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CYNTHIA DUNN

In Pursuit of Pluralist Jurisprudence

Cambridge University Press

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.

Edward Elgar Publishing

This collection of essays interrogates how human rights law and practice acquire meaning in relation to legal pluralism, ie, the co-existence of more than one regulatory order in a same social field. As a social phenomenon, legal pluralism exists in all societies. As a legal construction, it is characteristic of

particular regions, such as post-colonial contexts. Drawing on experiences from Latin America, Sub-Saharan Africa and Europe, the contributions in this volume analyse how different configurations of legal pluralism interplay with the legal and the social life of human rights. At the same time, they enquire into how human rights law and practice influence interactions that are subject to regulation by more than one normative regime. Aware of numerous misunderstandings and of the mutual suspicion that tends to exist between human rights scholars and anthropologists, the volume includes contributions from experts in both disciplines and intends to build bridges between normative and empirical theory.

Sociological Constitutionalism

Edward Elgar Publishing

In the urgency to respond to the challenges posed by diversity in contemporary societies, the discussion of normative foundations is often overlooked. This book takes that important first step, and offers new ways of thinking about diversity. Its contribution to an ongoing dialogue in this field lies in the construction of a normative framework which endeavours to better understand the challenges of justice in diverse societies. By applying this normative framework to specific and broader examples of injustices in the spheres of religion, culture, race, ethnicity, gender and nationality, the book demonstrates how constitutional pluralist discourses can contribute both

to new and legal responses to diversity. The book will be of interest to legal professionals, policy makers, law students and scholars concerned with exploring diversity in the 21st century.

The Plurality Trilemma Bloomsbury Publishing

We live in a pluralist world of multi-level law and governance. More than ever before multiple legal systems and governing authorities at different levels - sub-state, state, supranational, international - are recognized as applying to, and claiming authority over, the affairs of the same sets of individuals and institutions. Yet our constitutional theories fail to adequately capture this pluralist state of affairs. This book examines some of the key conceptual and theoretical puzzles which the

contemporary state of multilevel pluralism poses for our constitutional theories. It offers fresh perspectives on these questions by addressing the pluralism of norms and authorities from the viewpoint of legality and legitimacy respectively, proposing novel solutions for pluralizing constitutional theory in the light of contemporary multilevel governance. Our turbulent times are on a steady trajectory of ever-more pluralism of law and governance to tackle the defining social and political problems of our age including populism, pandemic, and climate change and this book provides an essential intervention in debates on how to pluralize constitutional theory to better understand and, perhaps more importantly, legitimize the tools to

address these increasingly shared problems.

Authority in Transnational Legal Theory

Oxford University Press

“A fascinating collection of essays commenting on and developing Frankenberg’s IKEA theory of legal transfer. With valuable theoretical analyses, comparative studies, attention to gender issues, post-colonial contexts, imposed law and legal history, this book is essential reading for anyone thinking about the circulation of legal models especially, but not only, in the area of constitutional law.” — David Nelken, University of Cardiff, UK “Frankenberg’s work gives a new insight of what comparative law can be in the context of globalization, representing an outstanding achievement. His theory of

“transfer” supersedes the metaphors of mainstream scholarship, displaying that constitutions are not mere “commodities” or items to be assembled. The real matter is rather, which “meanings” are generated through transfer. In this way, beyond any usual flat version, we may perceive that any “constitutional relocation” exhibits a reappraisal of the whole world we live in.” — Pier Giuseppe Monateri, University of Turin, Italy Constitutional orders and legal regimes are established and changed through the importing and exporting of ideas and ideologies, norms, institutions and arguments. The contributions in this book discuss this assumption and address theoretical questions, methodological problems and political projects connected with the

transfer of constitutions and law. Some of the chapters focus on the pathways, risks and side-effects of legal-constitutional transfers in specific situations, such as postcolonial societies and occupied territories. Others follow law beyond the official arenas into systems of legal pluralism, while others analyze how experimentalism generates hybrid constitutional orders. This interdisciplinary, multi-jurisdictional study will appeal to researchers, academics and advanced students in the fields of comparative constitutional law, comparative law and legal theory.

Research Handbook on Legal Pluralism and EU Law OUP Oxford

This collection of innovative contributions to the study of legal pluralism in international and

transnational law focuses on collisions and conflicts between an increasing number of institutional and legal orders, which can manifest themselves in contradictory decisions or mutual obstruction. It combines theoretical approaches from a variety of disciplines with theoretically informed case studies in order to further understanding of the phenomenon of regime collisions. By bringing together scholars of international law, legal philosophy, the social sciences and postcolonial studies from Latin America, the United States and Europe, the volume demonstrates that collisions between various institutional and legal orders affect different regions in different ways, and highlights some of their problematic consequences and identifies methods of

addressing such collisions in a more productive manner.

Handbook on Global Constitutionalism Cambridge University Press

This collection brings together some of the most influential sociologists of law to confront the challenges of current transnational constitutionalism. It shows the constitution appearing in a new light: no longer as an essential factor of unity and stabilisation but as a potential defence of pluralism and innovation. The first part of the book is devoted to the analysis of the concept of constitution, highlighting the elements that can contribute from a socio-legal perspective, to clarifying the principle meanings attributed to the constitution. The study goes on to analyse some

concrete aspects of the functioning of constitutions in contemporary society. In applying Luhmann's General Systems Theory to a comparative analysis of the concept of constitution, the work contributes to a better understanding of this traditional concept in both its institutionalised and functional aspects. Defining the constitution's contents and functions both at the conceptual level and by taking empirical issues of particular comparative interest into account, this study will be of importance to scholars and students of sociology of law, sociology of politics and comparative public law.

International Tax Law Routledge
Human rights have transformed the way in which we conceive the place of the individual within the community and in

relation to the state in a vast array of disciplines, including law, philosophy, politics, sociology, geography. The published output on human rights over the last five decades has been enormous, but has remained tightly bound to a notion of human rights as dialectically linking the individual and the state. Because of human rights' dogged focus on the state and its actions, they have very seldom attracted the attention of legal pluralists. Indeed, some may have viewed the two as simply incompatible or relating to wholly distinct phenomena. This collection of essays is the first to bring together authors with established track records in the fields of legal pluralism and human rights, to explore the ways in which these concepts can be mutually

reinforcing, delegitimizing, or competing. The essays reveal that there is no facile conclusion to reach but that the question opens avenues which are likely to be mined for years to come by those interested in how human rights can affect the behaviour of individuals and institutions.

Globalization and Sovereignty

Cambridge University Press

We live in a world of legal pluralism, where a single act or actor is potentially regulated by multiple legal or quasi-legal regimes imposed by state, substate, transnational, supranational and nonstate communities. Navigating these spheres of complex overlapping legal authority is confusing and we cannot expect territorial borders to solve all these problems. At the same time, those

hoping to create one universal set of legal rules are also likely to be disappointed by the sheer variety of human communities and interests. Instead, we need an alternative jurisprudence, one that seeks to create or preserve spaces for productive interaction among multiple, overlapping legal systems by developing procedural mechanisms, institutions and practices that aim to manage, without eliminating, the legal pluralism we see around us. Global Legal Pluralism provides a broad synthesis across a variety of legal doctrines and academic disciplines and offers a novel conceptualization of law and globalization.

Transnational Law OUP Oxford

In considering diffusion from a global perspective, this book provides timely

new insights into its application in a variety of fields and at many levels of both legal and non-legal orderings. This collection contributes to the wider theoretical debate concerning the movement of law and legal norms by engaging with concrete examples of legal diffusion, in jurisdictions as diverse as Albania, the Czech Republic, Poland and Kuwait. These examples, taken together, provide a comprehensive illustration of the theoretical debates concerning the diffusion of laws and norms in terms of both process and form. This international, multi-disciplinary and multi-methodological volume brings together scholars from law and social science with experience in mixed and hybrid jurisdictions, and advances the conversation about legal

and normative diffusion across the academy. It represents a robust challenge to many preconceived ideas about legal movement and, as such, will be of interest to academics and students working in the fields of Law, Sociology, Anthropology, Political Science, Legal Education and comparative method. *Order from Transfer* Flipside Digital Content Company Inc.

The achievements of the democratic constitutional order have long been associated with the sovereign nation-state. Civic nationalist assumptions hold that social solidarity and social plurality are compatible, offering a path to guarantees of individual rights, social justice, and tolerance for minority voices. Yet today, challenges to the liberal-democratic sovereign nation-state

are proliferating on all levels, from multinational corporations and international institutions to populist nationalisms and revanchist ethnic and religious movements. Many critics see the nation-state itself as a tool of racial and economic exclusion and repression. What other options are available for managing pluralism, fostering self-government, furthering social justice, and defending equality? In this interdisciplinary volume, a group of prominent international scholars considers alternative political formations to the nation-state and their ability to preserve and expand the achievements of democratic constitutionalism in the twenty-first century. The book considers four different principles of organization—federation, subsidiarity,

status group legal pluralism, and transnational corporate autonomy—contrasts them with the unitary and centralized nation-state, and inquires into their capacity to deal with deep societal differences. In essays that examine empire, indigenous struggles, corporate institutions, forms of federalism, and the complexities of political secularism, anthropologists, historians, legal scholars, political scientists, and sociologists remind us that the sovereign nation-state is not inevitable and that multinational and federal states need not privilege a particular group. *Forms of Pluralism and Democratic Constitutionalism* helps us answer the crucial question of whether any of the alternatives might be better suited to core democratic principles.

Fragmentation vs the Constitutionalisation of International Law
Cambridge University Press

The state-centred 'Westphalian model' of international law has failed to protect human rights and other international public goods effectively. Most international trade, financial and environmental agreements do not even refer to human rights, consumer welfare, democratic citizen participation and transnational rule of law for the benefit of citizens. This book argues that these 'multilevel governance failures' are largely due to inadequate regulation of the 'collective action problems' in the supply of international public goods, such as inadequate legal, judicial and democratic accountability of governments vis-a-vis citizens. Rather

than treating citizens as mere objects of intergovernmental economic and environmental regulation and leaving multilevel governance of international public goods to discretionary 'foreign policy', human rights and constitutional democracy call for 'civilizing' and 'constitutionalizing' international economic and environmental cooperation by stronger legal and judicial protection of citizens and their constitutional rights in international economic law. Moreover intergovernmental regulation of transnational cooperation among citizens must be justified by 'principles of justice' and 'multilevel constitutional restraints' protecting rights of citizens and their 'public reason'. The reality of 'constitutional pluralism' requires

respecting legitimately diverse conceptions of human rights and democratic constitutionalism. The obvious failures in the governance of interrelated trading, financial and environmental systems must be restrained by cosmopolitan, constitutional conceptions of international law protecting the transnational rule of law and participatory democracy for the benefit of citizens.

Advanced Introduction to Law and Globalisation Edward Elgar Publishing
This thoroughly revised Handbook presents an up-to-date political and philosophical history of global constitutionalism. By exploring the constitutional-like qualities of international affairs, it provides key

insight into the evolving world order.

The Diffusion of Law Cambridge University Press

This landmark book provides the first systematic overview of the key scholarly contributions in an emerging field of research on constitutionalism: the sociology of constitutions. It presents chapters offering very different normative and methodological approaches to constitutions, ranging from analysis of national constitutional law, to research on transnational legal forms, to discussions of the constitutional impact of international human rights law. The book makes an important contribution to a series of wider debates - spanning constitutional law, legal theory, comparative constitutionalism, sociology, and political

science - about the changing nature of constitutionalism. Researchers and students in constitutional law will gain a comprehensive appreciation of a diverse range of distinctively sociological approaches to constitutional law and an in-depth understanding of distinctive sociological dimensions of constitutions. The book offers new insights into the sources of constitutional normativity in society and it proposes different sociological methods for addressing them.

Jurisgenerative Constitutionalism GRIN Verlag

The idea of the EU as a constitutional order has recently taken on renewed life, as the Court of Justice declared the primacy of EU law not just over national constitutions but also over the

international legal order, including the UN Charter. This book explores the nature and character of EU legal and political authority, and the complex analytical and normative questions which the notion of European constitutionalism raises, in both the EU's internal and its external relations. The book culminates in a dialogical epilogue in which the authors' arguments are questioned and challenged by the editor, providing a unique and stimulating approach to the subject. By bringing together leading constitutional theorists of the European Union, this book offers a sharp, challenging and engaging discussion for students and researchers alike.

Sociology of Constitutions Cambridge University Press

Studienarbeit aus dem Jahr 2023 im Fachbereich Jura - Europarecht, Völkerrecht, Internationales Privatrecht, Note: 8, Universität Bremen, Veranstaltung: Völkerrecht, Sprache: Deutsch, Abstract: Das Völkerrecht als Recht zwischen den Staaten ist frei von Hierarchien und zeichnet sich aus durch eine Gleichordnung der Akteure. Im Zuge der Globalisierung haben sich jedoch stetig mehr neue internationale Spruchkörper gebildet – es kam zur Entstehung neuer Teilrechtsgebiete und zur Proliferation (Vervielfachung) internationaler Gerichte. Wie kann ohne Hierarchien noch ein Überblick über sämtliche Konfliktlösungsinstanzen, ihren Geltungsbereich und ihre Beziehung zueinander behalten werden? Und welche Auswirkungen hat dieser

institutionelle Wandel auf die Struktur des Völkerrechts? In den vergangenen zwei Jahrzehnten wurde eine Vielzahl von Theorien zur Darstellung der gegenwärtigen Entwicklung und zur Zukunft des Völkerrechts aufgestellt. Zentraler Aspekt hiervon ist die Furcht vor einer Rechtszersplitterung in unabhängig voneinander agierende Teilbereiche (Fragmentierung). Die einen wollen diese bekämpfen, indem man das Recht durch Schaffung von Hierarchien vereinheitlicht (Konstitutionalisierungsthese), andere wiederum wollen das Nebeneinanderbestehen und Überlappen der verschiedenen Rechtsordnungen zu einem ganz neuen Rechtssystem zulassen (globaler Rechtspluralismus). In dieser Arbeit werden alle diese Thesen

und ihr jeweiliger Diskussionsgehalt erläutert und gegenübergestellt, um die Entwicklung des Völkerrechts besser begreifen und bewerten zu können.

Beyond Constitutionalism Bloomsbury Publishing

The pluralist turn in jurisprudence has led to a search for new ways of thinking about law. The relationships between state law and other legal orders such as international, customary, transnational or indigenous law are particularly significant in this development. Collecting together new work by leading scholars in the field, this volume considers the basic questions about what would be an appropriate theoretical response to this shift: how precisely is it to be undertaken? Is it called for by developments in legal practice or are

these adequately addressed by current legal theory? What normative challenges are raised, and what fresh promises might the pluralist turn hold? What distinctive insights can it offer for theorising about law? This book presents a rich variety of resources drawn from a number of theoretical approaches and demonstrates how they might be brought together to generate an increasingly important pluralist jurisprudence.

Human Rights Encounter Legal

Pluralism Bloomsbury Publishing

This book stems from a symposium held at the Faculty of Law of the National University of Singapore in honour of the pioneer in the field of legal pluralism, Professor M.B. Hooker. It gathers essays from admirers and friends who add their

own contributions on legal pluralism, transnationalism and culture in Asia. The book opens with an account of M.B. Hooker's colourful and prolific career. The authors then approach legal pluralism through legal theory, legal anthropology, comparative law, law and religion, constitutional law, even Islamic art, thus reflecting the broad approaches of Professor Hooker's scholarship. While most of the book focuses mainly on Southeast Asia, it also reaches out to all of Asia up to Israel, and even includes a chapter comparing Indonesia and Egypt. Debating Legal Pluralism and Constitutionalism Cambridge University Press

In recent years, liberal constitutionalism has come under sharp attack. Globalization has caused huge

disparities in wealth, identity-based alienation triggered by mass migration, and accompanying erosions of democracy. Liberal populists have also adapted the framework of liberal institutionalism, masking their aim to subvert its core values. These developments bring the links between justice and the constitution to the fore, particularly concerning distributive justice in its three dimensions of redistribution, recognition, and representation. A Pluralist Theory of Constitutional Justice provides a systematic account of the central role of distributive justice in the normative legitimation of liberal constitutions. The requirements of distributive justice are highly contested, and constitutions are susceptible to influencing those they

govern. By drawing on Rawls' insight that distributive justice calls for "constitutional essentials", Rosenfeld advances the thesis that liberal constitutions must incorporate certain "justice essentials". This book is divided into three sections. Part one examines the current legal, economic, political and ideological developments that pose challenges to the normative viability of liberal constitutionalism. Part two offers a rereading of philosophical and jurisprudential literature that sheds crucial light on the relationship between constitution and justice. Finally, part three makes a case for using a thoroughly pluralistic approach in the quest for a constitution's justice essentials.

Proliferation internationaler Gerichte.

Das Völkerrecht zwischen Fragmentierung, Konstitutionalisierung und Rechtspluralismus Debating Legal Pluralism and Constitutionalism

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.

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