of crisis and therefore a crucial juncture in European politics, Dagmar Schiek offers us an inspiring vision of the potential of the European Union. In her brilliant study, she exposes the obstacles that economic integration has posed for achievement of social justice, and provides a bold solution. Rejecting more limited models of constitutionalism, she presents a convincing alternative which is socially embedded, allowing space for action by manifold actors at multiple levels of governance.' – Tonia Novitz, University of Bristol, UK This well-researched book analyses the positioning of EU constitutional law towards economic and social integration by contrasting liberal and socially embedded constitutionalism. The book draws on a unique content and discourse analysis of all Grand Chamber decisions on substantive EU law since May 2004. It finds the EU's 'judicial constitution' to be more nuanced and more uniform than expected. While the Court of Justice enforces the constitution of integration, it favours economic freedoms under mainly liberal paradigms, but socially embeds constitutionalism in citizenship cases. The 'judicial constitution' contrasts with EU Treaties after the Treaty of Lisbon in that their new value base enhances European social integration. However, the Treaties too seem contradictory in that they do not expand the EU's competence regime accordingly. In the light of these contradictions, Dagmar Schiek proposes a 'constitution of social governance': the Court and EU institutions should encourage steps towards social integration at EU level to be taken by transnational societal actors, rather than condemn their relevant activity. Economic and Social Integration will appeal to academics and postgraduate students in EU law, EU politics, European sociology, international relations, international law, labour law, and welfare state theory. Undergraduate students in labour law, policy advisors on EU social policy and welfare state, government departments and EU Commission departments will also find much to interest them in this book.

European Union Law 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.

Constitutional Courts and Democratic Values This book takes as its starting point the interaction and gaps between the free movement and competition rules of the EC Treaty, and is the first book-length treatment of the topic. Competition and free movement are well known as fundamental elements of the Community legal order and are normally treated separately by different specialists. Hence their interaction has tended to receive less doctrinal analysis. This work bridges the gap and examines the interaction of these disparate rules using a framework which is defined by the author as the economic
constitutional law of the European Community. The book then examines in depth specific issues such as, for example, the economic orientation of the constitution of the Community, the structure and principles of interpretation relating to it, or the gaps presented by this structure and the ways in which they have been filled by the European Court of Justice. Particular attention is given, in separate chapters, to two important topics: the possible extension of the application of the free movement rules to protectionist private conduct and that of the competition rules or principles extracted from them to State action. The problem of the public/private divide, a pressing one for contemporary constitutionalism and societies, is a major concern for the chapters devoted to these topics, and it is seen by the author as the central question of the economic constitutional law of the Community. The book is equally concerned with theoretical and practical issues, and will be of use and interest to academics and practitioners interested in the European Community legal order. In addition to the wealth of information it contains and its challenging analysis of the law, the book also provides a way of thinking afresh about the problems presented by these established branches of Community law.

Freedom of Speech The book focuses on the legal framework for the use of the bridging clauses of Article 48(7) TEU as well as on parliamentary participation in the process of activating these clauses. It also outlines national parliamentary participation in EU law in general and, specifically, in the procedures for the amendment of the Treaties. Further, it explores the substantial law of the general bridging clauses (scope of application, exceptions, legal effects) and explains in detail the special bridging clauses and similar provisions that are scattered throughout the Treaties. The study further deals in depth with procedural issues, including the procedural requirements in the provision itself, notably the important and most complex element: the participation of the national parliaments, both directly and indirectly through the (European) Council. To this end, the book includes an analysis of the safeguards and mandating systems that national legal orders have installed.

Constitutional Review in Europe This volume provides a holistic presentation of the reality of constitutional change in 18 countries (the 15 old EU member states, Canada, Switzerland and the USA). The essays offer analysis on formal and informal constitutional amendment bringing forth the overall picture of the parallel paths constitutional change follows, in correlation to what the constitution means and how constitutional law works. To capture the patterns of constitutional change, multifaceted parameters are explored such as the interrelations between form of government, party system, and constitutional amendment; the interplay between constitutional change and the system of constitutionality review; the role of the people, civil society, and experts in constitutional change; and the influence of international and European law and jurisprudence on constitutional reform and evolution. In the extensive final, comparative chapter, key features of each country's amendment procedures are epitomized and the mechanisms of constitutional change are explained on the basis of introducing five distinct models of constitutional change. The concept of constitutional rigidity is re-approached and broken down to a set of factual and institutional rigidities. The classification of countries within models, in accordance with the way in which
operative amending mechanisms connect, leads to a succinct portrayal of different modes of constitutional change engineering. This book will prove to be an invaluable tool for approaching constitutional revision either for theoretical or for practical purposes and will be of particular interest to students and scholars of constitutional, comparative and public law.

Constitutional Law of the EU’s Common Foreign and Security Policy Constitutions serve to delineate state powers and enshrine basic rights. Such matters are hardly uncontroversial, but perhaps even more controversial are the questions of who (should) uphold(s) the Constitution and how constitutional review is organised. These two questions are the subject of this book by Maartje de Visser, which offers a comprehensive, comparative analysis of how 11 representative European countries answer these questions, as well as a critical appraisal of the EU legal order in light of these national experiences. Where possible, the book endeavours to identify Europe's common and diverse constitutional traditions of constitutional review. The raison d'être, jurisdiction and composition of constitutional courts are explored and so too are core features of the constitutional adjudicatory process. Yet, this book also deliberately draws attention to the role of non-judicial actors in upholding the Constitution, as well as the complex interplay amongst constitutional courts and other actors at the national and European level. The Member States featured are: Belgium, the Czech Republic, Finland, France, Germany, Italy, Hungary, the Netherlands, Spain, Poland, and the United Kingdom. This book is intended for practitioners, academics and students with an interest in (European) constitutional law.

Judicial Dissent in European Constitutional Courts 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.

Constitutional Principles of Local Self-government in Europe This book analyses the specificity of the law-making activity of European constitutional courts. The main hypothesis is that currently constitutional courts are positive legislators whose position in the system of State organs needs to be redefined. The book covers the analysis of the law-making activity of four constitutional courts in Western countries: Germany, Italy, Spain, and France; and six constitutional courts in Central–East European countries: Poland, Hungary, the Czech Republic, Slovak Republic, Latvia, and Bulgaria; as well as two international courts: the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). The work thus identifies the mutual interactions between national constitutional courts and international tribunals in terms of their law-making activity. The chosen countries include constitutional courts which have been recently captured by populist governments and subordinated to political powers. Therefore, one of the purposes of the book is to identify the change in the law-making activity of those courts and to compare it with the activity of constitutional courts from countries in which democracy is not viewed as being under threat. Written by national experts, each chapter addresses a series of set questions allowing accessible and meaningful comparison. The book will be a valuable resource for students, academics, and policy-makers working in the areas of constitutional law and politics.

The Tangled Complexity of the EU Constitutional Process The recent developments regarding the defence and security identity of the European Union and the debate over the nature of an enlarged Union make this book all the more topical.

New Challenges to Constitutional Adjudication in Europe 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.

The Oxford Handbook of Legal History This textbook on European constitutional law offers a coherent and scholarly analysis
presented within a clear structure.

European Constitutional Law Edited by Catherine Barnard and Steve Peers, European Union Law draws together a range of perspectives from experienced academics, teachers and practitioners to provide a comprehensive introduction to EU law. Each chapter has been written and updated by an expert in the field to provide students with access to a broad range of ideas while offering a solid foundation in the institutional and substantive law of the EU. Written by experts, designed for students; every chapter ensures a balance of accessible explanation and critical detail. Case studies are included throughout the book to enable students to understand the context and implications of EU law, as well as helping to familiarize them with some of the most significant caselaw in the area. Quotations and examples from key EU legislation and academic sources are also included to help develop an understanding of EU law, while further reading suggestions for each chapter act as a springboard for further study and assessment preparation. This text provides a fresh and modern guide to EU law and is an ideal entry-point for students new to the subject as well as those looking to develop their understanding of EU law. As the process of the UK leaving the EU unfolds, readers can also visit the OUP European Union Law Resource Centre for up-to-date comment, opinion, and updates created by our authors to engage students with the legal and political issues and considerations at play.

Global Constitutionalism and Its Challenges to Westphalian Constitutional Law Dissent in courts has always existed. It is natural and healthy that judges disagree on legal issues of a certain importance and difficulty. The question is if it is reasonable to conceal dissent. Not every legal system allows judges to explain their disagreement to the public in a separate opinion attached to the judgment of the court. Most constitutional courts do. This book presents a comparative analysis of the practice of judicial dissent in constitutional courts from the perspective of the civil law tradition. It discusses the theoretical background, presents the history of the institution and today's practice, thus laying down the basis for an accurate consideration of the phenomenon from a legal perspective.

Trade, Foreign Policy and Defence in EU Constitutional Law 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.

Principles of European Constitutional Law 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.

Europe's Functional Constitution The Common Foreign and Security Policy (CFSP) of the European Union is a highly exceptional component of the EU legal order. This constitutionalised foreign policy regime, with legal, diplomatic, and political DNA woven throughout its fabric, is a distinct sub-system of law on the outermost sphere of European supranationalism. When contrasted against other Union policies, it is immediately clear that EU foreign policy has a special decision-making mechanism, making it highly exceptional. In the now depillarised framework of the EU treaties, issues of institutional division arise from the legacy of the former pillar system. This is due to the reality that of prime concern in EU external relations is the question of 'who decides?' By engaging a number of legal themes that cut across foreign affairs exceptionalism, executive prerogatives, parliamentary accountability, judicial review, and the constitutionalisation of European integration, the book lays bare how EU foreign affairs have become highly legalised, leading to ever-greater coherence in how Europe exerts itself on the global stage. In this first monograph dedicated exclusively to the law of the EU's Common Foreign and Security Policy in modern times, the author argues that the legal framework for EU foreign affairs must adapt in a changing world so as to ensure the EU treaties can cater for a more assertive Europe in the wider world. Cited in Opinion of Advocate General Evgeni Tanchev, Case C-730/18 P, SC v Eulex Kosovo, ECLI:EU:C:2020:176, Court of Justice of the European Union (First Chamber), 5 March 2020; and, Opinion of Advocate General Gerard Hogan, Case C-134/19 P, Bank Refah Kargaran v Council of the European Union, ECLI:EU:C:2020:396, Court of Justice of the European Union (Grand Chamber), 28 May 2020.
A Secular Europe

If the task of constitutional theory is to set out a language in which the discourse of constitutional law may be grounded, a question of the utmost importance is how this terminology is created, defined and interpreted. In this groundbreaking new work, András Jakab maps out and analyses the grammar and vocabulary on which the core European traditions of constitutional theory are based. He suggests understanding key constitutional concepts as responses to historical and present day challenges experienced by European societies. Drawing together a great and diverse range of literature, much of which has never before been touched upon by scholarship in the English language, Jakab reconceptualises and argues for a new understanding of European constitutional law discourse. In so doing he shines new light on what constitutes its distinctively European nature. This remarkable book is essential reading for all scholars and students of constitutional theory in Europe and beyond.

Between Competition and Free Movement

National Identity in EU Law

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.

Foreign Policy Objectives in European Constitutional Law

This is a completely revised and updated second edition of Rights Before Courts (2005, paper edition 2008). This book carefully examines the most recent wave of the emergence and case law of activist constitutional courts: those that were set up after the fall of communism in Central and Eastern Europe. In contrast to most other analysts and scholars, the study does not take for granted that they are a “force for good” but rather subjects them to critical scrutiny against a background of wide-ranging comparative and theoretical analysis of constitutional judicial review in the modern world. The new edition takes in new case law and constitutional developments in the decade since the first edition, including considering the recent disturbing disempowerment of the Hungarian Constitutional Court (which previously was probably the most powerful constitutional court in the world) resulting from the fundamental constitutional changes brought about by the Fidesz government.

The Internet and Constitutional Law

Despite nearly sixty years of European integration, neither nations nor national loyalties have withered away. On the contrary, national identity rhetoric seems on the rise, not only in politics but also in legal
discourse. Lately we have seen a rise in the number of Member States invoking their national identity in an attempt to justify a derogation from a requirement imposed on them by a Treaty article or an EU legislative act, or to legitimize a particular national reading of such an EU norm. Despite this, the European Court of Justice (ECJ) has yet to develop a coherent approach to such arguments, or express a vision of the role national identity should play in EU law. Elke Cloots undertakes this task by providing a principled and coherent scheme for the adjudication of disputes involving claims based on the national identity of a Member State. Should arguments involving national identity be legally relevant? If yes, how should the ECJ approach such identity-related interests? Cloots crafts a normative framework to assist the ECJ in striking the right balance between European integration and respect for the identity concerns at issue. The book combines rigorous theoretical inquiry with thorough analysis of the European Treaties and case law, with particular attention paid to litigation involving domestic measures concerning the national system of government, constitutional rights protections, and language policy. Clarifying the issues at stake and presenting a solution to these problems, this book will be an invaluable resource for the academics, lawyers, and policy makers in the field.

NATIONAL CONSTITUTIONS IN EUROPEAN AND GLOBAL GOVERNANCE 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 Oxford Handbook of Comparative Constitutional Law 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.

The Triangular Constitution The second revised edition of this acclaimed book brings the story of the EU's constitutional journey up to date. The EU's constitution, composed of a myriad of legal texts, case law and practice, is a moving target subject to continuous change, and the past two years have seen no slacking in the pace of that change. With a wider geographical ambit than ever, the EU faces unprecedented political, economic and cultural challenges, all of which impact upon the evolution of its constitution. Moreover, the crisis in the Eurozone has given rise to the need for a whole new chapter focussing on the institutional reforms embarked upon in the quest to restore financial order. The book succeeds, where others have struggled, in making sense of the EU's complex constitutional order, focussing on its essential features but taking into account the profound changes that have taken place over the past 20 years. The EU has become much more than an internal economic market and has recently become active in areas such as immigration and third-country nationals, security and defence policy, and penal law and procedure, while the crisis in the Eurozone has triggered an increasing focus on economic and fiscal policy. Eschewing too much detail the authors underline the essential values, principles and objectives of the integration regime as well as its basic normative structure and hierarchy. In this context, the decentralised nature of the EU is highlighted as an integral part of its constitutional make-up. Recurring themes include European citizenship, fundamental rights and the rule of law. The book also confronts head-on the problems and challenges facing the Union and the gap which is often perceived between lofty ideals and harsh realities. The book will be useful to students of EU law and European integration but will also appeal to a broader audience of researchers and practitioners, including political scientists.

Engineering Constitutional Change Presenting the first comprehensive account of foreign policy objectives as a growing part of European constitutional law, Joris Larik confronts the growing trend of enshrining international ambitions in the highest laws of states and the European Union. Closely examining the provisions of foreign policy objectives, Larik differentiates their legal force and functions, situating them into the overall legal order of the state, the EU, and the composite 'European constitutional space'. He argues that the codification of foreign policy objectives suggests a progression in the evolution of the role of the constitution: from limiting public authority to guiding it towards certain goals, both at home and in the wider world. Advancing a comparative constitutional perspective for the study of EU external relations, this volume contributes a constitutional dimension to the 'normative power' debate in the study of EU foreign policy. Drawing on established national doctrines on constitutional objectives from Germany, France, and India, the book provides a common vocabulary for coming to terms with foreign policy objectives as legal norms across different jurisdictions. In the pluralist context and closely
intertwined legal orders of the EU and its Member States, it shows how objectives help to channel the individual ambitions of
the Member States through the Union framework towards a more coherent external action. Furthermore, the book connects
its legal findings with the debate on the EU as an actor in international relations, exploring the role of these norms in inter-
institutional struggles and processes of identity-shaping, legitimation, and socialization.

Courts, Politics and Constitutional Law 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.

European Constitutional Law Víctor Ferreres Comella contrasts the European 'centralised' constitutional court model, in
which one court system is used to adjudicate constitutional questions, with a decentralised model such as that of the United
States, in which courts deal with both constitutional and non-constitutional questions.

Three Generations of European Constitutional Courts in Transition to Democracy This book considers the issue of free speech
in transitional democracies focusing on the socio-legal developments in the Czech Republic, Hungary, and Poland. In showing
how these Central and Eastern European countries have engaged with free speech models imported from the Council of
Europe / EU and the USA, the book offers valuable insights into the ways States have responded to challenges associated
with transformation from communism to Western democracy. The book first explores freedom of expression in European and
American law looking particularly at hate speech, historical revisionism, and pornography. It subsequently enquires into the role and perspectives of those European (mandatory) and US-American (persuasive) models for the constitutional debate in Central and Eastern Europe. The study offers an original interpretation of the "European" model of freedom of expression, beyond the mechanisms of the Council of Europe. It encompasses the relevant aspects of EU law (judgments of the Court of Justice and the harmonised EU instruments) as mandatory standards for courts and legislators, including those in transitional countries of Central and Eastern Europe. The book argues for de-criminalisation of historical revisionism and pornography, and illuminates topics such as genocide denial, the rise of Prague and Budapest as Europe’s porno-capitals, anti-Semitism and anti-Gypsyism, religious obscurantism and homophobia, virulent Islamophobia, and the glorification of terrorism. The research methodology in this study combines a descriptive case law assessment (comparative constitutional, public international, and EU law) with a normative critique stemming from post-structuralist scrutiny, rhetoric, postmodern legal movements, legal history, history of ideas, and art criticism. This book will be of interest to students and scholars of, comparative constitutional law, law and society, human rights and European law as well as political philosophers.

European Yearbook of Constitutional Law 2019 How to accommodate diverse religious practices and laws within a secular framework is one of the most pressing and controversial problems facing contemporary European public order. In this provocative contribution to the subject, Lorenzo Zucca argues that traditional models of secularism, focusing on the relationship of state and church, are out-dated and that only by embracing a new picture of what secularism means can Europe move forward in the public reconciliation of its religious diversity. The book develops a new model of secularism suitable for Europe as a whole. The new model of secularism is concerned with the way in which modern secular states deal with the presence of diversity in the society. This new conception of secularism is more suited to the European Union whose overall aim is to promote a stable, peaceful and unified economic and political space starting from a wide range of different national experiences and perspectives. The new conception of secularism is also more suited for the Council of Europe at large, and in particular the European Court of Human Rights which faces growing demands for the recognition of freedom of religion in European states. The new model does not defend secularism as an ideological position, but aims to present secularism as our common constitutional tradition as well as the basis for our common constitutional future.

The Constitution's Gift The concept of a European Constitutional Area has been used in legal scholarship to describe a common space of constitutionalism where national and international constitutional guarantees interact to maintain the common constitutional values of Europe. This concept has not yet been tested in a case where the constitutional order of a Member State of the European Union seems to develop systemic deficiencies. The present volume aims to assess recent constitutional developments in Hungary and Romania, as well as the interplay of national, international and European constitutionalism which react to the loopholes in national constitutions. Accordingly, a core part of the volume is an in-depth analysis of the situation in Hungary and Romania. Based on that, the volume offers an account of the different reaction
mechanisms of the European Union and of the Council of Europe. Beyond a detailed stock-taking of these mechanisms, their legal and political frameworks are explored, as well as different ways to extend their reach. In this way, the volume contributes to a little-studied aspect of European constitutionalism.

Constitutional Pluralism in the European Union and Beyond This book offers the first overarching examination of constitutional pluralism in the European context. Mapping the leading work to date, it offers a critical assessment of the problems and potential of pluralist theory, arguing that a refined version of constitutional pluralism should be considered the best account of European constitutionalism.

Rights Before Courts 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.

Economic and Social Integration Westphalian constitutionalism has shaped our understanding of politics, socio-political institutions and personal and political freedom for centuries. It is historically based in the foundations of Western modernity, such as humanism and rationalism, and is organised around familiar principles of national sovereignty, the rule of law, the separation of powers, and democracy. But since the end of the twentieth century, global constitutionalism has gradually emerged, challenging both the constitutional ideology and the constitutional design of Westphalian constitutional law. This book critically assesses the structural and functional transformations in the Westphalian constitutional tradition produced by the emergence of supranational and global constitutionalism. In so doing, it evaluates the theory of global constitutionalism, its legal and socio-political limits, and important issues concerning the supranational constitutionalism of the EU. This leads to an articulation of the constitutional theory of the emerging post-Westphalian constitutionalism, examining its development during a period of significantly increased access to and sharing of information, increased mobility and more open statehood, as well as the rise of human rights and its encounter with populism and nationalism. This book will be of great interest to scholars of constitutional law and theory, particularly those with an interest in globalisation and
supranationalism.

The Political Dimension of Constitutional Law 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.

European Constitutional Language

Constitutional Pluralism in the EU The law and politics of European integration have been inseparable since the 1960s, when the European Court of Justice rendered a set of foundational decisions that gradually served to 'constitutionalize' the Treaty of Rome. In this book, Alec Stone Sweet, one of the world's foremost social scientists and legal scholars, blends deductive theory, quantitative analysis of aggregate data, and qualitative case studies to explain the dynamics of European integration and institutional change in the EU since 1959. He shows that the activities of market actors, lobbyists, legislators, litigators, and judges became connected to one another in various ways, giving the EU its fundamentally expansionary character. He then assesses the impact of Europe's unique legal system on the evolution of supranational governance, tracing outcomes in three policy domains: free movement of goods, sex equality, and environmental protection. The book integrates diverse themes, including: the testing of hypotheses derived from regional integration theory; the 'judicialization' of legislative processes; the path dependence of precedent and legal argumentation; the triumph of the 'rights revolution' in the EU; delegation, agency, and trusteeship; balancing as a technique of judicial rulemaking and governance; and why national administration and justice have been steadily 'Europeanized'. Written for a broad audience, the book is also recommended for use in graduate and advanced undergraduate courses in law and the social sciences.

EU Constitutional Law This book discusses in what sense constitutional law has a political dimension, raising the question
whether constitutional law is fundamentally political as to its validity, terms of its origin, conceptual structure and/or corresponding practice. It also poses the question whether that dimension is a political-theological dimension. A positive answer to these questions challenges the prevailing view that constitutional law is to be conceived strictly as law, moreover as written law, approved at a certain point in history by a particular power and interpreted as any other law by the judiciary. The essays included in this book, written by leading scholars in constitutional theory – including Martin Loughlin, Paul Kahn, Manon Altwegg-Boussac and Massimo La Torre – address these questions in a timely and original way.

The Judicial Construction of Europe The European Yearbook of Constitutional Law (EYCL) is an annual publication initiated by the Department of Public Law and Governance at Tilburg University and devoted to the study of constitutional law. It aims to provide a forum for in-depth analysis and discussion of new developments in the field, both in Europe and beyond. This inaugurate volume examines the safeguards and limits of judicial power in a variety of constitutional systems, both at the national and supranational level. The book approaches the judiciary as part of the constitutional system operating within a legal order that connects the citizens and institutions of the state to each other. Looking at the judiciary from this broader perspective, the traditional doctrine of the separation of powers would appear no longer to adequately represent the diversity and complexity of constitutional systems and their democratic legitimacy. Judicial independence does not mean isolation, but should better be understood as institutionalizing relationships that legitimize the power of the courts. The notions of ‘safeguards’ and ‘limits’ indicate the reciprocally enabling and protecting nature of these relationships. In recognition of this, the contributions to this volume analyse these safeguards and limits as relations existing within a complex constitutional architecture. State institutions, today, are involved in a fundamental transformation of their selfunderstanding as a result of changes in political culture. Several contributions to this volume provide examples of political criticism and pressure on the judiciary, against which the usual guarantees are unable to provide adequate protection. A convincing and effective response to threats to the judiciary’s independence requires a detailed and precise analysis of the judiciary’s constitutional safeguards and limits. This book offers a step in that direction.

Bridging Clauses in European Constitutional Law For the time being, the political project of basing the European Union on a document entitled ‘Constitution' has failed. The second, revised and enlarged edition of this volume retains its title nonetheless. Building on a scholarly rather than black-letter law account, it shows European constitutional law as it looks following the Treaty of Lisbon, with the EU's foundational treaties mandating the exercise of public authority, establishing a hierarchy of norms and legitimising legal acts, providing for citizenship, and granting fundamental rights. In this way the treaties shape the relations between legal orders, between public interest regulation and market economy, and between law and politics. The contributions demonstrate in detail how a constitutional approach furthers understanding of the core issues of EU law, how it offers theoretical and doctrinal insights, and how it adds critical perspective. From Reviews of the First Edition: “should be mandatory reading for anyone who wants to get a holistic perspective of the academic debate on
Europe's constitutional foundations. It is impossible to present the richness of thought contained in the 833 pages of the book in a short review." Common Market Law Review "an enduring scholarly work, which gives an English-speaking audience important, and overdue, access to the long-standing and forever-vigorous traditions of (European) constitutional law unhesitatingly recommend[ed]." European Law Journal "real scholarship in the profound sense of the word" K Lenaerts, Professor of European Law, Leuven

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