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Chapter 1 : Sovereignty in Transition by Neil Walker () | Boomerang Books

2 The Variety of Sovereignty Neil Walker Introduction: Relocating Sovereignty This chapter seeks to engage simultaneously with three related sets of chal-.

Laws of Specific jurisdictions. Summary "Sovereignty in Transition" brings together a group of leading scholars from law and cognate disciplines to assess contemporary developments in the framework of ideas and the variety of institutional forms associated with the concept of sovereignty. Sovereignty has been described as the main organising concept of the international society of states - one which is traditionally central to the discipline and practice of both constitutional law and of international law. The volume asks to what extent, and with what implications, this centrality is challenged by contemporary developments that shift authority away from the state to new sub-state, supra-state and non-state forms. A particular focus of attention is the European Union, and the relationship between the sovereignty traditions of various member states on the one hand and the new claims to authority made on behalf of the European Union itself on the other are examined. The collection also includes contributions from international law, legal philosophy, legal history, political theory, political science, international relations and theology that seek to examine the state of the sovereignty debate in these disciplines in ways that throw light on the focal constitutional debate in the European Union. Sovereignty, post-sovereignty and pre-sovereignty: Sovereignty and plurinational democracy: The View from the States. Do not mention the word: State sovereignty and European integration: Postmodern versus retrospective sovereignty: The debate about sovereignty in the United States: The View from Europe. Notes "This book brings together a group of leading scholars from law and cognate disciplines to assess contemporary developments in the framework of ideas and the variety of institutional forms associated with the concept of sovereignty. A particular focus of attention is the European Union, and the relationship between the sovereignty traditions of various member states on the one hand and the new claims to authority made on behalf of the European Union itself on the other. The collection also includes contributions from international law, legal philosophy, legal history, political theory, political science, international relations and the history of ideas, each of which seeks to examine the state of the sovereignty debate in these disciplines in ways that throw light on the focal constitutional debate in the European Union. Includes bibliographical references and index. Electronic version is available via NetLibrary. Access Conditions Electronic version is restricted to subscribing institutions. Technical Details Mode of access: Internet via World Wide Web.

Chapter 2 : Sovereignty in Transition - Neil Walker - HÃ¤ftad () | Bokus

About Sovereignty in Transition. Sovereignty in Transition brings together a group of leading scholars from law and cognate disciplines to assess contemporary developments in the framework of ideas and the variety of institutional forms associated with the concept of sovereignty.

Advanced Search This essay, in discussing some recent contributions to the contemporary debate on sovereignty, focuses on what is at stake in this debate. While most authors today agree that the meaning of the concept of sovereignty is open to change across time and space, students of international law and international relations disagree about the causes and consequences of this conceptual change. While some scholars take such changes to be indicative of a corresponding transformation of global institutions, others regard them as evidence of the remarkable endurance of the Westphalian order. In this essay, I argue that this disagreement depends less on divergent accounts of the world, and more on the ontological status implicitly accorded to concepts by these authors. I conclude by pointing out that the very emphasis on the changing meaning of sovereignty makes normative problems intrinsically hard to settle, and that dealing with this impasse will be a major challenge to legal and political theory in the years to come. The concept of sovereignty, once relatively uncontested, has recently become a major bone of contention within international law and international relations theory. Rather than presupposing that the concept of sovereignty has a timeless or universal meaning, more recent scholarship has focused on the changing meanings of this concept across a variety of historical and political contexts. One main upshot of this reorientation has been to claim that language, rather than being a neutral medium of representation, is actively involved in the constitution of legal and political reality. Yet, contrary to initial expectations, the linguistic turn has increased rather than diminished the staying power of the concept of sovereignty within legal and political discourse. The very moment that scholars decided that the meaning of sovereignty lies very much in what we make of it through our linguistic conventions and rhetorical practices, they also opened up a new field of inquiry within which this concept could survive and thrive, albeit now as an object of inquiry rather than as its uncontested foundation. What then became the subject of great interest was the question of why the meaning of this concept changes across time and space, and under what conditions these changes in turn spill over into institutional change on a grand scale. The very focus on the concept of sovereignty brought about by this linguistic reorientation â€” rather than on the facts or norms of sovereign statehood â€” has provided a common ground where the concerns of lawyers and political scientists can again meet, relatively undisturbed by epistemological differences. Both disciplines have now deconstructed themselves back to a normal working relationship, with enough common ground to make their differences seem topical rather than merely confusing. As a result, the concept of sovereignty has become the focal point of an interdisciplinary debate that concerns the most basic of questions: In what kind of world do we live, and what kind of entities make up this world? Two main answers to this question compete within contemporary international relations theory. According to the first view, the sovereign state is unlikely to remain the main locus of political authority and community in the future. It is challenged by new constellations of authority and community which transcend the divide between the domestic and the international spheres, and will soon be replaced by new forms of political life that know nothing of this distinction. Yet the tricks that the concept of sovereignty continues to play on our political imagination make it difficult to make coherent sense of these new constellations as they do not conform to the indivisibility and discreteness that characterize sovereignty. This concept should therefore either be abandoned, or be redefined in order to make sense of these new constellations. Those emergent constellations of authority and community that allegedly challenge the predominance of the sovereign state are ultimately only manifestations of its successful sovereignty claims. They are thus indicative of the remarkable endurance of this concept in both theory and practice. When properly understood, therefore, the concept of sovereignty retains much of its explanatory power and normative relevance. Indeed, many constructivists seem to assume that this question has been settled once and for all, and are thus blind to the ontological implications of their own arguments. On the one hand, the belief that sovereignty is undergoing profound change is greatly facilitated by a nominalist

view of concepts since, according to this view, concepts are nothing but general names that we use to constitute different classes of objects as distinct from each other. To the nominalist, conceptual change is therefore a matter of sharp historical discontinuities between different classificatory schemes of our own making. On the other hand, the belief that sovereignty is a permanent feature of political life is nourished by a realist view of concepts, according to which classes of objects exist independently of our descriptions, and instead condition their possibility. To the realist, conceptual change is much more like a thematic variation of an underlying core meaning that remains basically the same across time and space. I shall discuss three books. The first, Reconfigured Sovereignty. Multi-Layered Governance in the Global Age, edited by Thomas Ilgen, analyses how and why sovereignty has been relocated as a consequence of economic and political globalization. The second book, Sovereignty in Transition, edited by Neil Walker, discusses the implications of such a relocation for legal and political theory. Thus, taken together, these books unintentionally offer complementary perspectives on the concept of sovereignty and its theoretical and empirical manifestations. Its author argues that sovereignty is a much more fluid and malleable concept than its standard characterization as fixed and immutable in international affairs. The introductory chapter posits that sovereignty nowadays is seldom monopolized by the state, but is regularly divided and shared among state and non-state actors at all levels of governance, depending on the issue or problem at hand. Furthermore, while most existing scholarship has argued that the principal challenges to state sovereignty come from outside the state, and that state governments have responded to these challenges by sharing sovereignty with and within international organizations, this volume focuses on the internal challenges to state sovereignty. In pursuing this inquiry, the contributors argue that both internal and external factors have increased the sovereignty of sub-national levels of governance: In his ambitious overview of the history of sovereignty, Ilgen explores the tension between the universal acceptance of the sovereign state as the primary form of political organization and the gradual emergence of a global market economy. While the history of sovereignty culminates in its concentration in the nation-state, it is challenged by the market economy and its natural tendency to expand beyond the politically defined boundaries of states. Consequently, crucial features of state sovereignty have been weakened, such as its ability to make and enforce laws, the power to define and defend territorial borders, as well as the capacity to shape and direct economic performance. Individual contributions to this volume corroborate this trend towards a downward diffusion of sovereignty. Barry Jones, Elizabeth Crighton and Nigel Boyle make convincing empirical cases in favour of the view that such downward devolution within Great Britain has been beneficial to Welsh and Irish economic development, and go as far as arguing that it might be conducive to peace in the case of Northern Ireland. Mark Donovan analyses the sources of constitutional and political change in Italy, and concludes that the strong pressures for decentralization and devolution have had a profound and lasting impact upon Italian politics and society. Examples from Germany and Turkey further substantiate the impression that sovereignty has been and still is in the process of being reconfigured within different national contexts, and that this development constitutes a reasonable response to the logic of political globalization. In the last chapter, Thomas Ilgen concludes that while it is hard to generalize about the causes of this reconfiguration, ineffective or dysfunctional central government coupled with external economic pressures push towards a diffusion of sovereignty, and hence towards multilayered governance. So while the sovereign state certainly has not withered away, much of its former authority has been dispersed to other levels of governance, above as well as below the institutions of central government. In many ways, this is a standard account of the political consequences of globalization. Yet through its focus on the internal dynamics of political globalization, this volume yields some interesting insights into the mechanisms of decentralization and devaluation of political authority. But is the concept of sovereignty really necessary in order to understand this development? On the one hand, the concept of sovereignty provides the contributors to this volume with a common focus. On the other hand, the concept is used in such a way that it becomes hard to distinguish it from that of autonomy. The authors invariably use the term sovereignty with little regard to its traditional connotations of indivisibility and discreteness, thereby implying that these logical properties have become irrelevant to our attempts to make sense of contemporary political life. Thomas Ilgen and his crew seem happy to assume that sovereignty simply is divisible and continuous. By choosing not to confront the semantics of

sovereignty head on, the contributors to this volume not only fail to distinguish the concept of sovereignty from other concepts, but also miss the opportunity to defend themselves against the objection that, given their theoretical and empirical purposes, the concept of sovereignty is ultimately redundant. Unfortunately, sovereignty becomes little more than a shorthand term whose meaning is far removed from the linguistic conventions that the empirical analyses of this volume challenges. As a result of this unwillingness to confront the problem of sovereignty at the conceptual level, many of the principal questions in contemporary legal and political theory cannot be formulated, let alone answered. The focus of this volume is primarily legal, yet its editor, Neil Walker, has done an excellent job in bringing together contributions from a variety of perspectives from within different disciplines. While the various authors provide distinct, if not incommensurable, interpretations of the concept of sovereignty, there is nevertheless a strong sense of intellectual coherence that derives from a shared focus on the conceptual problems that arise in thinking about sovereignty in transition. All the contributors to this volume seem more or less painfully aware of the tension that exists between the traditional view of sovereignty as an indivisible and discrete condition of possible statehood, and the actual dispersion of political power and legal authority to the sub- and supranational levels. They are also very aware of the fact that whenever the concept of sovereignty is simply redefined in order to be better attuned to this dispersion of authority, a series of paradoxes arise that must be resolved if those new constellations of power and authority are to be perceived as legitimate. The chief virtue of this volume is the consistent ambition among its authors to explore and tackle these paradoxes head on, rather than brushing them under the carpet as has frequently been done in contemporary political theory. How can we develop a conception of sovereignty that can underpin the actual constitutional pluralism of the European Union? In order to answer this question, Neil Walker defines sovereignty as a discursive claim concerning the existence and character of a supreme ordering power for a particular polity. He then goes on to argue that such a conception indeed is indispensable in order to understand and justify the transition from good old Westphalian sovereignty to our present condition of late sovereignty. The constitutional pluralism and multidimensional order that characterize late sovereignty display considerable continuity with the old order in the way that they handle the tension between law and politics, yet they have certain distinctive features of their own. If we are to believe this account, there is no going back from this new order, only forward: If understanding sovereignty as a discursive claim helps us to make sense of emergent polities, it is less helpful when it comes to the question of how such polities might be turned into political communities governed according to the constitutional requirements of popular sovereignty. Such an understanding would require a systematic account of the relationship between constituting power and constituted power, in order to explain how citizens or subjects might be constituted as a demos, and how this demos in turn might provide governmental authority with democratic legitimacy. Since Rousseau, this problem has been a perennial source of debate in legal and political theory, as it begs the simple question of how the people can both rule and be ruled simultaneously. This problem is dealt with systematically in a brilliant essay by Bert van Roermund. As he points out, the concept of sovereignty is prima facie incoherent, since it signifies both the political power constituting the law and the law restraining that very power. If I have understood van Roermund correctly, popular sovereignty does indeed possess the long-disputed capacity to legitimize itself without recourse to anything over and above the people thus constituted. If this indeed is the case, it would imply that other solutions to this problem are simply redundant. In his view, efforts to move beyond our traditional conceptions of sovereignty are rather misguided, since this concept is indispensable to our understanding of the modern political and legal order. Sovereignty is the very relational interface between law and politics, that which both separates these domains and binds them together. As such, sovereignty represents the autonomy of the political, and hence provides the foundation of public law. Loughlin goes on to explain the many manifestations of sovereign authority within modern polities, arguing that it is a coherent concept of continuing relevance despite appearances to the contrary. Claims that we have reached the end of sovereignty are rooted in a misunderstanding of the concept of sovereignty and its meaning: This essay is decidedly impressive in its intellectual ambition. However, it is hard to see how a different conclusion could have been reached, given the ontological assumptions that silently inform both the definition of the concept and the subsequent inquiry: Such a view of concepts and their meaning is exactly

what is contested in a piece that promises to be an influential contribution to the present debate. Here, the concept of sovereignty is not merely understood in terms of its meaning and reference, but in terms of its function within discourse. Lindahl elaborates the implications of this view for our understanding of the logic of political representation in the European Union. His way out of the resulting paradox is both simple and original, and also provides an escape from the predicament described by Derrida in Force de Loi: This is another remarkable way of bringing the mythological lawgiver from Du Contrat Social down to earth, yet without ending up in the arms of old Nick in doing so. Richard Bellamy shares these concerns with democratic legitimacy and rights within the European Union, but delivers a different solution. He is critical both of the view that state sovereignty has been transferred to other bodies and the view that it has evaporated in favour of an international rights regime. To him, political sovereignty still persists, but changing legal norms have altered its basis. Bellamy goes on to specify the principles of mixed sovereignty that would satisfy these requirements, thereby returning to and reviving the ideals of civic republicanism. The aim is to produce a balance between the interests and values of individuals and groups within the polity, obliging them to interact with each other in fair and reciprocal ways. Bellamy envisages a polity in which all arbitrary power is kept in check and in which unity is based on constant dialogue and negotiation, but he has little to say about the boundaries of such a polity. How are they to be drawn, and in whose name? Here Bellamy, like many other political philosophers, remains silent. Another approach to the question of democratic legitimacy is taken up by Michael Keating. Noting how the notoriously ambiguous concept of sovereignty nevertheless has been constitutive of the disciplines of political science and international relations, he proceeds to describe the challenges faced by the modern sovereign nation-state, and the reasons why these disciplines have had a hard time making sense of these challenges. This solution of course begs the question of why the nation should still be conceived of as the exemplary form of community, and to what extent it should be regarded as the predominant source of political will in a world in which the very idea of distinct and bounded national identities is under challenge. The relationship between transnationalism and sovereignty receives a refreshing treatment in the hands of Jef Huysmans, who raises the question whether the existence of transnational practices really defies the logic of sovereignty in international politics, or if it merely constitutes one of its many reproductive circuits. Rather than merely reiterating any of the standard views about the corrosive effects of transnational practices upon state sovereignty, Huysmans reformulates this problem in terms of how these practices might affect the matrix of sovereignty, understood as the way in which the question of the political conventionally has been formulated in terms of a territorialized distinction between the domestic inside and the international outside. The existence of transnational practices thus opens up the possibility of envisaging politics in terms of pluralization instead of unification, making it possible to rework the matrix of sovereignty and thus align it closer to a democratic ethos.

Chapter 3 : Sovereignty in Transition : Neil Walker :

This chapter seeks to engage simultaneously with three related sets of challenges to sovereignty in contemporary understandings and with three questions of sovereignty's "relocation" that issue from these challenges. First, and at the highest level of abstraction, "relocating" conveys the.

A strain of law reaching beyond any bounded international or transnational remit to assert a global jurisdiction has recently acquired a new prominence. Intimations of Global Law detects this strain in structures of international law claiming a planetary scope independent of state consent, in new threads of global constitutional law, administrative law and human rights, and in revived notions of ius gentium and the global rule of law. The coming of global law affects how law manifests itself in a global age and alters the shape of our legal-ethical horizons. Global law presents a diverse, unsettled and sometimes conflicted legal category, and one which challenges our very understanding of the rudiments of legal authority. Public law has been conceived in many different ways, sometimes overlapping, often conflicting. However in recent years a common theme running through the discussions of public law is one of loss. What function and future can public law have in this rapidly transforming landscape, where globalized states and supranational institutions have ever-increasing importance? The contributions to this volume take stock of the idea, concepts, and values of public law as it has developed alongside the growth of the modern state, and assess its continued usefulness as a distinct area of legal inquiry and normativity in light of various historical trends and contemporary pressures affecting the global configuration of law in general. Divided into three parts, the first provides a conceptual, philosophical, and historical understanding of the nature of public law, the nature of private law and the relationship between the public, the private, and the concept of law. The second part focuses on the domains, values, and functions of public law in contemporary state legal practice, as seen, in part, through its relationship with private domains, values, and functions. The final part engages with the new legal scholarship on global transformation, analysing the changes in public law at the national level, including the new forms of interpenetration of public and private in the market state, as well as exploring the ubiquitous use of public law values and concepts beyond the state. This volume started as a series of papers to mark the contribution of the late Sir Neil MacCormick and to celebrate his scholarship and life. This book emerged from an extended seminar series held in Edinburgh Law School which sought to explore the complex constitutional arrangements of the European legal space as an inter-connected mosaic. There has been much recent debate concerning the constitutional future of Europe, focusing almost exclusively upon the EU in the context of the failed Constitutional Treaty of and the subsequent Treaty of Lisbon. The premise of the book is that this focus, while indispensable, offers only a partial vision of the complex constitutional terrain of contemporary Europe. Together these developments create increasingly dense networks of constitutional authority within the European space. This fluid and multi-dimensional dynamic is difficult to classify, and indeed may seem in many ways impenetrable, but that makes the explanatory challenge all the more important and pressing. Without this fuller picture it becomes impossible to understand the legal context of Europe today or the prospects of ongoing changes. The book brings together a range of experts in law, legal theory and political science from across Europe in order to address these complex issues and to supply illustrative case-studies in the topical areas of the constitutionalisation of European labour law and European criminal law. In this set of interdisciplinary essays leading scholars discuss the future of the Rule of Law, a concept whose meaning and import has become ever more topical and elusive. It has also come to be equated, more broadly, with certain goods suggested by the idea of legality as such, including the preservation of human dignity and other individual and social benefits predicated upon or conducive to a rule-based social order. But in both its narrow and broader senses the Rule of Law remains a much contested concept. This book sets out to examine some of the key features of what we describe as the paradox of constitutionalism: These questions have been debated both in different national contexts and at the level of constitutional theory, and these debates are acknowledged and developed in the first two sections of the book. Part I includes chapters on how the question of constituent power has been treated in the constitutional histories of USA, France, UK and

Germany, while Part II examines at the question of constituent power from the perspective of both liberal and non-liberal theories of the state and legal order. The essays in Part III consider the operation of constitutionalism with respect to a series of contemporary challenges to the state, including those from popular movements below the level of the state and challenges from the supranational and international levels, and they analyse how the puzzles associated with the question of constituent power are played out in these increasingly important settings Neil Walker, Ian Loader, Civilizing Security, Cambridge University Press, Abstract: This book develops and defends an original argument concerning the importance and value of security as a good, and the virtue and necessity of the democratic state in fostering and sustaining that good. It travels widely over debates in social and political theory, sociology, criminology, law and international security studies. This volume brings together a collection of classic and contemporary texts which engage with the core problem of sovereignty from the perspective of various legal and law-related sub-disciplines: Many of the highlights from the intense debates about the continuing relevance or otherwise of the internal sovereignty of national legal orders and the external sovereignty of states in a rapidly- globalizing world are reproduced here. The concept of the AFSJ was introduced into the EU Treaty framework by the Treaty of Amsterdam in , and it incorporates migration law, family reunion law, asylum law, police cooperation, and cooperation in criminal law. Each of these areas of law is the subject of an in-depth examination in a separate chapter of this book. The early years of the AFSJ, building upon a substantial body of law already in place under the Treaty of Maastricht and various intergovernmental arrangements, have witnessed a rapid expansion in legislative and executive activity in the field of European internal security. In migration law, family reunion law, asylum law, police co-operation, and co-operation in criminal law, the scale and intensity of action at the supranational level is already such as to overturn longstanding assumptions about the priority of national law in matters of migration control and criminal justice. An introductory chapter examines the various policy strands covered by the AFSJ; investigates what, if anything, can be viewed as its distinctive legal underpinning; and discusses its possible future development in the light of current discussions over the adoption of a first documentary Constitution for the European Union. In addition to setting out the main contours of legal policy, each chapter examines the continuing tension between national sovereignty on the one hand and a growing commitment to collective, EU-wide action on the other. The volume also addresses the wider constitutional implications of a growing supranational capacity in questions of the priority of political values in the evolving EU; fundamental rights protection; the control of new forms of executive and administrative discretion; and the pressures of accommodating the ten new Enlargement states within the internal security field. Sovereignty in Transition brings together a group of leading scholars from law and cognate disciplines to assess contemporary developments in the framework of ideas and the variety of institutional forms associated with the concept of sovereignty. Sovereignty has been described as the main organising concept of the international society of states - one which is traditionally central to the discipline and practice of both constitutional law and of international law. The volume asks to what extent,and with what implications, this centrality is challenged by contemporary developments that shift authority away from the state to new sub-state, supra-state and non-state forms. A particular focus of attention is the European Union, and the relationship between the sovereignty traditions of various member states on the one hand and the new claims to authority made on behalf of the European Union itself on the other are examined. The collection also includes contributions from international law, legal philosophy, legal history, political theory, political science, international relations and theology that seek to examine the state of the sovereignty debate in these disciplines in ways that throw light on the focal constitutional debate in the European Union. Wilkie, Managing the Police: A better approach to questions of the relationship between state-centered legal and political authority and cosmopolitan justice would start from a firmer sense of the gap between the actual and the ideal, of the significance of that gap, and of the difficulties and possibilities attendant upon efforts to bridge that gap. It is my argument that, through this novel account, contested multilateralism offers both a serious challenge and qualified encouragement to postnational constitutionalism, and that we only appreciate the full value of its approach if we hold both of these perspectives â€" critical and constructive â€" together. This essay revisits the theory of constitutional pluralism. This theory was first developed in the EU context as

a way of understanding and defending the absence of a broadly agreed source of final authority in the relationship between national and supranational EU legal systems and their respective appellate courts in the context of the significant increase in supranational jurisdiction around the time of the Maastricht Treaty 25 years ago. The essay argues that the theory of constitutional pluralism remains relevant today, in particular offering better explanatory and justificatory accounts of the EU than any of the singularist or monist , holist or federalist alternatives. Its continuing relevance, however, depends on a more explicit focus on the political underpinnings of the legal and judicial dimensions of constitutional pluralism than has typically been the case in the literature, and on more detailed consideration of the preconditions, forms and limits of constitutional initiative in the contemporary phase of unprecedented challenge to the legitimacy of the EU. The Sound of One Hand Clapping? Their combination, moreover, holds out the prospect of a fertile engagement between the two core concerns of modern political moralityâ€”our collective requirements and potential public goods and our individual dignity and well-being human rights. Yet for all their ambition, public goods and human rights each face the formidable challenge of placing considerations of political authority and political morality in productive balance. Exploring both, we face the frustrating phenomenon of one hand clappingâ€”a failure to reconcile authority and morality in a satisfactory manner. In turn, this reinforces the incompleteness of its claim in political morality. The discourse of human rights, perhaps surprisingly, reveals stronger authoritative roots; however, these are locally situated, and the soil becomes very thin as we move away from the state to the broader global environment and the familiar yet ethically abstracted moral discourse of universal entitlement. In conclusion, I argue, it is precisely because both of these dimensions of global ethicsâ€”public goods and human rightsâ€”face the same type of difficulty of the grounding political authority that their conjunction in a single scheme does not allow either to compensate for the deficiencies of the other. This paper examines how ideas of postnational constitutionalism and postnational public law have developed and will likely continue to develop in ways that are in some respects complementary and in other respects in tension. Both terms are neologisms-recently emergent concepts seeking to adapt legal-normative ideas suited to one state context to another postnational context. To subscribe to either, or to both, is already to take sides against a broad church of postnational sceptics, and instead to view the legal forms and vocabulary of statehood as a mobile resource and as an indispensable part of any answer to the question of the authority of the expanding domain of law beyond the state under conditions of globalisation. Yet beyond this basic threshold of agreement, postnational constitutionalists and postnational public lawyers tend to differ in emphasis. Other approaches that try to reach beyond this normative and diagnostic division to combine or reconcile input and output, particular and general, subjective and objective, must do so in appreciation of the fact that the basic opposition in question cannot be entirely eradicated. Rather, it reflects the deep and resilient ambivalence of the aspirational horizon associated with the age of political modernity-as relevant to the postnational phase as to the state-centred phase-in which the values of autonomy and equality within a constructed socio-political project have displaced earlier notions of conformity and status in accordance with a pre-given order of things. For under these modern conditions law must be concerned both to endorse and facilitate the collective pursuit of autonomy and equality and to protect the core individual expression of these values from collective encroachment. This article begins by assessing the ways in which the life and work of Neil MacCormick exemplified a dual commitment to the local and particularâ€”especially through his advocacy of nationalismâ€”and to the international and the universal. The article continues by considering a number of ways in which this tension may be resolved. That complexity is revealed by treating democracy as an incomplete ideal, referring both to the empirical incompleteness of democracy as unable to supply its own terms of application - the internal dimension - and to the normative incompleteness of democracy as guide to good government - the external dimension. This double-edged incompleteness explains the contingent necessity of modern constitutionalism. Constitutionalism is a necessary response to democratic incompleteness - seeking both to realise democracy the internal dimension and to supplement and qualify democracy the external dimension. Yet, if incomplete democracy requires the accompaniment of constitutionalism, such incompleteness also means that democratic considerations cannot specify definitively the content of constitutionalism. The content of constitutionalism as a means to completing democracy,

therefore, remains contingent upon other normative and practical considerations. Democratic incompleteness thus remains both the justificatory foundation for contemporary constitutionalism and the main reason for its inherent fragility. The paper proceeds by examining the relationship between democracy and constitutionalism along various internal, external and mixed dimensions, observing that some of the ways in which constitutionalism treats democracy recur over time and circumstance. Yet how democratic incompleteness manifests itself, and how constitutionalism responds to incompleteness, also evolves and alters, revealing the relationship between constitutionalism and democracy as iterative. The paper then concentrates on the iteration emerging from the current globalising wave. The fact that states are no longer either the exclusive sites of democratic authority or the only constitutional entities and sources compounds democratic incompleteness and complicates how constitutionalism responds. This continuity reflects how the deep moral order of political modernity, in particular the emphasis on individualism, equality, collective agency and collective self-improvement, remains constant while its institutional architecture, including the forms of its commitment to democracy, evolves. Constitutionalism, itself both a basic orientation and a set of design principles for that architecture, remains a necessary support for and supplement to democracy. This conclusion challenges two dominant but opposing understandings of the postnational constitutionalism of the global age - both that which indicts global constitutionalism because of its weakened democratic credentials and that which assumes that these weakened democratic credentials pose no problem for postnational constitutionalism, which may instead thrive through a heightened emphasis on non-democratic values. The recent proliferation of transnational forms of legal regulation and recognition has transformed the way we understand the global legal configuration, both in quantitative and in qualitative terms. Quantitatively, so dense are the connections and so significant the overlaps between legal orders that they can no longer easily be compartmentalized â€" still less marginalized â€" as mere boundary disputes. The future of the global legal configuration is likely to involve more of the same. It is likely we will not witness the re-establishment of a new dominant order of orders but, instead, will depend on the terms of accommodation reached among these competing models and among the actors â€" popular, judicial, and symbolic â€" who are influential in developing them. Secondly, the very gravity and divisiveness of what is at stake for the various parties involved and positions implicated in the sovereignty surplus renders the question of the proper diagnosis and treatment of the ensuing democratic deficit highly controversial and, indeed, sharply polarized. Thirdly and finally, and bringing us to the current constitutional controversy and mid-life crisis, the sovereignty surplus also makes the question of praxis - of how to secure the very ground of initiative necessary to develop and act on a more inclusively resolved diagnosis and treatment of the democratic deficit â€" whatever that may be, difficult if not intractable. Constitutional discourse has perhaps never been more popular, nor more comprehensively challenged than it is today. The development of new constitutional settlements and languages at state and post-state level has to be balanced against the deepening of a formidable range of sceptical attitudes. These include the claim that constitutionalism remains too state-centered, overstates its capacity to shape political community, exhibits an inherent normative bias against social developments associated with the politics of difference, provides a language easily susceptible to ideological manipulation and, that, consequent upon these challenges, it increasingly represents a fractured and debased conceptual currency. A rehabilitated language of constitutionalism would meet these challenges through a version of constitutional pluralism. Constitutional pluralism recognises that in the post-Westphalian world there exists a range of different constitutional sites and processes configured in a heterarchical rather than a hierarchical pattern, and seeks to develop a number of empirical indices and normative criteria which allow us to understand this emerging configuration and assess the legitimacy of its development. Discusses the principle of uniformity in the development of law and institutions in the European Union. Concept of sovereignty; Conclusion. The Neglect of the Symbolic Dimension? This chapter revisits the question of the nature of a post-state or cosmopolitan constitutionalism, and of its merits in comparison to state-centred constitutionalism, by reference to a number of deep-rooted antinomies within constitutional thought and practice. The first concerns the structural dimension of constitutionalism, in particular the tension between constitutionalism as an integrated achievement, its features embedded in the specific polity so as to form an indivisible whole, and constitutionalism as a disaggregable

achievement, capable of abstraction from the particular polity and, in its abstract form, separable into various generic attributes. The second concerns the ethical dimension of constitutionalism; more specifically the tension between a particular and polity-centred and a universal and polity-transcending understanding of constitutional principles and doctrines. The third concerns the functional dimension of constitutionalism, and in particular the tension between gubernaculum and jurisidictio â€" between an emphasis upon governing capacity and an emphasis upon constraining public power. The fourth and last antinomy concerns the socio-cultural dimension of constitutionalism, and in particular the tension between constitutionalism as investment in an already established political way of being, and constitutionalism as a blueprint for progress â€" a future-oriented project of political community. State constitutionalism has sought, with greater or less success, to find a balance between these various contending forces. Post-national constitutionalism, in contrast, tends to gloss over the antinomic structure of constitutionalism and to take a one-sided approach within each dimension, emphasizing abstraction and disaggregation, universalism, jurisdictio and projection against their more culturally grounded alternatives.

Chapter 4 : Concept of Sovereignty Revisited | European Journal of International Law | Oxford Academic

Neil Walker, Sovereignty in Transition, (Hart Publishing,) Abstract: Sovereignty in Transition brings together a group of leading scholars from law and cognate disciplines to assess contemporary developments in the framework of ideas and the variety of institutional forms associated with the concept of sovereignty. Sovereignty has been.

Chapter 5 : The Paradox of Constitutionalism - Martin Loughlin; Neil Walker - Oxford University Press

Sovereignty in Transition brings together a group of leading scholars from law and cognate disciplines to assess contemporary developments in the framework of ideas and the variety of institutional forms associated with the concept of sovereignty.

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