

The Cavalier Presidency Executive Power And

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The History of the English Constitution
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the first comprehensive study of the nature and scope of the nationhood power this book brings a fresh perspective to the scholarship on the powers of the executive branch in australia the question of when the federal executive government can act without the authorisation of the parliament is contested and highly topical in australia in recent judicial decisions australian courts have suggested that statutory authorisation may not be required where the federal executive government is exercising the nationhood power that is the implied executive power derived from the character and status of the commonwealth as the national government the federal executive government has relied on this power to implement controversial spending programs respond to national emergencies and exclude non citizens from australia together the chapters in this book analyse and evaluate judicial observations about the operation of the nationhood power in these different contexts and the limits which apply to it while the focus of this book is on the nationhood power it also addresses broader issues concerning the relationship between the legislative and executive branches in parliamentary systems of government this book makes an important contribution to the literature on executive power and will appeal to constitutional lawyers scholars and

practitioners and those who are involved in the administration of government

for most of the past two hundred years or more the grand era of national constitution making founding fathers and constitutional scholars alike seem to have focused more sharply on questions of legislative power than they have on executive power executive power by contrast they worried much less about and sought to delimit less thoroughly the scope of executive power and its accountability are however endemic problems which arise within federal and non federal states nor are these issues unique to common law constitutional orders problems concerning the nature and delimitation of executive power also arise in civil law jurisdictions and in the european union despite the historical constitutional focus on legislative power it is executive authority which seems in the early 21st century to be the more threatening this book addresses two sets of questions that are under researched in constitutional scholarship what is the proper scope of executive authority how is executive power delimited and how should it be defined how is executive authority best held to account politically and legally these questions are both descriptive and normative and they are addressed accordingly in each of the chapters by leading public lawyers from a variety of jurisdictions the book examines executive power in the united kingdom from a british and from a distinctively scottish perspective there are chapters on the four common law jurisdictions of australia new zealand canada and the united states on the four civil law jurisdictions of france germany italy and spain and on the european union this insightful comparative perspective allows themes to be drawn together and lessons extracted on the nature of executive power and its accountability

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annotation many analysts now believe that the growth of presidential war power relative to congress is irreversible this book contests that view buchanan focuses on diagnosing the origins of the problem and devising practical ways to work toward restoration of the constitutional balance of power between congress and the president

this book examines the use of presidential power during the war on terror justin deplato joins the debate on whether the constitution matters in determining how each branch of the federal government should use its power to combat the war on terror the actions and words of presidents george w bush and barack obama are examined deplato s findings support the theory that executives use their own prerogative in determining what emergency powers are and how to use them according to deplato the presidents argue that their powers are implied in article ii of the constitution not expressed this conclusion renders the constitution meaningless in times of crisis the author reveals that presidents are becoming increasingly cavalier and that the nation should consider adopting an amendment to the constitution to proffer expressed executive emergency powers

that non statutory executive powers are subject to judicial review is beyond doubt but current judicial practice challenges prevailing theories of judicial review and raises a host of questions about the nature of official power and action this is particularly the case for official powers not associated with the royal prerogative which have been argued to comprise a third source of governmental authority looking at non statutory powers directly rather than incidentally stirs up the intense but ultimately inconclusive debate about the conceptual basis of judicial review in english law this provocative book argues that modern judges and scholars have neglected the very concepts necessary to understand the supervisory jurisdiction and that the law has become more complex than it needs to be if we start from the concept of office and official action rather than grand ideas about parliamentary sovereignty and the

courts the central questions answer themselves

most would agree that business and trade are now carried out in an international environment but it is much less widely recognized that the practice of the law of business and technology is also becoming internationalized indeed in many ways we seem to be rapidly moving toward a world legal order that may parallel the world economic order in th

how access to resources and policymaking powers determines the balance of power between the legislative and executive branches the specter of unbridled executive power looms large in the american political imagination are checks and balances enough to constrain ambitious executives checks in the balance presents a new theory of separation of powers that brings legislative capacity to the fore explaining why congress and state legislatures must possess both the opportunities and the means to constrain presidents and governors and why without these tools executive power will prevail alexander bolton and sharece thrower reveal how legislative capacity which they conceive of as the combination of a legislature s resources and policymaking powers is the key to preventing the accumulation of power in the hands of an encroaching executive they show how low capacity legislatures face difficulties checking the executive through mechanisms such as discretion and oversight and how presidents and governors unilaterally bypass such legislative adversaries to impose their will when legislative capacity is high however the legislative branch can effectively stifle executives bolton and thrower draw on a wealth of historical evidence on congressional capacity oversight discretion and presidential unilateralism they also examine thousands of gubernatorial executive orders demonstrating how varying capacity in the states affects governors power checks in the balance affirms the centrality of legislatures in tempering executive power and sheds vital new light on how and why they fail

moving beyond previous scholarship he gives us a locke as much concerned with the effective functioning of government as with the roots of its moral legitimacy book jacket

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