

Federal Impartiality

Navigating Divisive Rights in the EU and the US

Disagreements on constitutional rights (such as racial and religious discrimination or abortion) are increasingly divisive. From the role of abortion in US presidential elections to debates about the competence creep of EU fundamental rights, the question arises: should the power to decide these matters rest with a central/federal union, or be left to individual states? This book addresses this crucial federal boundary question from both theoretical and comparative perspectives. It explores how the proper allocation of decision-making power in federal systems can enhance impartiality and reduce polarisation. The book both develops and critiques the influential constitutional theory of James Madison, architect of the US Constitution and modern federalism. By tracing Madison's intellectual debt to David Hume and to common law rules on bias, it identifies gaps in his account of impartiality. It also shows how a revised Madisonian framework remains relevant to contemporary struggles in both the US and the EU over managing discord through federal structures. The book's comparative dimension explores three categories of rights, each reflecting particular forms of social disagreement: (i) minority rights, which often trigger group bias and spark division between majorities and minorities; (ii) ideologically divisive rights, such as abortion; and (iii) cases where group and ideological bias overlap, such as those pitting religious freedoms against ideologically contested measures, including bans on ritual slaughter or religious apparel in public employment. By combining comparative and theoretical contributions, the book demonstrates both the perils and the promise of federalism in securing impartiality and navigating social faction.

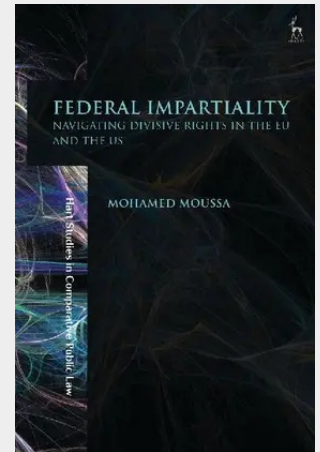
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