



# Hart Publishing

## Legal History 2019



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## Legal History Series

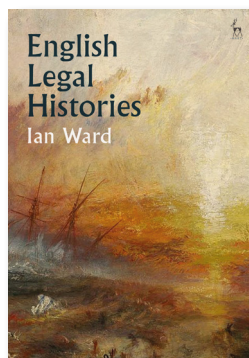


### Landmark Cases

*Editor: Paul Mitchell*

The *Landmark Cases* series is an occasional series of volumes which seek to highlight the historical antecedents of what are widely considered to be the leading cases in the common law. These edited volumes feature original archival research by eminent scholars in the field, and are intended to provide a context, or contexts, in which to better understand how and why certain cases came to be regarded as the 'Landmark' cases in any given field.

## Legal History Titles (2018-2020)



### English Legal Histories

*Ian Ward*

*English Legal Histories* is an exciting and innovative approach to the study of English law. Written in an accessible style, designed for both a student and a broader audience, it takes the reader beyond the narrower confines of legal doctrines and cases, and invites them to consider the myriad contexts within which English law has been shaped; the politics, the economics, the art, the poetry. Reaching from the Reformation through to the age of Reform, it tells stories, the 'histories', of English law. Histories of the constitution and government, of crime and contracts, tort and trespass, property and equity. Of the people who made that law, those who wrote it, and those who suffered it. For it is in the end a human story, of justice and injustice, of success and failure, good luck and bad. The law is full of statutes and instruments, cases and precedent, but its history is full of people and peculiarity. Which is what, of course, makes it so endlessly fascinating.

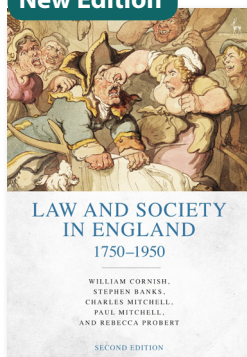
***Ian Ward*** is Professor of Law at Newcastle University.

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Nov 2019 | 464pp | Pbk | 9781509912292 | RSP: £49.99



New Edition



## Law and Society in England 1750-1950

*William Cornish, Steve Banks, Charles Mitchell,  
Paul Mitchell and Rebecca Probert*

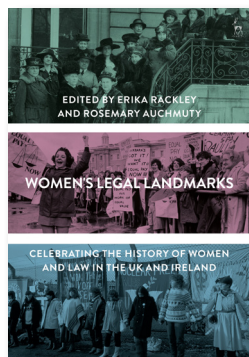
*Law and Society in England 1750-1950* has become an indispensable text for those wishing to study English legal history and to understand the foundations of the modern British state. In this new updated edition the authors explore the complex relationship between legal and social change. They consider the ways in which those in power themselves imagined and initiated reform and the ways in which they were obliged to respond to demands for change from outside the legal and political classes. What emerges is a lively and critical account of the evolution of modern rights and expectations and an engaging study of the formation of contemporary institutions and the road that was travelled to create them.

The book is divided into eight chapters: Institutions and Ideas; Land; Commerce and Industry; Labour Relations; The Family; Poverty and Education; Accidents and Crime.

This extensively referenced analysis of modern legal history will be invaluable to students and teachers of the law alike, as well as political scientists and historians.

**William Cornish** was Professor of English Law at the London School of Economics and Political science, then Professor of Law at the University of Cambridge. **Steve Banks** is a Senior Lecturer and Co-Director of the Forum for Legal and Historical Research at the University of Reading. **Charles Mitchell** is a Professor of Law and Paul Mitchell is a Professor of Law, both at University College London. **Rebecca Probert** is Professor of Law at the University of Warwick.

Oct 2019 | 720pp | Pbk | 9781849462730 | RSP: £39.99



## Women's Legal Landmarks

*Celebrating the history of women  
and law in the UK and Ireland*

*Edited by Erika Rackley and Rosemary Auchmuty*

*Women's Legal Landmarks* commemorates the centenary of women's admission in 1919 to the legal profession in the UK and Ireland by identifying key legal landmarks in women's legal history. Over 80 authors write about landmarks that represent a significant achievement or turning point in women's engagement with law and law reform. The landmarks cover a wide range of topics, including matrimonial property, the right to vote, prostitution, surrogacy and assisted reproduction, rape, domestic violence, FGM, equal pay, abortion, image-based sexual abuse, and the ordination of women bishops, as well as the life stories of women who were the first to undertake key legal roles and positions. Together the landmarks offer a scholarly intervention in

the recovery of women's lost history and in the development of methodology of feminist legal history as well as a demonstration of women's agency and activism in the achievement of law reform and justice.

**Erika Rackley** is a Professor of Law at the University of Kent. **Rosemary Auchmuty** is a Professor of Law at the University of Reading.

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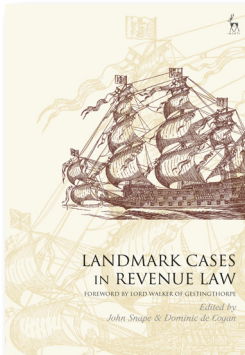
## Landmark Cases in Defamation Law

*Edited by David Rolph*

*Landmark Cases in Defamation Law* is a diverse and engaging edited collection that brings together eminent scholars from the United Kingdom, the United States, Australia, Canada and New Zealand to analyse cases of enduring significance to defamation law. The cases selected have all had a significant impact on defamation law, not only in the jurisdiction in which they were decided but internationally. Given the formative influence of English defamation law in the United States, Australia, Canada and New Zealand, the focus is predominantly on English cases, although decisions of the United States and Australia are also included in the collection. The authors all naturally share a common interest in defamation law but bring different expertise and emphasis to their respective chapters. Among the authors are specialists in tort law, legal history and internet law. The cases selected cover all aspects of defamation law, including defamatory capacity and meaning; practice and procedure; defences; and remedies.

**David Rolph** is Professor of Law at the University of Sydney.

Aug 2019 | 280pp | Hbk | 9781509916702 | RSP: £70



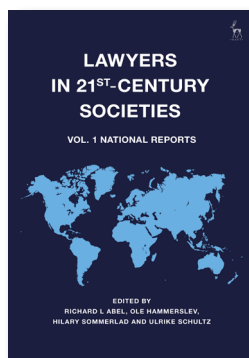
## Landmark Cases in Revenue Law

*Edited by John Snape and Dominic de Cogan*

In an important addition to the series, this book tells the story of 20 leading revenue law cases. It goes well beyond technical analysis to explore questions of philosophical depth, historical context and constitutional significance. The editors have assembled a stellar team of tax scholars, including historians as well as lawyers, practitioners as well as academics, to provide a wide range of fresh perspectives on familiar and unfamiliar decisions. The whole collection is prefaced by the editors' extended introduction on the peculiar significance of case-law in revenue matters. This publication is a thought provoking and engaging showcase of tax writing that is accessible equally to specialists and non-specialists.

**John Snape** is Associate Professor of Law at the University of Warwick. **Dominic de Cogan** is University Lecturer in Law at the University of Cambridge, and Fellow of Christ's College, Cambridge.

Jan 2019 | 576pp | Hbk | 9781509912261 | RSP: £85



## Lawyers in 21st-Century Societies

### Vol. 1: National Reports

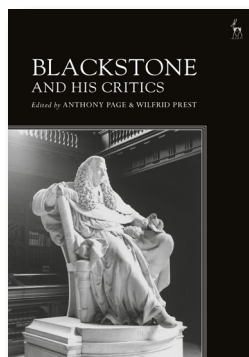
*Edited by Richard L Abel, Ole Hammerslev,  
Ulrike Schultz and Hilary Sommerlad*

The world's legal professions have undergone dramatic changes in the 30 years since publication of the landmark three-volume *Lawyers in Society*, which launched comparative sociological studies of lawyers. This is the first of two volumes in which scholars from a wide range of disciplines, countries and cultures document and analyse those changes. The present volume presents reports on 46 countries, with broad coverage of North America, Western Europe, Latin America, Asia, Australia, North Africa and the Middle East, sub-Saharan Africa, and former communist countries. These national reports address the impact of globalisation and neoliberalism on national legal professions (i.e. the relationship of lawyers and their professional associations to the state

and tensions between state and citizenship), changes in lawyer demography (rapidly growing numbers and the profession's efforts to retain control, the entry of women and obstacles to full gender equality, ethnic diversity), legal education (the proliferation of institutions and pedagogic innovation), structures of production (especially the growth of large firms and the impact of technology and paraprofessionals), the distribution of lawyers across roles, and access to justice (state funded legal aid and pro bono services). Juxtaposition of the reports reveals the dramatic transformations of professional rationales, labour markets, and working practices and the multiple contingencies of the role of lawyers in societies experiencing increasing juridification within a new geopolitical order.

**Richard L Abel** is Michael J Connell Distinguished Professor of Law Emeritus and Distinguished Research Professor at UCLA. **Ole Hammerslev** is Professor of Sociology of Law at the University of Southern Denmark. **Hilary Sommerlad** is Professor of Law and Social Justice at the University of Leeds. **Ulrike Schultz** is a Senior Academic at the Fern Universität Hagen, Germany.

Jan 2020 | 912pp | Hbk | 9781509915149 | RSP: £250



## Blackstone and His Critics

*Edited by Anthony Page and Wilfrid Prest*

William Blackstone's *Commentaries on the Laws of England* (1765-69) is perhaps the most elegant and influential legal text in the history of the common law. By one estimate, Blackstone has been cited well over 10,000 times in American judicial opinions alone. Prominent in recent reassessment of Blackstone and his works, Wilfrid Prest also convened the Adelaide symposia which have now generated two collections of essays: *Blackstone and his Commentaries: Biography, Law, History* (2009), and *Re-Interpreting Blackstone's Commentaries: A Seminal Text in National and International Contexts* (2014).

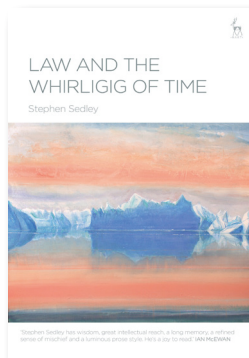
This third collection focuses on Blackstone's critics and detractors. Leading scholars examine the initial reception of the *Commentaries* in the context of debates over law, religion and politics in eighteenth-century Britain and Ireland. Having shown Blackstone's volumes to be a contested work of the

Enlightenment, the remaining chapters assess critical responses to Blackstone on family law, the status of women and legal education in Britain and America. While Blackstone and his *Commentaries* have been widely lauded and memorialised in marble, this volume highlights the extent to which they have also attracted censure, controversy and disparagement.

**Anthony Page** is a Senior Lecturer in History at the University of Tasmania. **Wilfrid Prest** is Emeritus Professor of History and of Law at the University of Adelaide.

Apr 2018 | 256pp | Hbk | 9781509910458 | RSP: £65

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## Law and the Whirligig of Time

*Stephen Sedley*

For over 30 years, first as a QC, then as a judge, and latterly as a visiting professor of law at Oxford, Stephen Sedley has written and lectured about aspects of the law that do not always get the attention they deserve.

His first anthology of essays, *Ashes and Sparks*, was praised in the New York Times by Ian McEwan for its 'exquisite, finely balanced prose, the prickly humour, the knack of artful quotation and an astonishing historical grasp'. 'You could have no interest in the law,' McEwan wrote, 'and read his book for pure intellectual delight.'

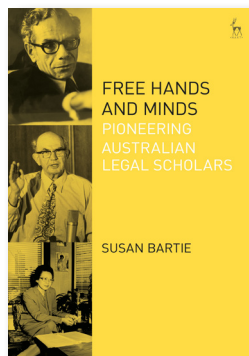
The present volume contains more recent articles by Stephen Sedley on the law, many of them from the *London Review of Books*, and lectures given to a variety of audiences.

The first part is concerned with law as part of history - Feste's 'whirligig of time'; the second part with law and rights.

The third part is a group of biographical and critical pieces on a number of figures from the legal and musical worlds. The final part is more personal, going back to the author's days at the bar, and then forward to some parting reflections.

**Sir Stephen Sedley** is a retired Lord Justice of Appeal for England and Wales, and former visiting professor of law at Oxford University.

May 2018 | 304pp | Hbk | 9781509917099 | RSP: £25



## Free Hands and Minds

*Pioneering Australian Legal Scholars*

*Susan Bartie*

Peter Brett (1918-1975), Alice Erh-Soon Tay (1934-2004) and Geoffrey Sawer (1910-1996) are key, yet largely overlooked, members of Australia's first community of legal scholars. This book is a critical study of how their ideas and endeavours contributed to Australia's discipline of law and the first Australian legal theories. It examines how three marginal figures—a Jewish man (Brett), a Chinese woman (Tay), and a war orphan (Sawer)—rose to prominence during a transformative period for Australian legal education and scholarship.

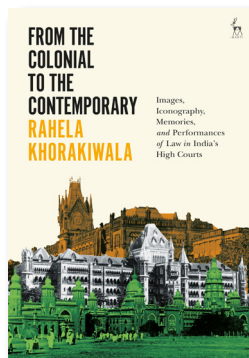
Drawing on in-depth interviews with former colleagues and students, extensive archival research, and an appraisal of their contributions to scholarship and teaching, this book explores the three professors' international networks and broader social and historical milieux. Their pivotal leadership roles in law

departments at the University of Melbourne, University of Sydney, and the Australian National University are also critically assessed.

Deftly ranging from local experiences and the concerns of a nascent Australian legal academy to the complex transnational phenomena of legal scholarship and theory, it makes a compelling case for contextualising law and legal culture within society. At a time of renewed crisis in legal education and research in the common law world, it also offers a vivid, nuanced and critical account of the enduring liberal foundations of Australia's discipline of law.

**Susan Bartie** is Lecturer in Law at the University of Tasmania, Australia.

Sep 2019 | 328pp | Hbk | 9781509922611 | RSP: £70



## From the Colonial to the Contemporary Images, Iconography, Memories, and Performances of Law in India's High Courts *Rahela Khorakiwala*

*From the Colonial to the Contemporary* explores the representation of law, images and justice in the first three colonial high courts of India at Calcutta, Bombay and Madras. It is based upon ethnographic research work and data collected from interviews with judges, lawyers, court staff, press reporters and other persons associated with the courts.

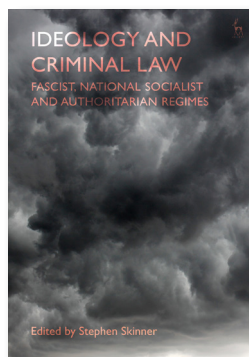
Observing the courts through the in vivo, in trial and practice, the book asks questions in different registers, ranging from the impact of the architecture of the courts, the contestation around the renaming of the high courts, the debate over the use of English versus regional languages, forms of addressing the court, the dress worn by different court actors, rules on photography,

video recording, live telecasting of court proceedings, use of CCTVs and the alternative of courtroom sketching and the ceremony and ritual that existed in daily court proceedings.

The three colonial high courts studied in this book share a recurring historical tension between the Indian and British notions of justice. This tension is apparent in the semiotics of the legal spaces of these three high courts and is transmitted through oral history as narrated by the judges, lawyers and court staff who are interviewed. The contemporary understandings of these court personnel are therefore seen to have deep historical roots. In this context, the architecture and judicial iconography of the high courts helps to constitute, preserve and reinforce the ambivalent relationship that the court shares with its own contested image.

*Rahela Khorakiwala* is an independent researcher based in Mumbai, India.

Dec 2019 | 280pp | Hbk | 9781509930654 | RSP: £70



## Ideology and Criminal Law Fascist, National Socialist and Authoritarian Regimes *Edited by Stephen Skinner*

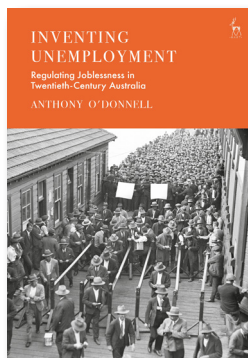
With populist, nationalist and repressive regimes increasing around the world, questioning the impact of politics on the state and the role of law is a pressing concern. If we are to understand the effects of extreme ideologies on the state's legal dimensions and powers — especially the power to punish and to determine the boundaries of permissible conduct through criminal law — it is essential to consider the lessons of history. This timely collection explores how political ideas and beliefs influenced the nature, content and application of criminal law and justice under Fascism, National Socialism, and other authoritarian regimes in the twentieth century. Bringing together expert legal historians from four continents, the collection's sixteen chapters examine aspects of criminal law and related jurisprudential and criminological

questions in the context of Fascist Italy, Nazi Germany, Nazi-occupied Norway, apartheid South Africa, Francoist Spain, and the authoritarian regimes of Brazil, Romania and Japan. Based on original archival, doctrinal and theoretical research, the collection offers new critical perspectives on issues of systemic identity and the foundational role of criminal law; processes of state repression and the activities of criminal courts and lawyers; and ideological aspects of, and tensions in, substantive criminal law.

*Stephen Skinner* is Associate Professor of Comparative Legal History and Human Rights at the University of Exeter.

Sep 2019 | 392pp | Hbk | 9781509910816 | RSP: £80





## Inventing Unemployment

### Regulating Joblessness in Twentieth-Century Australia

Anthony O'Donnell

This book examines the evolution of Australian unemployment law and policy across the past 100 years. It poses the question 'How does unemployment happen?' But it poses it in a particular way. How do we regulate work relationships, gather statistics, and administer a social welfare system so as to produce something we call 'unemployment'? And how has that changed over time?

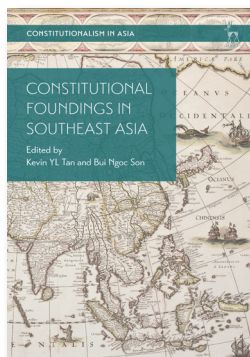
Attempts to sort the labour market into discrete categories — the 'employed', the 'unemployed', those 'not in the labour force' — are fraught, and do not always easily correspond with people's working lives. Across the first decades of the 20th century trade unionists, statisticians, and advocates of social insurance in Australia as well as Britain grappled with the problem of what forms of joblessness should be classified as 'unemployment'. This book traces those debates. It also chronicles the emergence and consolidation of a specific idea of unemployment in Australia after the Second World War. It then charts the eventual unravelling of that idea, and relates that unravelling to changing ways of ordering employment relationships.

In doing so, *Inventing Unemployment* challenges the preconception that casual work, self-employment, and the 'gig economy' are recent phenomena. Those forms of work confounded earlier attempts to define 'unemployment' and are again unsettling our contemporary understandings of joblessness.

This thought-provoking book shows that the category of 'unemployment', rather than being a taken-for-granted economic variable, has its own history, and one that is intimately related to our understanding of 'employment'.

**Anthony O'Donnell** is Senior Lecturer in Law at La Trobe University, Melbourne.

Dec 2019 | 192pp | Hbk | 9781509928194 | RSP: £50



## Constitutional Foundings in Southeast Asia

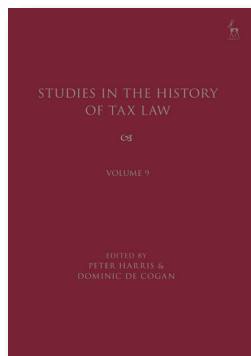
### Edited by Kevin YL Tan and Bui Ngoc Son

This volume focuses on the making, nature, and role of the first modern constitutions at the founding of the modern nation-states in Southeast Asia. These historical essays add richly to our understanding and appreciation of the founding moments and to the theory and practice of constitutionalism in these states. This volume makes three significant contributions. First, it helps plug the wide knowledge gap in comparative constitutional history in Southeast Asia. Second, it furthers our understanding of contemporary constitutional practice and also anticipates possible developmental trajectories in light of the foundational values embedded in and manifested through these constitutions. Third, through the comparative historical study of these early constitutions, plausible theoretical insights may be gained to further our understanding of Southeast Asia's constitutional history. The book is essential reading for those wishing to obtain a deeper understanding of the

constitutional foundings of Southeast Asia.

**Kevin YL Tan** is Adjunct Professor at both the Faculty of Law, National University of Singapore and at the S Rajaratnam School of International Studies, Nanyang Technological University. **Bui Ngoc Son** is Assistant Professor at the Faculty of Law at the Chinese University of Hong Kong.

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## Studies in the History of Tax Law, Volume 9

*Edited by Peter Harris and Dominic de Cogan*

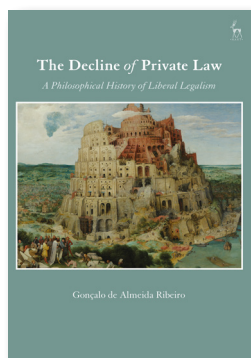
These are the papers from the 9th Cambridge Tax Law History Conference held in July 2018. In the usual manner, these papers have been selected from an oversupply of proposals for their interest and relevance, and scrutinised and edited to the highest standard for inclusion in this prestigious series.

The papers fall within five basic themes. Four papers focus on tax theory; one on Bentham, another on social contract and tax governance, a third on Schumpeter's 'thunder of history', and a fourth resurgence of the benefits theory. Three involve the history of UK specific interpretational issues; management expenses, anti-avoidance jurisprudence, and identification of professionals. Another three concern specific forms of UK tax on road travel, land and capital gains. One paper considers the formation of HMRC and another explains aspects of 19th century taxation by reference to Jane Austen

characters. Another four consider aspects of international taxation; development of EU corporate tax policy, history of Dutch tax planning, the important 1942 Canada-US tax treaty, and the 1928 UN model tax treaties on tax evasion. Also included are papers on the WWI effects on New Zealand income tax and development of anti-tax avoidance rules in China.

**Peter Harris** is Professor of Tax Law and **Dominic de Cogan** is University Lecturer in Tax Law, both at the Law Faculty, University of Cambridge.

Sep 2019 | 544pp | Hbk | 9781509924936 | RSP: £140



## The Decline of Private Law

*A Philosophical History of Liberal Legalism*

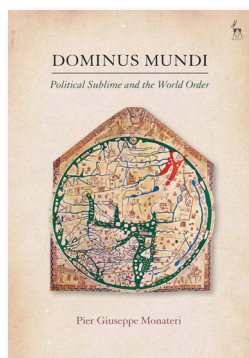
*Gonçalo de Almeida Ribeiro*

This book is a large-scale historical reconstruction of liberal legalism, from its inception in the mid-nineteenth century, the moment in which the jurists forged the alliance between political liberalism and legal expertise embodied in classical private law doctrine, to the contemporary anxiety about the possibility of both a liberal solution to the problem of political justification and of law as a respectable form of expert knowledge. Each stage in the history is a moment of synthesis between a substantive and a methodological idea. The former is the liberal political theory of the period, purporting to provide a solution to the problem of political justification. The latter is a conception of legal method or science, supposedly vindicating the access of the expert to the political choices embodied in the law. Thus, each moment in the history

of liberal legalism integrates a political theory with a jurisprudential conception. Although it reaches the unsettling conclusion that liberal legalism has largely failed by its own standards, the book urges us to avoid quietism, scepticism or cynicism, in the hope that a deeper understanding of the fragility of our values and institutions inspires a more thoughtful, broadminded and nurtured citizenship.

**Gonçalo de Almeida Ribeiro** is Professor of Law at Universidade Católica Portuguesa and Judge of the Constitutional Court of Portugal.

May 2019 | 344pp | Hbk | 9781509907908 | RSP: £75



## Dominus Mundi

### Political Sublime and the World Order

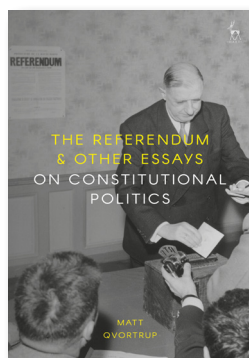
*Pier Giuseppe Monateri*

This monograph makes a seminal contribution to existing literature on the importance of Roman law in the development of political thought in Europe. In particular it examines the expression 'dominus mundi', following it through the texts of the medieval jurists – the Glossators and Post-Glossators – up to the political thought of Hobbes. Understanding the concept of dominus mundi sheds light on how medieval jurists understood ownership of individual things; it is more complex than it might seem; and this book investigates these complexities. The book also offers important new insights into Thomas Hobbes, especially with regard to the end of dominus mundi and the replacement by Leviathan. Finally, the book has important relevance for contemporary political theory. With fading of political diversity Monateri

argues "that the actual setting of globalisation represents the reappearance of the Ghost of the Dominus Mundi, a political refoulé – repressed – a reappearance of its sublime nature, and a struggle to restore its universal legitimacy, and take its place." In making this argument, the book adds an important original vision to current debates in legal and political philosophy.

**Pier Giuseppe Monateri** is Professor of Law at the University of Torino. He is a member of the International Academy of Comparative Law (New York), l'Accademia delle Scienze (Bologna) and la Société de Législation Comparée (Paris).

Sep 2018 | 210pp | Hbk | 9781509911752 | RSP: £60



## The Referendum and Other Essays

### on Constitutional Politics

*Matt Qvortrup*

Until recently, referendums were little used. After the Scottish independence and Brexit referendums, they have come to the fore as a mechanism with the potential to disrupt the status quo and radically change political direction. This book looks at the historical development of the referendum, its use in different jurisdictions, and the types of constitutional questions it seeks to address. Written in an engaging style, the book offers a clear, objective overview of this important political and constitutional tool.

**Matt Qvortrup** is Professor of Political Science at Coventry University.

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