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Recovering Constituent Power May 30 2020

[The Principles of Constitutionalism](#) Nov 04 2020 In this follow-up volume to the critically acclaimed *The Constitutional State*, N. W. Barber explores how the principles of constitutionalism structure and influence successful states. Constitutionalism is not exclusively a mechanism to limit state powers. An attractive and satisfying account of constitutionalism, and, by derivation, of the state, can only be reached if the principles of constitutionalism are seen as

interlocking parts of a broader doctrine. This holistic study of the relationship between the constitutional state and its central principles - sovereignty; the separation of powers; the rule of law; subsidiarity; democracy; and civil society - casts light on long-standing debates over the meaning and implications of constitutionalism. The book provides a concise introduction to constitutionalism and a detailed account of the nature and implications of each of the principles in question. It concludes with an examination of the importance of constitutional principles to the work of judges, legislators, and others involved in the operation and creation of the constitution. The book is essential reading for those seeking a definitive account of constitutionalism and its benefits.

Constitutionalism in Global Constitutionalisation Jul 01 2020 Aoife

O'Donoghue explains why normative constitutionalism must underpin the global constitutionalisation debate if it is to realise its critical potential.

Constituent Power and the Law Mar 01 2023 This book examines the relationship between constituent power and the law, and the place of the former in constitutional history, drawing from constitutional theory beyond the Anglo-American sphere, with new material made available for the first time to English readers.

Constitutionalism, Identity, Difference, and Legitimacy Jan 25 2020 The essays in this collection were first presented at an October 1991 conference on comparative constitutionalism under the auspices of the Jacob Burns Institute for Advanced Legal Studies, and the Cardozo-New School Project on Constitutionalism. Essays are organized in sections on the rebirth of constitutionalism, the legitimation of constitution making, the identity of the constitutional subject, the struggle between identity and difference, and the role of property rights. Annotation copyright by Book News, Inc., Portland, OR

Sovereignty Across Generations Oct 28 2022 Every cohort of voters may dream of being 'the people' under the sway of serial visions of sovereignty; or understand itself, more modestly, as co-author of a constitutional project in a cross-generational sequence rooted in the past and extending into the future. *Sovereignty Across Generations* offers a theory of democratic sovereignty and constituent power grounded in John Rawls's political liberalism. Neither exegetic nor abstractly analytic, this book assumes that 'political liberalism' is broader than Political Liberalism. In answering the question 'How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?', the paradigm implicit in Political Liberalism enables us to address facets of that question that Rawls sidelined in the context of his time. Following populist threats to democracy, which were still latent in 1993, this book responds to the urgency of clarifying the proper relation of 'the people' (as transgenerational author of the constitution) to its pro-tempore living segment in its capacity as electorate and as

co-author of the constitution. An explanation of that relation brings 'constituent power' into the picture and unfolds in seven steps that form the conceptual backbone of this book. By taking new steps in updating and revisiting political liberalism, this book reconstructs Rawls's implicit view of constituent power beyond the pages dedicated to it in *Political Liberalism* and brings that view into conversation with major constitutional theories of the twentieth century. This book is a must read for all those interested in the fields of politics, philosophy, and constitutional law.

Only the People Can Save the People Jan 07 2021

Free to Protest Nov 16 2021 "This book addresses the issue of public demonstrations, looking at the experiences of established democracies (EU member states and USA) and countries in transition. The approach of the book is to cover the problem not as a strictly legal one, but to combine the constitutional and human rights aspects with the historical, political and philosophical dimensions. The recent history of mass protests in democracies and semi-democracies raises a number of concerns. Some of these concerns are related to the proper balance between the right to demonstrate and its impacts on third parties." --Book Jacket.

Philosophical Foundations of Constitutional Law Dec 30 2022 This is a collection of essays from leading constitutional lawyers and theorists, examining the philosophical foundations of constitutional law and the issues that arise from the fundamental philosophical issues raised by the idea of a constitution.

Constituent Power Apr 02 2023 From the French Revolution onwards, constituent power has been a key concept for thinking about the principle of popular power, and how it should be realised through the state and its institutions. Tracing the history of constituent power across five key moments - the French Revolution, nineteenth-century French politics, the Weimar Republic, post-WWII constitutionalism, and political philosophy in the 1960s - Lucia Rubini reconstructs and examines the history of the principle. She argues that, at any given time, constituent power offered an alternative understanding of the power of the people to those offered by ideas of sovereignty. *Constituent Power: A History* also examines how, in turn, these competing understandings of popular power resulted in different institutional structures and reflects on why contemporary political thought is so prone to conflating constituent power with sovereignty.

Negotiating the Power of the People Mar 21 2022 Explores the history of the idea of constituent power over five key events, from the French Revolution to the present.

Weak Constitutionalism Dec 18 2021 It has been frequently argued that democracy is protected and realized under constitutions that protect certain rights and establish the conditions for a functioning representative democracy. However, some democrats still find something profoundly unsettling about contemporary constitutional regimes. The participation of ordinary citizens in constitutional

change in the world's most "advanced" democracies (such as the United States, Canada, and the United Kingdom) is weak at best: the power of constitutional reform usually lies in the exclusive hands of legislatures. How can constitutions that can only be altered by those occupying positions of power be considered democratically legitimate? This book argues that only a regime that provides an outlet for constituent power to manifest from time to time can ever come to enjoy democratic legitimacy. In so doing, it advances a democratic constitutional theory, one that combines a strong or participatory conception of democracy with a weak form of constitutionalism. The author engages with Anglo-American constitutional theory as well as examining the theory and practise of constituent power in different constitutional regimes (including Latin American countries) where constituent power has become an important part of the left's legal and political discourse. *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power* will be of particular interest to legal/political theorists and comparative constitutional lawyers. It also provides an introduction to the theory of constituent power and its relationship to constitutionalism and democracy.

Constituent Power May 03 2023 From the French Revolution onwards, constituent power has been a key concept for thinking about the principle of popular power, and how it should be realised through the state and its institutions. Tracing the history of constituent power across five key moments - the French Revolution, nineteenth-century French politics, the Weimar Republic, post-WWII constitutionalism, and political philosophy in the 1960s - Lucia Rubinelli reconstructs and examines the history of the principle. She argues that, at any given time, constituent power offered an alternative understanding of the power of the people to those offered by ideas of sovereignty. *Constituent Power: A History* also examines how, in turn, these competing understandings of popular power resulted in different institutional structures and reflects on why contemporary political thought is so prone to conflating constituent power with sovereignty.

Constituent Power in the European Union Jul 25 2022 This book seeks to develop a new approach to EU legitimacy by reformulating the classical notion of constituent power for the context of European integration and challenging the conventional theoretical assumptions regarding the EU's ultimate source of authority.

Insurgencies May 23 2022 In the ten years since the initial publication of *Insurgencies*, Antonio Negri's reputation as one of the world's foremost political philosophers has grown dramatically. Now with a foreword by Michael Hardt, *Insurgencies* leads to a new notion of how power and action must be understood if we are to achieve a democratic future.

Issues in comparative political theory Oct 04 2020

The Adventures of the Constituent Power Oct 16 2021 This book explores the democratic methods by which political communities make their basic law, and the

dangers associated with constitution-making.

Human Rights and Constituent Power Jul 13 2021 With the emergence of modern human rights in the Universal Declaration, what remained of a radical political potential of the discourse withdrew: statism and individualism became its authorised foundations and the possibilities of other human rights traditions were denied. The strife that once lay at the heart of human rights was forgotten in an increasing juridification. This book seeks to recover the radical political pole of human rights. It looks to the debates surrounding constituent power – the ‘power of the people’ – in order to understand different possibilities for the discourse. Using continental political philosophy and critical legal theory, *Human Rights and Constituent Power* presents a very different conception of human rights, more at home on the riotous streets than in courtrooms and parliaments.

Constituent Power Beyond the State Aug 26 2022 The concept of constituent power plays a major part in modern political and legal theory— in how we think about the political. This book tackles the twofold issue of public authority and public autonomy in the modern conception of the political by analysing the notion of constituent power, its function in the modern political apparatus, and debates about its meaning and function in our own context. Focusing on contemporary debates on constitutionalism "beyond" the state, Geneviève Nootens assesses the prospects for recasting the notion of constituent power in a polycentric setting that challenges state sovereignty as embodying the autonomy of the political. She argues that constituent power belongs with the conceptual apparatus of a theory of government peculiar to a statist way of knowing, and being into, the world, and that it is too much dependent upon the statist framework for it to have critical purchase on the new mappings of public authority. Nootens stresses the critical need to frame public authority appropriately if we are to conceptualize a conception of collective political agency that can sustain public autonomy in the current era. *Constituent Power Beyond the State* will be of interest to students and scholars of political theory, democratic theory, law, and constitutionalism.

Constituent Moments Mar 09 2021 Since the American Revolution, there has been broad cultural consensus that “the people” are the only legitimate ground of public authority in the United States. For just as long, there has been disagreement over who the people are and how they should be represented or institutionally embodied. In *Constituent Moments*, Jason Frank explores this dilemma of authorization: the grounding of democratic legitimacy in an elusive notion of the people. Frank argues that the people are not a coherent or sanctioned collective. Instead, the people exist as an effect of successful claims to speak on their behalf; the power to speak in their name can be vindicated only retrospectively. The people, and democratic politics more broadly, emerge from the dynamic tension between popular politics and representation. They spring from what Frank calls “constituent moments,” moments when claims to speak in the people’s name are

politically felicitous, even though those making such claims break from established rules and procedures for representing popular voice. Elaborating his theory of constituent moments, Frank focuses on specific historical instances when unauthorized individuals or associations seized the mantle of authority, and, by doing so, changed the inherited rules of authorization and produced new spaces and conditions for political representation. He looks at crowd actions such as parades, riots, and protests; the Democratic-Republican Societies of the 1790s; and the writings of Walt Whitman and Frederick Douglass. Frank demonstrates that the revolutionary establishment of the people is not a solitary event, but rather a series of micropolitical enactments, small dramas of self-authorization that take place in the informal contexts of crowd actions, political oratory, and literature as well as in the more formal settings of constitutional conventions and political associations.

Law, Violence and Constituent Power Apr 21 2022 This book challenges traditional theories of constitution-making to advance an alternative view of constitutions as being founded on power which rests on violence. The work argues that rather than the idea of a constitution being the result of political participation and deliberation, all power instead is based on violence. Hence the creation of a constitution is actually an act of coercion, where, through violence, one social group is able to impose itself over others. The book advocates that the presence of violence be used as an assessment of whether genuine constitutional transformation has taken place, and that the legitimacy of a constitutional order should be dependent upon the absence of killing. The book will be essential reading for academics and researchers working in the areas of constitutional law and politics, legal and political theory, and constitutional history.

Sovereignty, Civic Participation, and Constitutional Law Dec 06 2020 This book brings recent insights about sovereignty and citizen participation in the Belgian Constitution to scholars in the fields of law, philosophy, history, and politics. Throughout the Western world, there are increasing calls for greater citizen participation. Referendums, citizen councils, and other forms of direct democracy are considered necessary antidotes to a growing hostility towards traditional party politics. This book focuses on the Belgian debate, where the introduction of participatory politics has stalled because of an ambiguity in the Constitution. Scholars and judges generally claim that the Belgian Constitution gives ultimate power to the nation, which can only speak through representation in parliament. In light of this, direct democracy would be an unconstitutional power grab by the current generation of citizens. This book critically investigates this received interpretation of the Constitution and, by reaching back to the debates among Belgium's 1831 founding fathers, concludes that it is untenable. The spirit, if not the text, of the Belgian Constitution allows for more popular participation than present-day jurisprudence admits. This book is the first to make recent debates in this field accessible to international scholars. It provides a rare source of

information on Belgium's 1831 Constitution, which was in its time seen as modern constitutionalism's greatest triumph and which became a model for countless other constitutions. Yet the questions it asks reverberate far beyond Belgium. Combining new insights from law, philosophy, history, and politics, this book is a showcase for continental constitutional theory. It will be a valuable resource for academics and researchers in constitutional law, political and legal philosophy, and legal history.

Permanent States of Emergency and the Rule of Law May 11 2021 *Permanent States of Emergency and the Rule of Law* explores the impact that oxymoronic 'permanent' states of emergency have on the validity and effectiveness of constitutional norms and, ultimately, constituent power. It challenges the idea that many constitutional orders are facing permanent states of emergency due to the 'objective nature' of threats facing modern states today, arguing instead that the nature of a threat depends upon the subjective assessment of the decision-maker. In light of this, it further argues that robust judicial scrutiny and review of these decisions is required to ensure that the temporariness of the emergency is a legal question and that the validity of constitutional norms is not undermined by their perpetual suspension. It does this by way of a narrower conception of the rule of law than standard accounts in favour of judicial review of emergency powers in the literature, which tend to be based on the normative value of human rights. In so doing it seeks to refute the fundamental constitutional challenge posed by Carl Schmitt: that all state power cannot be constrained by law.

Limits to Democratic Constitutionalism in Central and Eastern Europe Feb 26 2020 In this book, Bogusia Puchalska develops an original theory of democratic constitutionalism and uses it to support the argument that constitution-making and law-making in constitutional moments should be politically, and not just constitutionally, legitimate. In doing so she expertly assesses the potential implications of the prospects of democratic consolidation and constitutionalism in Poland after 1989 and asks whether it is likely to be applicable to other transition countries such as Hungary, Czech Republic and Slovakia. This original and informative book should be read by all curious to understand how the democratic learning and the foundations of grass-root constitutionalism might have been damaged in post-communist countries.

The Paradox of Constitutionalism Sep 26 2022 In modern political communities ultimate authority is often thought to reside with 'the people'. This book examines how constitutions act as a delegation of power from 'the people' to expert institutions, and looks at the attendant problems of maintaining the legitimacy of these constitutional arrangements.

Constituent Power and the Legitimacy of International Organizations Jun 23 2022 This book develops a constitutional theory of international organization to explain the legitimation of supranational organizations. Supranational

organizations play a key role in contemporary global governance, but recent events like Brexit and the threat by South Africa to withdraw from the International Criminal Court suggest that their legitimacy continues to generate contentious debates in many countries. Rethinking international organization as a constitutional problem, Oates argues that it is the representation of the constituent power of a constitutional order, that is, the collective subject in whose name authority is wielded, which explains the legitimation of supranational authority. Comparing the cases of the European Union, the World Trade Organization, and the International Criminal Court, Oates shows that the constitution of supranationalism is far from a functional response to the pressures of interdependence but a value-laden struggle to define the proper subject of global governance. The book will be of interest to students and scholars of international organization and those working in the broader fields of global governance and general International Relations theory. It should also be of interest to international legal scholars, particularly those focused on questions related to global constitutionalism.

Constituent Power and Carl Schmitt's Theory of Constitution in Kenya's Constitution-Making Process Apr 09 2021 The decade-long constitutional reform process in Kenya spans two phases. The first ended with a High Court decision that the constitution-making process was unconstitutional because it failed to provide an opportunity for the exercise of constituent power by the Kenyan people. In the second phase Parliament sought to shield substantive questions of constitutional design from the reach of the constituent power. Drawing on Carl Schmitt's constitutional theory, this article argues that although paradoxical, such treatment of the constituent power is theoretically coherent. Reading Schmitt's theory closely reveals that, despite himself, Schmitt accepts limitation of the constituent power where the nature of law and liberal constitutionalism demand it. The article does not apply Schmitt's constitutional theory, so much as read it against itself to suggest that it bears close resemblance to Fuller's and Dworkin's jurisprudence. At the same time, the article seeks to understand the Kenyan constitutional reform process, and ultimately questions whether the limitations placed on the constituent power in Kenya are consistent with theoretically acceptable limitations.

Routledge Handbook of Comparative Constitutional Change Apr 29 2020 Comparative constitutional change has recently emerged as a distinct field in the study of constitutional law. It is the study of the way constitutions change through formal and informal mechanisms, including amendment, replacement, total and partial revision, adaptation, interpretation, disuse and revolution. The shift of focus from constitution-making to constitutional change makes sense, since amendment power is the means used to refurbish constitutions in established democracies, enhance their adaptation capacity and boost their efficacy. Adversely, constitutional change is also the basic apparatus used to orchestrate constitutional backslide as the erosion of liberal democracies and democratic regression is

increasingly affected through legal channels of constitutional change. Routledge Handbook of Comparative Constitutional Change provides a comprehensive reference tool for all those working in the field and a thorough landscape of all theoretical and practical aspects of the topic. Coherence from this aspect does not suggest a common view, as the chapters address different topics, but reinforces the establishment of comparative constitutional change as a distinct field. The book brings together the most respected scholars working in the field, and presents a genuine contribution to comparative constitutional studies, comparative public law, political science and constitutional history.

Agonistic Democracy Sep 02 2020 A pioneering analysis of agonistic democracy, its history, central thinkers and contribution to contemporary political theory.

Constituent Power and Constitutional Order Jan 31 2023 Constituent power of the people is a core concept of modern politics but what does this concept actually mean? This book addresses this question, sketching how constituent power of the people has been conceived since the early modern revolutions.

Language, Democracy, and the Paradox of Constituent Power Sep 14 2021 In this book, Catherine Frost uses evidence and case studies to offer a re-examination of declarations of independence and the language that comprises such documents. Considered as a quintessential form of founding speech in the modern era, declarations of independence are however poorly understood as a form of expression, and no one can completely account for how they work. Beginning with the founding speech in the American Declaration, Frost uses insights drawn from unexpected or unlikely forms of founding in cases like Ireland and Canada to reconsider the role of time and loss in how such speech is framed. She brings the discussion up to date by looking at recent debates in Scotland, where an undeclared declaration of independence overshadows contemporary politics. Drawing on the work of Hannah Arendt and using a contextualist, comparative theory method, Frost demonstrates that the capacity for renewal through speech arises in aspects of language that operate beyond conventional performativity. *Language, Democracy, and the Paradox of Constituent Power* is an excellent resource for researchers and students of political theory, democratic theory, law, constitutionalism, and political history.

Modern Constitutions Aug 02 2020 More than two millennia ago, Aristotle is said to have compiled a collection of ancient constitutions that informed his studies of politics. For Aristotle, constitutions largely distilled and described the varied and distinctive patterns of political life established over time. What constitutionalism has come to mean in the modern era, on the other hand, originates chiefly in the late eighteenth century and primarily with the U.S. Constitution—written in 1787 and made effective in 1789—and the various French constitutions that first appeared in 1791. In the last half century, more than 130 nations have adopted new constitutions, half of those within the last twenty years. These new constitutions

are devoted to many of the same goals found in the U.S. Constitution: the rule of law, representative self-government, and protection of rights. But by canvassing constitutional developments at the national and state level in the United States alongside modern constitutions in Eastern and Western Europe, Africa, and Asia, the contributors to *Modern Constitutions*—all leading scholars of constitutionalism—show that modern constitutions often seek to protect social rights and to establish representative institutions, forms of federalism, and courts charged with constitutional review that depart from or go far beyond the seminal U.S. example. Partly because of their innovations, however, many modern constitutional systems now confront mounting authoritarian pressures that put fundamental commitments to the rule of law in jeopardy. The contributions in this volume collectively provide a measure of guidance for the challenges and prospects of modern constitutions in the rapidly changing political world of the twenty-first century. Contributors: Richard R. Beeman, Valerie Bunce, Tom Ginsburg, Heinz Klug, David S. Law, Sanford Levinson, Jaime Llach, Christopher McCrudden, Kim Lane Scheppele, Rogers M. Smith, Mila Versteeg, Emily Zackin.

Popular Sovereignty and Constituent Power in Latin America Jun 11 2021 This book combines a bottom-up and top-down approach to the study of social movements in relationship to the development of constituent and constituted power in Latin America. The contributors to this volume argue that the radical transformation of liberal representative democracy into participative democracy is what colours these processes as revolutionary. The core themes include popular sovereignty, constituted power, constituent power, participatory democracy, free trade agreements, social citizenship, as well as redistribution and recognition issues. Unlike other collections, which provide broad coverage of social movements at the expense of depth, this book is of thematic focus and illuminates the relationships between rulers and ruled as they transform liberal democracy.

Constituent Power and the Law Aug 14 2021 This book examines the relationship between constituent power and the law, and the place of the former in constitutional history, drawing from constitutional theory beyond the Anglo-American sphere, with new material made available for the first time to English readers.

Agonistic Democracy Feb 05 2021 This pioneering book delivers a systematic account of agonistic democracy, and a much-needed analysis of the core components of agonism: pluralism, tragedy, and the value of conflict. It also traces the history of these ideas, identifying the connections with republicanism and with Greek antiquity. Mark Wenman presents a critical appraisal of the leading contemporary proponents of agonism and, in a series of well-crafted and comprehensive discussions, brings these thinkers into debate with one another, as well as with the post-structuralist and continental theorists who influence them. Wenman draws extensively on Hannah Arendt, and stresses the creative power of

human action as augmentation and revolution. He also reworks Arendt's discussion of reflective judgement to present an alternative style of agonism, one where the democratic contest is linked to the emergence of a militant form of cosmopolitanism, and to prospects for historical change in the context of neoliberal globalisation.

Constituent Power Nov 28 2022 With a strong focus on constitutional law, this book examines the legal as well as the political power of 'the people' in constitutional democracies. Bringing together an international range of contributors from the USA, Latin America, the UK and continental Europe, it explores the complex relationship between constitutional democracy and 'the people' from the angles of constitutional law, legal theory, political theory, and history. Contributors explore this relationship through the lens of radical democracy, engaging with the work of key figures such as Hannah Arendt, Carl Schmitt, Claude Lefort, and Jacques Ranciere.

The Constituent Power and the Birth of the New Laender Dec 26 2019

Constitutionalism in an Old Key Mar 28 2020 I argue that legal and constitutional theory should avoid the idea of constituent power. It is unhelpful in seeking to understand the authority of law and the place of written constitutions in such an understanding. In particular, it results in a deep ambivalence about whether authority is located within or without the legal order. That ambivalence also manifests itself within positivist legal theory, which explains the affinity between theories of constituent power and legal positivist accounts of authority. Legal theory should then focus on the question of law's authority as one entirely internal to legal order, thus making the question of constituent power superfluous. -- legal theory ; constitutional theory ; constituent power ; positivist legal theory.

Constituent Power Jan 19 2022 Recent social and political developments, including the presidential elections in the United States, antidemocratic state policies in Hungary and Poland, and the political climate in the rest of Europe have brought questions relating to the position and composition of 'the people' in constitutional democracies to the forefront.

Constitutional Crowdsourcing Feb 17 2022 Conceptualising the new phenomenon of constitutional crowdsourcing, this incisive book examines democratic legitimacy, participation, and decision-making in constitutions and constitutionalism. It analyses how the wider population can be given a voice in constitution-making and in constitutional interpretation and control, thus promoting the exercise of original and derived constituent power.

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