Federalism, Democratization, and the Rule of Law in Russia
Jeffrey Kahn

This book examines the development of Russia's current federal system of government from its Soviet origins, through Mikhail Gorbachev's reforms, to the presidencies of Boris Yeltsin and the early years of Vladimir Putin. The theoretical relationship between democracy, law, and federalism is examined with a focus on its application to the study of post-authoritarian state systems. Federal institutions shape political agendas in the constituent units of a federation just as much as those units influence the shape of the federal whole. Case studies focus on Russia's 21 ethnic ‘republics’ (out of 89 units in a complicated multi-level federal hierarchy) using previously unpublished primary source materials, including official documents and interviews with key participants on a variety of institutional levels.

The First New Federalism and the Development of the Modern American State
Kimberley S. Johnson

Looking at the disruptions of industrialization and urbanization that occurred during the late 19th century, the development of the modern American state during this period has been described by Stephen Skowronek as the result of a process of “patchwork” and “reconstitution”. This chapter focuses on federalism, an often ignored aspect of the American institution, and looks at how it played a critical role during the end of the late 19th century to the early decades of the 20th century in the development of American state. The political and
institutional order that developed due to federalism is termed by this chapter as the “First New Federalism”.

New Frontiers of State Constitutional Law
James A. Gardner and Jim Rossi (eds)

This book presents a range or perspectives on the role of state constitutions within the context of federalism. Rejecting both the old dual federalism and the newer judicial federalism models, this book understands the generation, development, interpretation, and enforcement of constitutional norms at the national and state levels to be best conceived as constituent activities of a single, collective enterprise conducted by many actors located in many sites scattered throughout the system. The chapters in this book present a conception of national and subnational constitutional law as complementary partners in a complex, collective enterprise of constitutional self-governance. The book aims to advance an understanding of state constitutions in the broader inter-institutional process of constitutional dialogue.

The Resilient Power of the States across the Long Nineteenth Century
Gary Gerstle

in The Unsustainable American State

Political and social historians in the last twenty years have challenged the accuracy of the interpretation that the 19th century was an era of laissez-faire which then transcended to an era of interventionist public rule during the 20th century. However, understanding the American state between these two centuries has proceeded slowly due to the increasing complexity of American state, thus, generalizing and charting its institutional and functional character and change over time has become more complicated. This chapter focuses on the continuing importance of federalism in constituting the American state and the roles played by state governments in 19th-century economic development and regulation. The chapter likewise examines the considerable role of state governments in the regulation of race, sexuality, and morality.
What is the federal philosophy inspiring the structure of European law? The federal principle stands for constitutional arrangements that find “unity in diversity”. The two most influential manifestations of the federal principle emerged under the names of “dual” and “cooperative” federalism in the constitutional history of the United States of America. Dual federalism is based on the idea that the federal government and the State governments are co-equals and each is legislating in a separate sphere. Cooperative federalism, on the other hand, stands for the thought that both governments legislate in the same sphere. They are hierarchically arranged and complement each other in solving a social problem. Can the European Union be understood in federal terms? The book’s General Part introduces three constitutional traditions of the federal idea. Following the American tradition, the European Union is defined as a Federation of States as it stands on the “middle ground” between international and national law.

The Federal Vision
Kalypso Nicolaidis and Robert Howse (eds)

This book is about the complex and changing relationship between levels of governance in the US and the European Union. On the basis of a transatlantic dialogue between scholars concerned about modes of governance on both sides, it is a collective attempt at analysing the ramifications of the legitimacy crisis in these multi-layered democracies, and possible remedies to this. Starting from a focus on the current policy debates over ‘devolution’ and ‘subsidiarity’, the book engages the reader into the broader tension of comparative federalism. Its authors believe that in spite of the fundamental differences between them, both the EU and the USA are in the process of re-defining a federal vision for the twenty-first century. The book is a contribution to the study of federalism and European integration, and seeks to bridge the divide between the two. It also bridges the traditional divide between technical, legal or regulatory discussions of federal governance and philosophical debates over questions of belonging and multiple identities. It is a multi-
disciplinary project, bringing together historians, political scientists and theorists, legal scholars, sociologists and political economists (more than 20 authors are involved), and includes both innovative analysis and prescriptions on how to reshape the federal contract in the USA and the EU. Included are introductions to the history of federalism in the USA and the EU, the current debates over devolution and subsidiarity, the legal framework of federalism and theories of regulatory federalism, as well as innovative approaches to the application of network analysis, principal-agent models, institutionalist analysis, and political theories of citizenship to the federal context. The introduction and conclusion by the editors draws out cross-cutting themes and lessons from the thinking together of the EU and USA experiences, and suggest how a ‘federal vision’ could be freed from the hierarchical paradigm of the ‘federal state’ and articulated around concepts of mutual tolerance and empowerment. The seventeen chapters are arranged in five sections: I. Articulating the Federal Vision (two chapters)—views of federalism in its USA and EU versions; II. Levels of Governance in the USA and the European Union: Facts and Diagnosis (four chapters)—an overview of the history and current state of federalism in the USA and EU; III. Legal and Regulatory Instruments of Federal Governance (three chapters); IV. Federalism, Legitimacy, and Governance: Models for Understanding (four chapters); V. Federalism, Legitimacy, and Identity (four chapters)—a discussion of the deeper roots of legitimacy in federal systems; there is also an appendix, which discusses the basic principles for the allocation of competence in the USA and EU.

Dimensions of Citizen Control
Kaare Strøm, Wolfgang C. Müller, Torbjörn Bergman, and Benjamin Nyblade
in Delegation and Accountability in Parliamentary Democracies

Representative democracy means delegation, and delegation implies the risk of agency problems. Parliamentary democracy is a particular delegation regime, a way to structure the democratic policy process, and an attempt to solve agency problems. This chapter finds that there are persistent and essential cross-national differences between European parliamentary democracies along two dimensions of citizen control: partisan influence and external constraints. This chapter’s investigation leads us to conclude that there has been a decline in the strength and cohesion of political parties and an enhancement of international, sub-national, judicial, and direct democratic external constraints. In most
respects, these changes strengthen ex post controls and weaken ex ante screening devices.

Federalism Without Constitutionalism: Europe's Sonderweg
J. H. H. Weiler

in The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union

Focuses on the European Union, and looks at the promise and possibilities that emerge once the federal vision is liberated from ‘statist’ conceptions of political organization. The author views attempts to transform the European project into one of federal constitutionalism along statist lines as deeply misguided. The first section points out that the constitutional discipline of Europe is in most respects indistinguishable from that of advanced federal states, but with the huge difference that Europe chose not to presuppose the supreme authority and sovereignty of its federal demos. There is then a brief analysis of some of the premises on which the constitutional debate is typically based. The rest of the chapter explains why the unique brand of European federalism represents not only its most original political asset but also its deepest set of values, and offers a normative reading of the European constitutional architecture.

Regulatory Legitimacy in the United States and the European Union
Giandomenico Majone

Returns to themes sounded in the previous two chapters, elaborating them in the context of regulatory federalism: Majone discusses how regulatory independence may be reconciled with accountability, in a context where important policy-making powers are delegated to non-majoritarian institutions, an issue the American polity has grappled with for more than a century. Joint regulatory action, or regulatory
cooperation, is a crucial feature of multi-level governance, where powers are not clearly allocated hierarchically, and in Europe, the emergence of transnational regulatory networks is the key development that will help Europe find coordinated rather than vertically distinct solutions to regulatory problems. However, this also entails important dilemmas of legitimacy: on the one hand, in the context of multi-level governance, values of technical competence and political independence argue in favour of governments delegating these joint regulatory activities to bodies of regulators from the various jurisdictions; on the other hand, this poses a very serious challenge to democratic legitimacy since there is no comprehensive democratic body or polity that can apparently effectively control the exercise of these delegated powers. Here, Majone dismisses various philosophies that have been tried in the USA and found echoes in the EU—from the traditional ‘transmission belt’ approach leaving no discretion to regulatory agencies, to the expertise model of the New Deal period or the pluralist proposal to politicize the regulatory process. Instead, he argues that, if one looks imaginatively at some of the control mechanisms that exist in the USA system today with respect to delegated federal regulatory powers, the problem may not at all be insuperable. In the EU, these procedural safeguards, designed to strengthen democratic legitimacy in general rather than simply state rights, are all the more necessary since delegation to the Commission and to a lesser extent to outside bodies involves wide discretionary powers: in short, the EU should continue to strengthen its multi-level networks as well as to adopt the equivalent of the Federal Administrative Procedure Act and emulate the far-reaching judicialization of regulatory decision-making that has occurred since then in the USA.

The Constitution of Institutions
Elizabeth Meehan

in The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union

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Begins with a brief reference to the constitutional and institutional frameworks of allegiances, identification, and citizenship rights, and goes on to argue that there are grounds for questioning the customary conceptual and political overlap between nationality and citizenship. Some decoupling has taken place in the EU, opening, according to some commentators, the possibility of a new paradigm in citizenship praxis. Thus, the chapter explores Carlos Closa's idea that supranational
citizenship has more potential than national citizenship to be democratic, and draws on Joseph Weiler's ideas, which in some respects are similar to those of Closa but differ in respect of the significance of nationality and national identity; Weiler's acknowledgement of national forces is, however, consistent with Closa's suggestion that civil society in the EU is too weak to take advantage of the more democratic potential of supranational citizenship. Both ideas can be used to infer that difficulties in European citizenship may be reinforced by enlargement, not because of the introduction of a further set of nationalities per se into a supranational citizenship system, but because of a new complexity in the principled norms that Closa says have to be present in a site of democratic citizenship. In view of this, there are lessons to be learned from American theories of republican federalism, which, as expounded by S. H. Beer (1993), have much in common with a modern interest among radical democrats in deliberative or dialogic democracy; in this respect, Weiler's ideas about a European public space must be taken seriously.

The United Kingdom as a Union State

Iain Mclean and Alistair McMillan

in State of the Union

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The UK is not a unitary state because it depends on two constitutional contracts — the Acts of Union of 1707 and 1800. Therefore, UK Unionism is not like, for instance, French Jacobinism. The 1707 Acts are still in force. Although most of Ireland left the UK in 1921, the 1800 Act has profoundly affected UK politics. Northern Ireland is the relic of the 1800 Act. Neither is the UK a federal state. Scotland and Northern Ireland do not have powers comparable to an American or an Australian state. Therefore, UK Unionism is not like Australian anti-federalism. When there have been subordinate parliaments (Northern Ireland 1921-72 and intermittently since 1999; Scotland and Wales since 1999), the supremacy of Westminster has been asserted by statute. There is a severe tension between the Diceyan concept of parliamentary sovereignty. Northern Ireland is a ‘federacy’, i.e., a self-governing unit whose constitution must not be unilaterally altered by the UK government. As England is the overwhelmingly dominant partner in the union state, English scholars, like the English population in general, have often been insensitive to these nuances. It is tempting to see England as simply the colonial oppressor of its three neighbours, getting by force the security or the economic advantage that it could not get by agreement.
This picture fits Ireland reasonably well, Wales less well, and Scotland hardly at all. Even Ireland has always contained a substantial proportion of Unionists.

Models of democracy for the EU

Mette Elise Jolly

in The European Union and the People

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This chapter discusses the possible roads to democratization of the EU that have been suggested in the literature by assessing eight different models of democracy such as federalism, parliamentary democracy, and majority rule. The ability of each model to encapsulate the EU system (descriptive strengths) is evaluated, then each is assessed for its ability to address the socio-psychological deficit of the union.

Sir Harold Nicolson and International Relations

Derek Drinkwater

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Sir Harold Nicolson (1886–1968) is well known as a historian of diplomacy and diplomatic thinker. Yet his achievements in other fields—as a man of letters, gardener, broadcaster, and an unorthodox marriage—have obscured his contribution to the realm of international theory. Nicolson’s diplomatic background and upbringing in a diplomatic household, followed by an Oxford classical education and twenty years in diplomacy, combined to forge a distinctive philosophy of international affairs. As a diplomatic practitioner between 1909 and 1929, Nicolson was ideally placed to observe the maelstrom of international politics, and as an anti-appeasement and wartime MP (1935–1945) he became a highly regarded authority on international relations. During and after the Second World War, he turned his mind to the questions of a united Europe and global peace. Central to Nicolson’s international thought is a conception of international order rooted in ancient Greek and Roman political theory and history. It represents a synthesis of realism and idealism to form liberal realism, his distinctive approach to resolving the major dilemmas of peace, war and, power for the twentieth and later centuries. Between the 1910s and 1960s, Nicolson’s international thought evolved from
an idealist outlook on international relations at the 1919 Paris Peace Conference, to one of limited realism after the Locarno Pact (1925), to a more realist, and ultimately liberal realist, approach during the 1930s. Henceforth, Nicolson sought to develop policies and devise practical means of addressing international problems on the basis of both ethical considerations and those of Realpolitik. He concluded that Hitler and Mussolini had to be dealt with through dialogue backed by overwhelming force, and that a European federation, world government, and universal peace in the Kantian sense were possibilities, but only when supported by the necessary institutional foundations and military safeguards.

Normative Pluralism in Indonesia: Regions, Religions, and Ethnicities
John Bowen

in Multiculturalism in Asia

This chapter analyses the debates on the relative merits of claims to self-governance made in Indonesia based on peoplehood, place, and social norms. It considers the question of religious law and its place in a democratic society. It argues that the processes of convergence across normative systems discussed for Islam in Indonesia are characteristic of competing universalistic normative structures.

The Free Movement of Goods
Alec Stone Sweet

in The Judicial Construction of Europe

The previous chapter showed how transnational activity, the adjudication of the European Community (EC) law, and EC lawmaking had developed symbiotically to determine much of what is important about European integration. This chapter provides a more detailed sectoral account of how the adjudication of one class of trading disputes gradually, but authoritatively, undermined the intergovernmental aspects of the EC, while enhancing the polity's supranational, or federal, character. Assesses the impact of adjudicating the freer movement of goods
provisions of the Treaty of Rome on integration and supranational governance, focusing on the problem of non-tariff barriers, as governed by Arts. 28–30 (EC). Proceeds as follows: first, the treaty rules on intra-EC trade are examined, hypotheses derived about how the domain could be expected to evolve, and the argument advanced is contrasted with alternatives; second, in a section ‘Judicial Governance and Market-Building’, the emergence is tracked of the basic doctrinal framework (the Dassonville framework) governing the domain, an analysis made of the aggregate data on adjudication in the sector, and the impact traced of the European Court of Justice's case law on the decision-making of other actors, including the European Commission and Member State governments; third, the mutation of the framework that occurred in the 1990s is discussed – an event that was heavily conditioned by the endogenous development of the law itself; the chapter concludes with an assessment of the findings in light of the pertinent scholarly debates about the impact of the European legal system on the greater course of market-building and political integration.


Thomas Poguntke

in The Presidentialization of Politics: A Comparative Study of Modern Democracies

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The political process of the Federal Republic has always been characterized by two seemingly contradictory attributes. Germany was said to be a Chancellor democracy and party state at the same time. Yet, this chapter shows that both features are not mutually exclusive. While political parties continue to occupy a central position in the political process of the Federal Republic, particularly when as regards political recruitment, they have been weakened when it comes to controlling the chief executive and the legislative process. The specific nature of German cooperative federalism furnishes the Chancellor with a central role in the decision-making process that makes him structurally more independent of his own party and of his coalition partners. This tendency has been augmented by the growing resources for the chancellor’s office, the internationalization of politics, the increasing tendency of the electronic media to focus on leaders, and the general decline of cleavage-based politics. At the same time, political parties have become leadership-dominated. While there are clear tendencies towards the
presidentialization of the political process in the Federal Republic, parties continue to control the access to the chief executive office, and they still hold the power to remove their leaders.

Canada: Executive Dominance and Presidentialization

Herman Bakvis and Steven B. Wolinetz

in The Presidentialization of Politics: A Comparative Study of Modern Democracies

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A parliamentary democracy based on the Westminster model, Canada does not qualify formally as a presidential system: The prime minister and other members of the political executive are responsible to a popularly elected House of Commons. Nonetheless, the Canadian prime minister enjoys wide-ranging powers that in practice are far more extensive than those enjoyed by prime ministers in other Westminster systems. The nature of the leadership selection process, strict party discipline and a fragmented opposition, help ensure prime ministerial dominance over both parliament and cabinet. So too do strong central agencies. While personalization and popularization of prime ministerial leadership is not as pronounced in Canada as in the UK, it is nevertheless an important factor. Prime ministers are beholden to very few interests in their parties, which they dominate. In the Canadian system, one finds many of the characteristics of presidentialization without any of the formal attributes. Federalism and the strength of the provinces act as the major constraint on prime ministerial power. In important respects, Canadian prime ministers are more powerful than presidents in some presidential systems.

Multination Federalism and Minority Rights in Sri Lanka

Rohan Edrisinha

in Multiculturalism in Asia

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One of the biggest challenges facing Sri Lanka is managing relations between its two largest ethnic groups: the (predominantly Buddhist)
Sinhalese majority, and the (predominantly Hindu) Ceylon Tamil minority. The problem in Sri Lanka has been characterized as the strong commitment of the Sinhalese majority to the ideal of a unitary nation-state, and the equally strong commitment of the Tamil minority to the ideal of national self-determination. This chapter explores the factors that either promote or inhibit the acceptance of multination federalism, and how this ideal challenges some of the inherited ideals and discourses that have historically dominated Sri Lankan political life.

Burma/Myanmar: The Struggle for Democracy and Ethnic Rights *
Alan Smith

in Multiculturalism in Asia

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Burma presents a paradigm case in which the state is faced with the demands for democratisation and demands for ethnocultural recognition and self-government. To date, the state has failed to successfully address either challenge. This chapter explores some of the historical and political factors that explain this failure, and considers the prospects for democratic multination federalism.

Federalism and Peace
Derek Drinkwater

in Sir Harold Nicolson and International Relations: The Practitioner as Theorist

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Sir Harold Nicolson’s writings on federalism, peace, and war are among his most important—and underrated—contributions to international theory. From the mid-1930s, with the European security situation deteriorating rapidly, Nicolson became increasingly interested in how war could be banished from international affairs and enduring global peace attained. In particular, he explored (or was influenced by) the approaches to a united Europe and world government of the advocates of Federal Union and Pan-Europa, and the exponents of functionalism. His philosophy of federalism has many parallels with the ideas of Immanuel Kant. Yet, Nicolson’s fusion of idealism and realism (to form liberal
realism) constituted a new approach to resolving these seemingly intractable problems.