

1. Record Nr.	UNINA9910784939603321
Autore	Nicol Danny
Titolo	The constitutional protection of capitalism // Danny Nicol
Pubbl/distr/stampa	Oxford, : Hart Publishing, 2010
ISBN	1-4725-6069-8 1-282-65947-2 9786612659478 1-84731-559-3
Edizione	[1st ed.]
Descrizione fisica	1 online resource (220 p.)
Disciplina	343.410721
Soggetti	Corporations - Finance - Law and legislation - Great Britain Law and globalization - Great Britain Great Britain Economic policy
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references and index
Nota di contenuto	1 Transnational Regimes and the Constitution -- Two Conceptions of Neoliberalism -- The Idea of a Constitution -- A Revolution from Above -- Transnational Constitutionalism as Insurance -- The Criterion of Democracy -- The British Model and Contestability -- The British Model and Relative Ideological Neutrality -- The British Model and Accountability -- Limited Democracy: The Triumph of Hayek -- Transnational Democracy: Hayek's Heirs? -- Markets as Democracy? -- British Exceptionalism? Britain, France and the Ratchet Effect -- The Ambit of the Argument -- 2 The World Trade Organisation and the Sanctity of Private Enterprise -- Assessing the WTO -- Britain and GATT 1947 -- GATT: Evolving towards Bindingness -- From GATT to WTO -- The World Trade Organization -- WTO: The Dispute Settlement Understanding -- The Terms of WTO -- GATT and Related Agreements -- GATS -- Public Procurement -- Subsidies -- Conclusion -- 3 The European Union: A Faithful Expression of the Capitalist Ideal? -- The Original Indeterminacy of the European Project: Article 345 TFEU -- Resolving the Indeterminacy -- EU Law as British Constitutional Law -- The Free Movement of Goods: Control of Imports -- Cassis de Dijon -- Goods, Regulation and the Corporate Role in Constitution-Building --

Standardisation: A Privatisation of Governance? -- Free Movement Rights versus Social Rights -- From Free Movement to a European Economic Policy -- Public Monopolies and Privatisation -- Article 106 TFEU -- EU Legislation -- Public Procurement -- State Aid -- Defining State Aid: Article 107(1) TFEU -- Justifying State Aid: Article 107(3) TFEU -- State Aid and the Credit Crunch -- Neoliberalism and the Open Method of Co-ordination -- Conclusion -- 4 'The Fundamental Right of the Well-to-Do': Property as a Human Right -- Human Rights at the Service of Neoliberalism -- Property and Democracy: Four Possibilities -- Disagreements over the Right of Property Ownership, 1950-51 -- Predominant Purpose of the Property Right: The Protection of Existing Entitlements -- Transforming the Property Right -- The Concept of 'Fair Balance' -- 'Fair Balance' Fused with Proportionality -- Proportionality and Compensation -- The Elasticity of 'General Principles of International Law' -- Compliance: The Evolution of Effective Enforcement -- Conclusion -- 5 Neoliberalism as the Constitution -- The Binding of Parliament -- Dismantling the Teleological State

Sommario/riassunto

In 1945 a Labour government deployed Britain's national autonomy and parliamentary sovereignty to nationalise key industries and services such as coal, rail, gas and electricity, and to establish a publicly-owned National Health Service. This monograph argues that constitutional constraints stemming from economic and legal globalisation would now preclude such a programme. It contends that whilst no state has ever, or could ever, possess complete freedom of action, nonetheless the rise of the transnational corporation means that national autonomy is now significantly restricted. The book focuses in particular on the way in which these economic constraints have been nurtured, reinforced and legitimised by the creation on the part of world leaders of a globalised constitutional law of trade and competition. This has been brought into existence by the adoption of effective enforcement machinery, sometimes embedded within the nation states, sometimes formed at transnational level. With Britain enmeshed in supranational economic and legal structures from which it is difficult to extricate itself, the British polity no longer enjoys the range and freedom of policymaking once open to it. Transnational legal obligations constitute not just law but in effect a de facto supreme law entrenching a predominantly neoliberal political settlement in which the freedom of the individual is identified with the freedom of the market. The book analyses the key provisions of WTO, EU and ECHR law which provide constitutional protection for private enterprise. It dwells on the law of services liberalisation, public monopolies, state aid, public procurement and the fundamental right of property ownership, arguing that the new constitutional order compromises the traditional ideals of British democracy
