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EUROPEAN AND US CONSTITUTIONALISM

European constitutionalism is not merely an intra-European phenomenon but it can also be compared to other major forms of constitutionalism. Over the past decade or so issues have emerged which seem to indicate that European constitutional theory and practice is becoming aware that it has developed certain rules and possesses certain characteristics which distinguish it from US constitutionalism and vice versa. This book explores whether such differences can be found in the five areas of 'freedom of speech', 'human dignity', 'duty to protect', 'adjudication' and 'democracy and international influences'. The authors of this book are constitutional scholars from Europe and the United States as well as from other constitutional states, such as Canada, Israel, Japan, Peru and South Africa.

GEORG NOLTE is Professor of Law at the University of Munich. From 1999 until 2004 he was Professor of Law at the University of Göttingen and in 2003–4 he was a Visiting Fellow at All Souls College, Oxford.

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PREFACE

This book is the fruit of an intense collaboration between the European Commission for Democracy through Law (the ‘Venice Commission’) and academia. The Venice Commission is the Council of Europe’s advisory body on constitutional matters. Established in 1990, the Commission has played a leading role in the adoption of constitutions that conform to the standards of Europe’s constitutional heritage. It contributes to the dissemination of the European constitutional heritage while continuing to provide ‘constitutional first-aid’ to individual states. The Venice Commission also plays a role in crisis management and conflict prevention through constitution building and advice.

The Venice Commission is composed of independent experts. The members are senior academics, particularly in the fields of constitutional or international law, supreme or constitutional court judges or members of national parliaments. Acting on the Commission in their individual capacity, the members are appointed for four years by the participating countries. All Council of Europe member states are members of the Venice Commission; in addition, Kyrgyzstan joined the commission in 2004. Argentina, Canada, the Holy See, Israel, Japan, Kazakhstan, the Republic of Korea, Mexico, the United States and Uruguay are observers. South Africa has a special cooperation status similar to that of the observers. The European Commission and OSCE/ODIHR participate in the plenary sessions of the Commission.

The work of the European Commission for Democracy through Law aims at upholding the three underlying principles of Europe’s constitutional heritage: democracy, human rights and the rule of law which represent the cornerstones of the Council of Europe. Accordingly, the Commission works in the four key areas of constitutional assistance, elections and referendums, cooperation with constitutional courts, and transnational studies, reports and seminars.

In May 2003, the Commission organized a seminar in Göttingen, Germany, on ‘European and American Constitutionalism’. This seminar

was held in collaboration with the Institute of International Law, University of Göttingen, and Yale Law School. In addition to the Council of Europe, the Volkswagen Foundation provided generous funding. After the conference all speakers revised and completed their papers in the light of the discussions in Göttingen.

Many people deserve to be thanked for their contributions. Apart from the authors, these are Professors Jeffrey Jowell, University College London, and Jed Rubenfeld, Yale Law School, for their support during the preparatory phase of the conference; Ms Caroline Martin and Ms Caroline Godard from the Council of Europe for all their organisational work; Ms Anna-Jule Arnhold, Mr Helmut Aust, Ms Nina Naske, and Mr Florian Prill, all University of Göttingen, for patiently and diligently checking the footnotes and putting them into the correct format; Ms Roslyn Fuller, University of Göttingen, for enthusiastically and professionally dealing with all the language aspects of the text; and, finally, as ever, Ms Christiane Becker, University of Göttingen, for being the friendly, competent and determined manager of the whole enterprise.

Georg Nolte