



Constitution In Wartime Beyond Alarmism And Complacency

Nico Krisch



Constitution In Wartime Beyond Alarmism And Complacency:

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

Originalism, Federalism, and the American Constitutional Enterprise Edward A. Purcell, 2007-12-28 In this lively historical examination of American federalism a leading scholar in the field refutes the widely accepted notion that the founding fathers carefully crafted a constitutional balance of power between the states and the federal government Edward A Purcell Jr bases his argument on close analysis of the Constitution's original structure and the ways that structure both induced and accommodated changes over the centuries There was no clear agreement among the founding fathers regarding the true nature of American federalism Purcell contends nor was there a consensus on correct lines dividing state and national authority Furthermore even had there been some true original understanding the elastic and dynamic nature of the constitutional structure would have made it impossible for subsequent generations to maintain any original or permanent balance The author traces the evolution of federalism through the centuries focusing particularly on shifting interpretations founded on political interests He concludes with insights into current issues of federal power and a discussion of the grounds on which legitimate decisions about federal and state power should rest

Getting to the Rule of Law James E. Fleming, 2011-09-01 The rule of law has been celebrated as an unqualified human good yet there is considerable disagreement about what the ideal of the rule of law

requires When people clamor for the preservation or extension of the rule of law are they advocating a substantive conception of the rule of law respecting private property and promoting liberty a formal conception emphasizing an inner morality of law or a procedural conception stressing the right to be heard by an impartial tribunal and to make arguments about what the law is When are exertions of executive power outside the law justified on the ground that they may be necessary to maintain or restore the conditions for the rule of law in emergency circumstances such as defending against terrorist attacks In *Getting to the Rule of Law* a group of contributors from a variety of disciplines address many of the theoretical legal political and moral issues raised by such questions and examine practical applications on the ground in the United States and around the world This timely interdisciplinary volume examines the ideal of the rule of law questions when if ever executive power outside the law is justified to maintain or restore the rule of law and explores the prospects for and perils of building the rule of law after military interventions Comparative International Law Anthea Roberts, Paul B. Stephan, Pierre-Hugues Verdier, Mila Versteeg, 2018 Explains that international law is not a monolith but can encompass on going contestation in which states set forth competing interpretations Maps and explains the cross country differences in international legal norms in various fields of international law and their application and interpretation in different geographic regions Organized into three broad thematic sections of conceptual matters domestic institutions and comparative international law and comparing approaches across issue areas Chapters authored by contributors who include top international law and comparative law scholars all from diverse backgrounds experience and perspectives *The Harbinger Theory* Robert Diab, 2015 The Harbinger Theory demonstrates that extreme measures have been consistently embraced in politics scholarship and public opinion not in terms of a general fear of the greater threat that terrorism now poses but a more specific belief that 9 11 was the harbinger of a new order of terror giving rise to the likelihood of an attack on the same scale as 9 11 or greater in the near future involving thousands of casualties and possibly weapons of mass destruction It explains how the harbinger theory shapes debates about rights and security by virtue of rhetorical strategies on the part of political leaders and security experts and in works of popular culture in which the theory is often invoked as a self evident truth without the need for supporting evidence or authority **Professional Generalism in a Hyper-specialised World** Nektarios Karanikas, 2025-04-01 This book challenges the notion that extreme professional expertise is the only path to success advocating instead for the concept of professional generalism as a complementary approach It brings together ideas from various disciplines offering insights relevant to all professionals regardless of specialisation The chapters of the book explore concepts and frameworks that are not typically discussed together in a single work and challenge the reader to test and contextualise them The book aims to inspire professionals to explore principles beyond their usual scope and to recognise opportunities to integrate concepts from other disciplines into their practice It encourages readers to consider how different approaches and perspectives can intersect and complement each other breaking down professional silos and

fostering a more interconnected way of thinking Rather than promoting simplistic or middle ground solutions the book emphasises the value of considering diverse perspectives and approaches recognising that different contexts may require different paradigms It encourages readers to embrace complexity and diversity fostering a holistic and nuanced perspective essential for navigating today s interconnected professional landscapes

The 'Militant Democracy' Principle in Modern Democracies Markus Thiel,2016-02-17 This collection provides an up to date analysis of key country approaches to Militant Democracy Featuring contributions from some of the key people working in this area including Mark Tushnet and Helen Irving each chapter presents a stocktaking of the legal measures to protect the democracy against its enemies within In addition to providing a description of the country s view of Militant Democracy and the current situation it also examines the legal and political provisions to defend the democratic structure against attacks The discussion also presents proposals for the development of the Militant Democracy principle or its alternatives in policy and legal practice In the final chapter the editor compares the different arrangements and formulates a minimum consensus as to what measures are indispensable to protect a democracy Highly topical this book is a valuable resource for students academics and policy makers concerned with democratic principles

Supreme Court A to Z Kenneth Jost,2012-03-14 The Supreme Court A to Z offers accessible information about the Supreme Court including its history traditions organization dynamics and personalities The entries in The Supreme Court A to Z are arranged alphabetically and are extensively cross referenced to related information This volume also has a detailed index reference materials on Supreme Court nominations a seat chart of the justices the U S Constitution online sources of decisions and a bibliography to help simplify research The fifth edition of The Supreme Court A to Z has been thoroughly updated to incorporate coverage of significant new cases and recent changes on the bench and includes more than 350 alphabetized entries Presented in an engaging reader friendly design this edition includes Biographies of recently appointed Associate Justices Elena Kagan and Sonia Sotomayor Updated entries on key issues and concepts including abortion campaigns and elections civil rights class action due process freedom of the press retired justices reapportionment and redistricting school desegregation and war powers New entries on criminal law and media and the court which highlights the Court s online presence This timely resource also includes updated seat charts of the justices online sources for finding decisions and a selected bibliography The Supreme Court A to Z is part of CQ Press s five volume American Government A to Z series

Emergency Powers of International Organizations Christian Kreuder-Sonnen,2019 The first book to introduce the concept of emergency powers to the study of International Organizations to investigate the emergency politics of IOs in comparative perspective and to examine why IOS are often reluctant to rescind such powers when the motivating threat has passed

Carl Schmitt's Institutional Theory Mariano Croce,Andrea Salvatore,2022-07-07 In 1922 Carl Schmitt penned Political Theology the celebrated essay in which he elaborated on the notorious theory that the heart of politics lies in the sovereign power to issue emergency measures that

suspend the legal order Ever since Schmitt's thinking has largely been identified with this concept despite him renouncing it over time Offering a comprehensive analysis of Schmitt's writings Carl Schmitt's Institutional Theory provides an ambitious novel perspective on Carl Schmitt and his legal and political thinking By delving into Schmitt's output over his decades long career Mariano Croce and Andrea Salvatore explore Schmitt's varied and developing thoughts on exceptionalism societal pluralism and the law as the progenitor and enforcer of normality Challenging dominant interpretations Croce and Salvatore dethrone the false centrality of certain key texts and instead provide a more unified coherent account of his institutional theory from across his long and controversial career

Catastrophe and Redemption Jessica Whyte, 2013-12-01 Offers a striking new reading of Agamben's political thought and its implications for political action in the present Challenging the prevalent account of Agamben as a pessimistic thinker Catastrophe and Redemption proposes a reading of his political thought in which the redemptive element of his work is not a curious aside but instead is fundamental to his project Jessica Whyte considers his critical account of contemporary politics his argument that Western politics has been biopolitics since its inception his critique of human rights his argument that the state of exception is now the norm and the paradigmatic significance he attributes to the concentration camp and shows that it is in the midst of these catastrophes of the present that Agamben sees the possibility of a form of profane redemption Whyte outlines the importance of potentiality in his attempt to formulate a new politics examines his relation to Jewish and Christian strands of messianism and interrogates the new forms of praxis that he situates within contemporary commodity culture taking Agamben's thought as a call for the creation of new political forms

The Oxford Handbook of the U.S. Constitution Mark V. Tushnet, Mark A. Graber, Sanford Levinson, 2015 The Oxford Handbook of the U S Constitution offers a comprehensive overview and introduction to the U S Constitution from the perspectives of history political science law rights and constitutional themes while focusing on its development structures rights and role in the U S political system and culture This Handbook enables readers within and beyond the U S to develop a critical comprehension of the literature on the Constitution along with accessible and up to date analysis Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U S constitutionalism today

Proportionality in International Humanitarian Law Amichai Cohen, David Zlotogorski, 2021 In Proportionality in International Humanitarian Law Amichai Cohen and David Zlotogorski offer a fresh and comprehensive look at the principle of proportionality They discuss various areas in which there are disagreements over the way in which proportionality should be applied and offer original solutions to existing debates Moreover they suggest that when applying proportionality the focus of the analysis should be on the procedures leading to the attack and the precautions taken by the attacking force They also discuss the course states should follow in investigating possible violations of the principle

[Transnational Torture](#)
Jinee Lokaneeta, 2011-08-29 Transnational Torture by Jinee Lokaneeta reviewed with Prachi Patankar on the blog Kafila

Evidence of torture at Abu Ghraib prison in Iraq and harsh interrogation techniques at Guantamo Bay beg the question has the war on terror forced liberal democracies to rethink their policies and laws against torture Transnational Torture focuses on the legal and political discourses on torture in India and the United States two common law based constitutional democracies to theorize the relationship between law violence and state power in liberal democracies Analyzing about one hundred landmark Supreme Court cases on torture in India and the United States memos and popular imagery of torture Jinee Lokaneeta compellingly demonstrates that even before recent debates on the use of torture in the war on terror the laws of interrogation were much more ambivalent about the infliction of excess pain and suffering than most political and legal theorists have acknowledged Rather than viewing the recent policies on interrogation as anomalous or exceptional Lokaneeta effectively argues that efforts to accommodate excess violence a constantly negotiated process are long standing features of routine interrogations in both the United States and India concluding that the infliction of excess violence is more central to democratic governance than is acknowledged in western jurisprudence **The Executive Unbound** Eric A. Posner, Adrian Vermeule, 2011-03-16 Ever since Arthur M Schlesinger Jr used imperial presidency as a book title the term has become central to the debate about the balance of power in the U S government Since the presidency of George W Bush when advocates of executive power such as Dick Cheney gained ascendancy the argument has blazed hotter than ever Many argue the Constitution itself is in grave danger What is to be done The answer according to legal scholars Eric Posner and Adrian Vermeule is nothing In *The Executive Unbound* they provide a bracing challenge to conventional wisdom arguing that a strong presidency is inevitable in the modern world Most scholars they note object to today's level of executive power because it varies so dramatically from the vision of the framers But there is nothing in our system of checks and balances that intrinsically generates order or promotes positive arrangements In fact the greater complexity of the modern world produces a concentration of power particularly in the White House The authors chart the rise of executive authority straight through to the Obama presidency Political cultural and social restraints they argue have been more effective in preventing dictatorship than any law The executive centered state tends to generate political checks that substitute for the legal checks of the Madisonian constitution *The Oxford Handbook of Carl Schmitt* Jens Meierhenrich, Oliver Simons, 2016 The Oxford Handbook of Carl Schmitt collects thirty original chapters on the diverse oeuvre of one of the most controversial thinkers of the twentieth century Uniquely located at the intersection of law the social sciences and the humanities it brings together sophisticated yet accessible interpretations of Schmitt's sprawling thought and complicated biography Thomas Jefferson and Executive Power Jeremy D. Bailey, 2007-07-09 By revisiting Thomas Jefferson's understanding of executive power this book offers a new understanding of the origins of presidential power Before Jefferson was elected president he arrived at a way to resolve the tension between constitutionalism and executive power Because his solution would preserve a strict interpretation of the Constitution as well as transform the precedents left by his Federalist predecessors it provided an

alternative to Alexander Hamilton's understanding of executive power. In fact, a more thorough account of Jefferson's political career suggests that Jefferson envisioned an executive that was powerful or energetic because it would be more explicitly attached to the majority will. Jefferson's Revolution of 1800 often portrayed as a reversal of the strong presidency was itself premised on energy in the executive and was part of Jefferson's project to enable the Constitution to survive and even flourish in a world governed by necessity.

Emergency Powers in Australia H. P. Lee, Michael W. R. Adams, Colin Campbell, Patrick Emerton, 2018-11-15 A lucid analysis of the constitutional and legal issues arising from Australian governmental responses to various sorts of emergencies.

Zones of Twilight Amanda DiPaolo, 2010-01-01 The Bill of Rights was designed to protect the American public from encroachments of liberty by the federal government. During times of war, the president often spearheads efforts to limit rights in the name of national security. When these cases make their way through the federal courts system, it is expected that the judiciary would use rights-based language in their adjudication of cases dealing with such rights-based claims. *Zones of Twilight* shows that the courts actually use the separation of powers to decide these cases. In other words, the courts look to see if Congress has authorized the president to limit the liberties in question. More often than not, if Congress is on board, so are the federal courts. Although the common conception is that the courts give the presidents a blank check during war, it is in fact Congress that has received that blank check. *Zones of Twilight* looks at four reoccurring issues during times of war where the courts have had to decide cases where the executive has limited individual freedoms: military detentions, warrantless electronic surveillance, emergency economic powers, and free speech. Book jacket.

Terrorism and Anti-Terrorism: A Normative and Practical Assessment Christopher Blakesley, 2021-10-25 This book addresses the complex, challenging, and dangerous problems relating to terrorism and the attempts to address and stop terrorism. It includes not only a positivistic legal analysis of issues but attempts to assess the costs facing us all in this modern reality of political violence. Blakesley challenges the so-called realist premise of fighting fire with fire and attempts to devolve a working definition of terrorism that may be applied to whatever group or nation that uses terror or terrorism as a tactic or strategy. Published under the Transnational Publishers imprint.

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