

Constitutionalism Legal Pluralism And International Regimes

An analysis of the relationship between private international law, examined from an international systemic perspective, and public international law.

Globalisation has changed the law radically, but broader conceptualisations of law have been slow to respond. Where new paradigms have been developed, they have drawn on domestic models of order, such as constitutionalism. But usually these can neither account for developments in practice nor do they resonate well with the particular, diverse character of postnational society. This book proposes to conceive of the emerging new order as one of 'postnational law' and to leave domestic paradigms behind in its theorisation. It argues that we should understand postnational law as 'pluralist', as made up of a multiplicity of sub-orders whose relationship is not settled by an overarching frame but remains legally underdetermined. And the book uses theoretical engagement as well as three case studies to suggest that such pluralism can be more than just an analytical prism - that it might indeed be a normatively appealing structural model.

This book examines hybridization as a defining phenomenon of regulatory frameworks in the transnational sphere. The contributions illustrate that globalization contributes to blurring the distinctions between national and international, public and private law; and that hybridization therefore necessitates a rethinking of fundamental legal concepts.

The book gathers the general report and the national reports presented at the XXth General Congress of the IACL, in Fukuoka (Japan), on the topic "Debating legal pluralism and constitutionalism: new trajectories for legal theory in the global age". Discussing the major contemporary changes occurring in and problems faced by domestic legal systems in the global age, the book describes how and to what extent these trends affect domestic legal orderings and practices, and challenges the traditional theoretical lenses that are offered to tackle them: constitutionalism and pluralism. Combining comparative law and comparative legal doctrine, and drawing on the national contributions, the general report concludes that most of the classic tools offered by legal doctrine are not appropriate to address most of today's practical and theoretical global legal challenges, and as such, the book also offers new intellectual tools for the global age.

This book offers new perspectives and insights into the functioning of mechanisms utilised by global constitutionalism.

Recent social and political developments in the EU have clearly shown the profound structural changes in European society and its politics. Reflecting on these developments and responding to the existing body of academic literature and scholarship, this book critically discusses the emerging notion of European constitutionalism, its varieties and different contextualization in theories of EU law, general jurisprudence, sociology of law, political theory and sociology. The contributors address different problems related to the relationship between the constitutional state and non-state constitutionalizations and critically analyze general theories of constitutional monism, dualism and pluralism and their juridical and political uses in the context of EU constitutionalism. Individual chapters emphasize the importance of interdisciplinary and socio-legal methods in the current research of EU constitutionalism and their potential to re-conceptualize and re-think traditional problems of constitutional subjects, limitation and separation of power, political symbolism and identity politics in Europe. This collection simultaneously describes the EU and its self-constitution as one polity, differentiated society and shared community and its contributors conceptualize the sense of common identity and solidarity in the context of the post-sovereign multitude of European society.

The achievements of the democratic constitutional order have long been associated with the sovereign nation-state. Civic nationalist assumptions hold that social solidarity and social plurality are compatible, offering a path to guarantees of individual rights, social justice, and tolerance for minority voices. Yet today, challenges to the liberal-democratic sovereign nation-state are proliferating on all levels, from multinational corporations and international institutions to populist nationalisms and revanchist ethnic and religious movements. Many critics see the nation-state itself as a tool of racial and economic exclusion and repression. What other options are available for managing pluralism, fostering self-government, furthering social justice, and defending equality? In this interdisciplinary volume, a group of prominent international scholars considers alternative political formations to the nation-state and their ability to preserve and expand the achievements of democratic constitutionalism in the twenty-first century. The book considers four different principles of organization—federation, subsidiarity, status group legal pluralism, and transnational corporate autonomy—contrasts them with the unitary and centralized nation-state, and inquires into their capacity to deal with deep societal differences. In essays that examine empire, indigenous struggles, corporate institutions, forms of federalism, and the complexities of political secularism, anthropologists, historians, legal scholars, political scientists, and sociologists remind us that the sovereign nation-state is not inevitable and that multinational and federal states need not privilege a particular group. *Forms of Pluralism and Democratic Constitutionalism* helps us answer the crucial question of whether any of the alternatives might be better suited to core democratic principles. "Abstract Global legal pluralism has become one of the leading analytical frameworks for understanding and conceptualizing law in the twenty-first century"--

The *Research Handbook on Legal Pluralism and EU Law* explores the diversity of phenomenon of overlapping legal systems within the European Union, the nature of their interactions, and how they deal with the difficult question of the legal hierarchy between them. The contributors reflect on the history, sociology and legal scholarship on constitutional and legal pluralism, and develop this further in the light of the challenges currently facing the EU.

Examines the way in which globalisation has affected our thinking about sovereignty, human rights, law and legitimacy.

This collection brings together some of the most influential sociologists of law to confront the challenges of current transnational constitutionalism. It shows the constitution appearing in a new light: no longer as an essential factor of unity and stabilisation but as a potential defence of pluralism and innovation. The first part of the book is devoted to the analysis of the concept of constitution, highlighting the elements that can contribute from a socio-legal perspective, to clarifying the principle meanings attributed to the constitution. The study goes on to analyse some concrete aspects of the functioning of constitutions in contemporary society. In applying Luhmann's General Systems Theory to a comparative analysis of the concept of constitution, the work contributes to a better understanding of this traditional concept in both its institutionalised and functional aspects. Defining the constitution's contents and functions both at the conceptual level and by taking empirical issues of particular comparative interest into account, this study will be of importance to scholars and students of sociology of law, sociology of politics and comparative public law.

This landmark book provides the first systematic overview of the key scholarly contributions in an emerging field of research on constitutionalism: the sociology of constitutions. It presents chapters offering very different normative and methodological approaches to constitutions, ranging from analysis of national constitutional law, to research on transnational legal forms, to discussions of the constitutional impact of international human rights law. The book makes an important contribution to a series of wider debates - spanning constitutional law, legal theory, comparative constitutionalism, sociology, and political science - about the changing nature of constitutionalism. Researchers and students in constitutional law will gain a comprehensive appreciation of a diverse range of distinctively sociological approaches to constitutional law and an in-depth understanding of distinctive sociological dimensions of constitutions. The book

offers new insights into the sources of constitutional normativity in society and it proposes different sociological methods for addressing them.

In most post-conflict states, a strong level of legal pluralism is the norm, particularly in regions of Africa and Asia where between eighty and ninety per cent of disputes are resolved through non-state legal mechanisms. The international community, in particular the United Nations, persistently drives the re-establishment of the rule of law in war-torn areas where, traditionally, customary law is prevalent. Laura Grenfell traces the international community's evolving understanding of the rule of law in such regions and explores the implications of strong legal pluralism for the rule-of-law enterprise. Using the comparative examples of two unique case studies, South Africa and Timor-Leste, *Promoting the Rule of Law* provides insight into the relationship between the rule of law and legal pluralism. Alongside these studies, the book offers a comprehensive introduction to the conceptual framework of the rule of law in the context of approaches taken by the international community.

Ruling the World?: Constitutionalism, International Law, and Global Governance provides an interdisciplinary analysis of the major developments and central questions in debates over international constitutionalism at the UN, EU, WTO, and other sites of global governance. The essays in this volume explore controversial empirical and structural questions, doctrinal and normative issues, and questions of institutional design and positive political theory. *Ruling the World?* grows out of a three-year research project that brought twelve leading scholars together to create a comprehensive and integrated framework for understanding global constitutionalization. *Ruling the World?* is the first volume to explore in a cross-cutting way constitutional discourse across international regimes, constitutional pluralism, and relations among transnational and domestic constitutions. The volume examines the core assumptions, basic analytic tools, and key challenges in contemporary debates over international constitutionalization.

'Transnational governance' is neither public nor private, nor purely international, supranational nor totally denationalised.

This book addresses conflicts involving different normative orders: what happens when international law prohibits behavior, but the same behavior is nonetheless morally justified or warranted? Can the actor concerned ignore international law under appeal to morality? Can soldiers escape legal liability by pointing to honor? Can accountants do so under reference to professional standards? How, in other words, does law relate to other normative orders? The assumption behind this book is that law no longer automatically claims supremacy, but that actors can pick and choose which code to follow. The novelty resides not so much in identifying conflicts, but in exploring if, when and how different orders can be used intentionally. In doing so, the book covers conflicts between legal orders and conflicts involving law and honor, self-regulation, *lex mercatoria*, local social practices, bureaucracy, religion, professional standards and morality.

The increasing transnationalisation of regulation – and social life more generally – challenges the basic concepts of legal and political theory today. One of the key concepts being so challenged is authority. This discerning book offers a plenitude of resources and suggestions for meeting that challenge.

How can legal authority be explained beyond the sovereign state? Roughan argues that instances of transnational and international law, along with overlapping constitutional orders, should be regarded as having shared, interdependent and relative authority.

This study of regime collisions in international law combines theoretical contributions by leading scholars in the field and case studies.

This *Advanced Introduction* offers a fresh critical analysis of various dimensions of law and globalisation, drawing on historical, normative, theoretical, and linguistic methodologies. Its comprehensive and multidisciplinary approach spans the fields of global legal pluralism, comparative legal studies, and international law.

In this first full-length study of legal monism, Paul Gragl advocates for the revival of legal monism as a solution to normative conflicts between different bodies of law. Using comprehensive and inter-disciplinary arguments, this book defends the theory against dualism and pluralism.

Utilizing detailed case studies from Nigeria, Ethiopia, and South Africa, this title traces African constitutionalism from precolonial times to the present. The volume offers a new framework for understanding African constitutionalism and a range of practical proposals for its future development.

Concepts shape how we understand and participate in international legal affairs. They are an important site for order, struggle and change. This comprehensive and authoritative volume introduces a large number of concepts that have shaped, at various points in history, international legal practice and thought; intimates at how the many projects of international law have grappled with, and influenced, the world through certain concepts; and introduces new concepts into the discipline.

The current system of international law is experiencing profound transformations. Indeed, the simultaneous processes of globalization combined with the disintegration of international systems of governance and law-making pose complex challenges for legal scholarship. The doctrinal response to these challenges has been theorized within two seemingly contradictory discourses in international law: fragmentation and constitutionalisation. This book takes an innovative approach to international law, viewing the processes of the fragmentation and constitutionalisation as being profoundly interconnected and reflective of each other. It brings together a select group of contributors, including both established and emerging scholars and practitioners, in order to explore the ways in which the problems of fragmentation and constitutionalisation are viscerally linked one to the other and thus mutually conditioning and stimulating. The book considers the theory and practice of international law looking at the two phenomena in relation to the various fields of international law such as international criminal law, cultural heritage law and international environmental law.

The idea of the EU as a constitutional order has recently taken on renewed life, as the Court of Justice declared the primacy of EU law not just over national constitutions but also over the international legal order, including the UN Charter. This book explores the nature and character of EU legal and political authority, and the complex analytical and normative questions which the notion of European constitutionalism raises, in both the EU's internal and its external relations. The book culminates in a dialogical epilogue in

of human rights as dialectically linking the individual and the state. Because of human rights' dogged focus on the state and its actions, they have very seldom attracted the attention of legal pluralists. Indeed, some may have viewed the two as simply incompatible or relating to wholly distinct phenomena. This collection of essays is the first to bring together authors with established track records in the fields of legal pluralism and human rights, to explore the ways in which these concepts can be mutually reinforcing, delegitimizing, or competing. The essays reveal that there is no facile conclusion to reach but that the question opens avenues which are likely to be mined for years to come by those interested in how human rights can affect the behaviour of individuals and institutions.

"This is a book about how we might fruitfully think about global law. Few terms are more topical in the transnational legal literature. Yet there has been little serious discussion - and little agreement where there has been discussion - on what is meant by 'global law', if, indeed, it means anything of note at all. In what follows, I suggest that we can nonetheless arrive at a core sense of global law as an emergent idea and practice"--

Horatia Muir Watt and Diego P. Fernández-Arroyo: Introduction: The Relevance of Private International Law to the Global Governance Debate Part I: BEHIND CLOSED DOORS: THE PRIVATE MODEL AND ITS DISCONTENTS Section A. Epistemological Challenge: The Meaning of 'Private' in Private International Law 1: Geoffrey Samuel: Comparative Law as Resistance 2: Robert Wai: Private v Private: Transnational Private Law and Contestation in Global Economic Governance 3: Ralf Michaels: Post-critical Private International Law: From Politics to Technique Section B. Political Critique: Privatization as Homogenization 4: Tomaso Ferrando: Global Land Grabbing: A Tale of Three Legal Homogenizations 5: Veronica Corcodel: Governance Implications of Comparative Legal Thinking: On Henry Maine's Jurisprudence and British Imperialism Section C. Searching for Legitimacy: Questions of Design 6: Diego P. Fernández-Arroyo: Private Adjudication Without Precedent? 7: Gilles Cuniberti: The Merchant Who Would Not Be King: Unreasoned Fears about Private Lawmaking 8: Yannick Radi: Balancing the Public and the Private in International Investment Law PART II: BEYOND THE SCHISM: EMERGING MODELS AND WORLDVIEWS Section A. The Global Turn to Informality: Pragmatism and Constructivism 9: Benoit Frydman: A Pragmatic Approach To Global Law 10: Harm Schepel: Rules of Recognition: A Legal Constructivist Approach to Transnational Private Regulation 11: Michael Karayanni: The Extraterritorial Application of Access to Justice Rights: On the Availability of Israeli Courts to Palestinian Plaintiffs Section B. Re-importing Public Law Methodology: Federalism and Constitutionalism 12: Alex Mills: Variable Geometry, Peer Governance, and the Public International Perspective on Private International Law 13: Jacco Bomhoff: The Constitution of the Conflict of Laws 14: Jérémy Heymann: Importing Proportionality to the Conflict of Laws Section C. Reinventing a Global Horizon: Working towards a Global Public Good 15: Bram van der Eem: Financial Stability and Private International Law 16: Ivana Isailovic: Recognition(and Mis-recognition) in Private International Law 17: Sabine Corneloup: Can Private International Law Contribute to Global Migration Governance? Horatia Muir Watt: Paradigm Change in Private International Law: Renewal, Circularity, or Decline?

This book provides insights into the viability of the idea of global constitution. Global constitutionalism has emerged as an alternative paradigm for international law. However, in view of the complex and varied structure of contemporary constitutionalism, in reality it is extremely difficult to use constitutional law to provide a new paradigm for international law. The book argues that the cultural paradigm can offer functional tools for the global constitutionalism discourse. In other words, global constitutionalism could be handled in the context of a global "constitutional culture" instead of a global constitution. This would provide a more realistic basis for discussing global constitutionalization of a society as diverse as the international community, where a globalized polity and a globalized legal system have not yet been achieved.

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