



Sovereign Immunity Or The Rule Of Law: New Federalism's Choice

Donald L. Doernberg

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This book explores the inherent conflict between the philosophical concept of the rule of law on one hand and sovereign immunity as it exists in the United States today on the other. The volume begins by canvassing the development of sovereignty as a concept from Bodin in the sixteenth century through the Framers of the United States Constitution in the late eighteenth century. The philosophy of John Locke receives special emphasis because the Framers were so intellectually indebted to his then-revolutionary view of sovereignty as an attribute of the people, not the government and of government not as the people's master, but as their trustee bound to perform on their behalf. An examination of sovereign immunity in the United States follows, focusing on the federalism relationship between the United States and the individual states. The Supreme Court's recent development of federalism, referred to by many as the New Federalism, provides rich material with which to examine sovereign immunity and its interaction with federalism principles.

Then book then explores the philosophy of the rule of law, a major component of which is the idea that government is itself limited by the law and must stay within law's bounds to retain its legitimacy. Particularly in a society like that of the United States, where a formal constitution creates and defines the government, its powers and its limitations, the clash between sovereign immunity and the rule of law is unavoidable. The Constitution has no function other than to define, empower, and limit the government. When the courts invoke sovereign immunity to shield government or its agents from the consequences of violation of constitutional norms, the rule of law and the basic fabric of society suffer.

This book intends to reach constitutional law and federal courts scholars, political scientists, historians, and students of political philosophy.

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