

Constitutionalism The Philosophical Dimension

Since the 1980s, democratic struggles have triggered constitutional reforms, elections, and other forms of political progress. This comprehensive volume offers refreshing perspectives on Africa's democratic renewal and will open up dialogue on the trends and trajectory of Africa's democratic future.

In this revised edition, Belfiore adds new concepts and discusses the views of additional thinkers. He gives an ontological foundation to ethics, politics, and law and shows how his thought can reinterpret the views of other philosophers regarding these topics.

The law is a symbolic construct and therefore rests on a variety of undertakings. What gives law its meaning is, for some, ideology, for others, the welfare of the majority. However, what is manifest is a conception of the law as a material structure that carries symbols of everyday life. The analyses that are made in the law and semiotics movements show that the laws symbolism cannot be understood by reference only to itself, a strictly legal meaning. It is a symbol that conveys life, a symbol that in itself is contaminated with life, politics, morality and so on. Law and Semiotics is an obvious meeting point between traditions, because it is the place where all the discussions about the law can find a common language. This is a collection of different papers where the institution of the law is investigated, in combination with, and as part of, a multiplicity of sign systems. Firstly, law can be understood as part of a global system of meaning (Part I) ; and, secondly, that despite the homogenising threat of globalisation, the play of legal meaning retains a socio-historical specificity (Part II). The global issues of human migration, human rights, colonisation and transnational power are played out in local spaces, in the public discourses through which they are given localised representation, in moments of activism, and as a tool of subversion. The law is a rhetorical device which at once constitutes these global and local truths but which is also constituted by them.

Western liberal constitutionalism has expanded recently, with, in East Asia, the constitutional systems of Japan, South Korea and Taiwan based on Western principles, and with even the socialist polities of China and Vietnam having some regard to such principles. Despite the alleged universal applicability of Western constitutionalism, however, the success of any constitutional system depends in part on the cultural values, customs and traditions of the country into which the constitutional system is planted. This book explains how the values, customs and traditions of East Asian countries are Confucian, and discusses how this is relevant to constitutional practice in the region. The book outlines how constitutionalism has developed in East Asia over a long period, considers different scholarly work on the ease or difficulty of integrating Western constitutionalism into countries with a Confucian outlook, and examines the prospects for such integration going forward. Throughout, the book covers detailed aspects of Confucianism and the workings of constitutions in practice.

Constitutionalism

The Philosophical Dimension

Philosophical Dimensions of Privacy

Searching the Law, 3d Edition

An Introduction To Jurisprudence

African Constitutionalism and the Role of Islam

What introduction is likely to build up constitutional norms? How do legal-philosophical insights get along with competing political claims? This book presents the main conclusions from the CITC (Congreso Internacional de Teoria Constitucional) in Cordoba, Argentina. While addressing the very foundations of Constitutional Law, leading scholars from Europe and America got together to debate legal and political issues which impinge upon institutional design and polity assessment, political representation and rights protection. Not to mention other vexing challenges such as the proper latitude of judicial review, the threatening phenomena of untamed emergency powers and the current international dimension of supra-national state-building. Beyond governance and human rights discourse, the core content of this book is concentrated on shedding some light on which theoretical and/or political conditions could better stand and give shelter to civil obedience and constitutional patriotism.

Constitutional law has been and remains an area of intense philosophical interest, and yet the debate has taken place in a variety of different fields with very little to connect them. In a collection of essays bringing together scholars from several constitutional systems and disciplines. Philosophical Foundations of Constitutional Law unites the debate in a study of the philosophical issues at the very foundations of the idea of a constitution: why one might be necessary; what problems it must address; what problems constitutions usually address; and some of the issues raised by the administration of a constitutional regime. Although these issues of institutional design are of abiding importance, many of them have taken on new significance in the last few years as law-makers have been forced to return to first principles in order to justify novel practices and arrangements in their constitutional orders. Thus, questions of constitutional 'revolutions,' challenges to the demands of the rule of law, and the separation of powers have taken on new and pressing importance. The essays in this volume address these questions, filling the gap in the philosophical analysis of constitutional law. The volume will provoke specialists in philosophy, politics, and law to develop new philosophically grounded analyses of constitutional law, and will be a valuable resource for graduate students in law, politics and philosophy.

It has been nearly fifty years since the collapse of the Nazi regime; is there any longer a point to presenting for the apprehension and prosecution of surviving Nazi war criminals? In this carefully argued book, Alan Rosenbaum makes it clear that there is. He contends that apart from concerns about obligations to the dead or vengeance against the

This title was first published in 2001. Idealism, Metaphysics and Community examines the place of idealism in contemporary philosophy, and its relation to problems of metaphysics, political thought, and the study of the history of philosophy. Following an extensive introduction by the editor, and drawing on the work of the Canadian idealist, Leslie Armour, the book is divided into three main parts: Part 1 focuses on F.H.Bradley; Part 2 examines metaphysical issues and idealism, such as the realism/anti-realism debate, the relation of classical and idealist metaphysics, rational psychology, time and eternity, and the divine; Part 3 draws on idealism to address contemporary concerns in ethical theory, political philosophy, social philosophy and culture and the history of philosophy. Presenting new insights into the work of classical and contemporary authors, this book provides a better understanding of classical idealism and addresses important areas of contemporary philosophical, social and political concern.

Regional Integration in Africa

The Moral Person of the State

We the People

Dimensions of Dignity

Essays on Bentham's Moral and Legal Philosophy

This specially commissioned volume examines the issue of constitutionalism.

Immanuel Kant's legal philosophy and theory have played an enormous role in the development of law since the eighteenth century. Although this influence can be seen primarily in German law and in the law of nations which have traditionally been oriented toward German legal development, today Kant's philosophy has experienced a Renaissance in the Anglo-American legal world. This anthology collects what the editors believe to be the very best of articles on Kant's legal theory, with an emphasis on his Metaphysics of Morals of 1797. In particular the articles relate to: 1) the nature of law and justice, 2) private law, 3) public law, 4) criminal law, 5) international law, and 6) cosmopolitan law.

At the century's end, societies all over the world are throwing off the yoke of authoritarian rule and beginning to build democracies. At any such time of radical change, the question arises: should a society punish its ancien regime or let bygones be bygones? Transitional Justice takes this question to a new level with an interdisciplinary approach that challenges the very terms of the contemporary debate. Ruti Teitel explores the recurring dilemma of how regimes should respond to evil rule, arguing against the prevailing view favoring punishment, yet contending that the law nevertheless plays a profound role in periods of radical change. Pursuing a comparative and historical approach, she presents a compelling analysis of constitutional, legislative, and administrative responses to injustice following political upheaval. She proposes a new normative conception of justice—one that is highly politicized—offering glimmers of the rule of law that, in her view, have become symbols of liberal transition. Its challenge to the prevailing assumptions about transitional periods makes this timely and provocative book essential reading for policymakers and scholars of revolution and new democracies.

"The Caribbean Community (CARICOM) has assumed a greater role in guiding and coordinating the affairs of its member states. The introduction of the CARICOM Single Market and Economy (CSME) and the Caribbean Court of Justice (CCJ) bring the quest for democratic governance into sharp relief. Using Caribbean cases, Simeon McIntosh discusses the fundamental rights and freedoms of speech and of the press, freedom of religion and freedom from inhuman and degrading punishment. He examines the protection of these rights and freedoms in the light of changes in society, social progress and other developments in the Commonwealth Caribbean within the context of the CSME and the CCJ. Fundamental Rights and Democratic Governance is the first body of work to give serious philosophical treatment to the question of fundamental rights in the Caribbean. In this second instalment on Caribbean Constitutionalism, McIntosh builds on his earlier work, Caribbean Constitutional Reform: Rethinking the West Indian Polity, in laying the theoretical justification for the Caribbean Court of Justice. "

Philosophical Foundations

Contemporary Issues of the Semiotics of Law

Idealism, Metaphysics and Community

Kant and Law

Kant & Political Philosophy

The Cosmopolitanism Reader

Examines the postmodern implications of Whitehead's metaphysical system.

This volume addresses the idea of origins, how things are formed, and how they relate to their present and future in terms of 'constitution-making' which is a continuous process in South Asian states. It examines the drafting, nature, core values and roles of the first modern constitutions during the founding of the eight modern nation-states in South Asia. The book looks at the constitutions of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. It provides an explanatory description of the process and substantive inputs in the making of the first constitutions of these nations; it sets out to analyse the internal and external (including intra-regional) forces surrounding the making of these constitutions; and it sets out theoretical constructions of models to conceptualise the nature and role of the first constitutions (including constituent documents) in the founding of the modern nation-states and their subsequent impact on state-building in the region.

"In this fine book, Gary McDowell shows that the Constitution is our fundamental law—not our master, but our guide and mentor. Only at our peril do we try to make it our servant."—Harvey Mansfield, Harvard University "Erudite and lucid: McDowell's book is a must-read for those who wish to understand the philosophical and linguistic roots of the originalist tradition of constitutional interpretation."—R. Kent Newmyer, University of Connecticut School of Law "This book adds a major dimension of depth to the case for guiding judicial interpretation of the Constitution by the original intent of the framers. McDowell articulates a deeply thought-provoking meditation, informed by a fertile understanding of key foundations for originalism articulated by major figures in political philosophy, in the common law, and among the Founders themselves who shaped the theorizing that informs our constitutional order."—Thomas Pangle, University of Texas at Austin "For several decades, Gary McDowell has been one of our most brilliant and learned students of law and political philosophy. This book is his summa, a profound defense of originalism as a moral Constitutional philosophy, a brilliant discourse on the framers and their philosophical forbears and successors, and a powerful handbook of strategy in what McDowell calls 'the contemporary war for the Constitution.'This work is essential reading for anyone who cares about the Supreme Court and the Constitution, but it is more. It is, simply stated, one of this generation's most important contributions toward preserving the rule of law itself."—Stephen Presser, Northwestern University School of Law

"In this timely book, the case against the so-called 'living' constitution is so powerfully argued and so clearly presented that it cannot be ignored."—Gordon S. Wood, Brown University

ConstitutionalismThe Philosophical DimensionPraeger

Some Contemporary Views

Democratic Renewal in Africa

Trends and Discourses

The Remaking of the Courts

Constitutionalism, Human Rights, and Islam after the Arab Spring

Whitehead's Radically Different Postmodern Philosophy

The essays in this volume offer a reassessment of Jeremy Bentham's strikingly original legal philosophy. Early on, Bentham discovered his 'genius for legislation' - 'legislation' included not only lawmaking and code writing, but also political and social institution building and engineering of public spaces for effective control of the exercise of political power. In his general philosophical work, Bentham sought to articulate a public philosophy to guide and direct all of his 'legislative' efforts. Part I explores the philosophical foundations of his public philosophy: his theory of meaning and framework for analysis and definition of key concepts, his theory of human affections and motivations, and his utilitarian theory of value. It is argued that, while concepts of pleasure and happiness play nominal roles in his theory of value, concepts of publicity, equality, and interests emerge as the dominant concepts of his public philosophy. Part II explores several dimensions of Bentham's jurisprudence, including his radically revised command model of law, his early reflections on justice and law in adjudication, his theories of judicial evidence, constitutional rights, the rule of law, and international law. The concluding essay demonstrates the centrality of the notion of publicity in his moral, legal and political thought. Emerging from this study is a positivist legal theory and a utilitarian moral-political philosophy that challenge in fundamental ways contemporary understandings of those doctrines.

In the revised edition, the distinguished philosophers have extended and strengthened the most authoritative text available on the philosophy of law and jurisprudence. While retaining their comprehensive coverage of classical and modern theory, Murphy and Coleman have added new discussions of the Critical Legal Studies movement and feminist jurisprudence, and they have strengthened their treatment of natural law theory, criminalization, and the law of torts. The chapter on law and economics remains the best short introduction to that difficult, controversial, and influential topic.Students will appreciate the careful organization and clear presentation of complicated issues as well as the emphasis on the relevance of both law and legal theory to contemporary society.

In theclosing decades of the eighteenth century, the newly independent colonies along the mid-Atlantic coast of North America commenced an unprecedented public debate concerning the principles of civil government. The debate culminated in 1787 with the Philadelphia convention where the United States Constitution was drafted and adopted. After rati

This book presents a unique collection of the most relevant perspectives in contemporary human rights philosophy. Different intellectual traditions are brought together to explore some of the core postmodern issues challenging standard justifications. Widely accessible also to non experts, contributions aim at opening new perspectives on the state of the art of the philosophy of human rights. This makes this book particularly suitable to human rights experts as well as master and doctoral students. Further, while conceived in a uniform and homogeneous way, the book is internally organized around three central themes: an introduction to theories of rights and their relation to values; a set of contributions presenting some of the most influential contemporary strategies; and finally a number of articles evaluating those empirical challenges springing from the implementation of human rights. This specific set-up of the book provides readers with a stimulating presentation of a growing and interconnecting number of problems that post-natural law theories face today. While most of the contributions are new and specifically conceived for the present occasion, the volume includes also some recently published influential essays on rights, democracy and their political implementation.

A Concise Introduction to American Politics

What Role for South Africa?

The Theory and Practice of Modern Constitutional Law

Prosecuting Nazi War Criminals

Shari'a & Constitutional Reform in Indonesia

Absolute Monarchy and the Stuart Constitution

Constitutionalism is steadily becoming the prevalent form of governance in Africa. But how does constitutionalism deal with the lingering effects of colonialism? And how does constitutional law deal with Islamic principles in the region? African Constitutionalism and the Role of Islam seeks to answer these questions. Constitutional governance has not been, nor will be, easily achieved. Abhullahi Ahmed An-Na'im argues. But setbacks and difficulties are to be expected in the process of adaptation and indigenization of an essentially alien concept—that of nation-state—and its role in large-scale political and social organization. An-Na'im discusses the problems of implementing constitutionalized forms of government specific to Africa, from definitional to conceptual and practical issues. The role of Islam in these endeavors is open to challenge and reformulation, and should not be taken for granted or assumed to be necessarily negative or positive. An-Na'im asserts, and he emphasizes the role of the agency of Muslims in the process of adapting constitutionalism to the values and practices of their own societies. By examining the incremental successes that some African nations have already achieved and An-Na'im reveals the contingent role that Islam has to play in this process. Ultimately, these issues will determine the long-term sustainability of constitutionalism in Africa.

The Remaking of the Courts: Less-Adversarial Practice and the Constitutional Role of the Judiciary in Australia centres on the changing nature of courts within the Australian constitutional context. In essence, the monograph explores the degree to which less-adversarial innovations and the remodelling of the judicial role can be accommodated within Australia's constitutional framework. The work draws upon comparative principles, separation of powers, jurisprudence and the theoretical perspectives of constitutionalism and neo-institutionalism. By examining Chapter III of the Commonwealth Constitution, and applying Chapter III approaches to less-adversarial case-studies traversing state and federal fields, the book argues that less-adversarial judicial practices can be broadly accommodated by the Australian constitutional framework. However, the book asserts that the clarity and suitability of the Chapter III constitutional approaches employed would be significantly improved by the adoption of a 'contextual incompatibility' methodology which would protect the constitutional role of the courts while not forestalling constitutionally compatible reform.

In response to a renewed cosmopolitan enthusiasm, this volume brings together 25 essays in the development of cosmopolitan thought by distinguished cosmopolitan thinkers and critics. It looks at classical cosmopolitanism, global justice, culture and cosmopolitanism, political cosmopolitanism, and cosmopolitan global governance.

The American Journal of Islamic Social Sciences (AJISS) is an interdisciplinary journal that publishes a wide variety of scholarly research on all facets of Islam and the Muslim world: anthropology, economics, history, philosophy and metaphysics, politics, psychology, religious law, and traditional Islam. Submissions are subject to a blind peer review process.

Transitional Justice

The Contemporary Legacy

Indonesian Constitutional Reform, 1999-2002

Handbook on Global Constitutionalism

Philosophical Dimensions Of The Constitution

Constitutionalising Europe

Human rights and the courts and tribunals that protect them are increasingly part of our moral, legal, and political circumstances. The growing salience of human rights has recently brought the question of their philosophical foundation to the foreground. Theorists of human rights often assume that their ideal can be traced to the philosophy of Immanuel Kant and his view of humans as ends in themselves. Yet, few have attempted to explore exactly how human rights should be understood in a Kantian framework. The scholars in this book have gathered to fill this gap. At the center of Kant's theory of rights is a view of freedom as independence from domination. The chapters explore the significance of this theory for the nature of human rights, their justification, and the legitimacy of international human rights courts.

This collection of essays makes readily accessible many of the most significant and influential discussions of privacy.

The European Union is in a state of transformation with its constitutional future the subject of much heated debate. This book provides a durable, authoritative and comprehensive account of constitutional development, examining the pivotal roles of law and judicial politics in establishing the EU constitutional edifice. Michael Longo demonstrates and substantiates the arguments for and against constitutionalization through the development of a theoretical framework drawing on theories and empirical research in both law and political science to understand this new process of European integration.

The long-accepted standard view is that the gradual polarization of Court and Parliament during the reigns of James I and Charles I reflected the split between absolutists (who upheld the divine right of the monarchy to rule) and constitutionalists (who resisted tyranny by insisting the monarch was subject to law) and resulted inevitably in civil war.

An Evaluation of Constitution-making in Transition

Philosophical Dimensions of the Constitution

Philosophical Foundations of Constitutional Law

Fundamental Rights and Democratic Governance

American Journal of Islamic Social Sciences 21:2

Processes and Practices

In Regional Integration in Africa: What Role for South Africa, Henri Bah, Siphamandla Zondi and André Mbata Mangu reflect on African integration. Despite some progress made, Africa is lagging behind and South Africa has not played a major role.

Constitutionalism, Human Rights, and Islam after the Arab Spring offers a comprehensive analysis of the impact that new and draft constitutions and amendments - such as those in Jordan, Morocco, Syria, Egypt, and Tunisia - have had on the transformative processes that drive constitutionalism in Arab countries. This book aims to identify and analyze the key issues facing constitutional law and democratic development in Islamic states, and offers an in-depth examination of the relevance of the transformation processes for the development and future of constitutionalism in Arab countries. Using an encompassing and multi-faceted approach, this book explores underlying trends and currents that have been pivotal to the Arab Spring, while identifying and providing a forward looking view of constitution making in the Arab world.

This book focuses on constitutional reform in Indonesia (1999-2002) from the perspective of shari'a. The study reveals one possible picture of how Islam and constitutionalism can co-exist in the same vision, not without risk of tension, but with the possibility of success.

An excellent sampling of current thinking in the theory and practice of constitutionalism. Each essay was written specifically for this volume by well-known legal and political philosophers. . . . All in all, a first-rate and provocative example of contemporary philosophical concerns. Choice In our constitutional democracy, the dissent and conflict that are the inevitable consequence of free political dialogue point to the importance of reexamining the philosophical premises on which our conceptions of society and government are based. This volume of original essays reviews the foundations of constitutionalism in classical liberal thought and looks at contemporary philosophical perspectives on a wide range of constitutional issues. Written by a distinguished group of philosophers and constitutional scholars, it provides a deeper understanding of the U.S. Constitution as a political instrument and examines the idea of constitutionalism as if functions in our modern world.

Kantian Theory and Human Rights

Essays in Caribbean Jurisprudence

Philosophy Of Law

An Argument for Its Contemporary Relevance

Constitutional Foundings in South Asia

Less-Adversarial Practice and the Constitutional Role of the Judiciary in Australia

A new history of the idea of the modern state and its 'personality', showing the centrality of Pufendorf to its development and propagation.

Providing an introduction to American politics, this work discusses the media and its relationship to the political process. It features coverage of AFDC, affirmative action, block grants, Bosnia, campaign-funding, devolution, exclusionary rule, federalism, food stamps, gay rights, and gender.

In recent years there has been a major revival of interest in the political philosophy of Immanuel Kant. Thinkers have looked to Kant's theories about knowledge, history, the moral self and autonomy, and nature and aesthetics to seek the foundations of their own political philosophy. This volume, written by established authorities on Kant as well as by new scholars in the field, illuminates the ways in which contemporary thinkers differ regarding Kantian philosophy and Kant's legacy to political and ethical theory. The book contains essays by Patrick Riley, Lewis White Beck, Mary Gregor, and Richard L. Velkley that place Kant in the tradition of political philosophy; chapters by Dieter Henrich, Susan Shell, Michael W. Doyle, and Joseph M. Knippenberg that examine Kantian perspectives on history and politics; contributions by William A. Galston, Bernard Yack, William James Booth, and Ronald Beiner that judge the Kantian legacy; and classic discussions by John Rawls, Jürgen Habermas, Charles Taylor, and Hans-Georg Gadamer that present different perspectives on contemporary debates about Kant.

This Handbook introduces scholars and students to the history, philosophy, and evidence of global constitutionalism. Contributors provide their insights from law, politics, international relations, philosophy, and history, drawing on diverse frameworks and empirical data sets. Across them all, however, is a recognition that the international order cannot be understood without an understanding of constitutional theory. The Handbook will define this field of inquiry for the next generation by bringing together some of the leading contemporary scholars.

Confucian Constitutionalism in East Asia

Philosophical Or Political Foundation of Constitutional Law?

Perspectives in Conflict

The Ontological Foundation of Ethics, Politics, and Law

An Anthology

The Language of Law and the Foundations of American Constitutionalism

Offers a public law theory that elaborates the idea of human dignity to illuminate and justify innovations in constitutional practice.

Philosophical Dimensions of Human Rights

Utility, Publicity, and Law