Contents

PART ONE: CONSTITUTIONALISM BEYOND THE STATE

1: Constitutionalism in an Age of Globalization	1
Rights Constitutionalism and the Globalization of Liberal Legalism	4
Globalization and the Empirical Challenge of Private Power	7
Globalization and the Epistemological Challenge of Legal Pluralism A New Dynamic: Rights Constitutionalism, Globalization and	10
Legal Pluralism	12
2: Globalization and the Reconfiguration of Political Power	17
The Washington Consensus and the Changing Role of the State	18
Global Corporate Power?	22
(a) Quantitative analyses of corporate Power	23
(b) Qualitative analyses of corporate power	25
(i) The state-corporate nexus	26
(ii) The corporate-state nexus	28
(iii) The constitutional framework of the global economy	29
(c) Global corporate power in practice	30
The Challenge for Rights Constitutionalism	33

PART TWO: RIGHTS CONSTITUTIONALSIM AND THE CHALLENGE OF LEGAL PLURALISM

3: The Paradigmatic Debate: Liberal Legalism and Legal Pluralism	39
Liberal Legalism	40
Legal Pluralism	44
(a) Legal pluralism and the challenge to legal centralism	45
(b) External legal pluralism and the multiplicity of law	50
(c) Internal legal pluralism and the incoherence of law	54
Conclusion	58
4: Internal Legal Pluralism and the Interpretive Question	59
Ronald Dworkin's Law as Integrity	60
(a) Law as integrity and Dworkin's constitutional theory	61
(b) Problems with implementing law as integrity	64

The Problem of Internal Legal Pluralism(a) Internal legal pluralism and constitutional theory(b) Internal legal pluralism and constitutional practice	66 68 70
Conclusion	77
5: External Legal Pluralism and the Instrumental Question	79
Race and Civil Rights	80
(a) 'Top-down' approaches	81
(b) 'Bottom-up' approaches	83
(c) Race relations and internormativity	84
Abortion	85
(a) Assessing direct effects	87
(b) Indirect effects	89
Freedom of Expression and Political Libels	91
Conclusion	95

PART THREE: CONSTITUTIONAL RIGHTS IN AN AGE OF GLOBALIZATION TOWARDS A LEGAL PLURALIST THEORY OF CONSTITUTIONALISM

6: Legal Pluralism and the Politics of Constitutional Definition	99
Legal Pluralism and the Politics of Definition	100
(a) Analytical and instrumental objections to legal pluralism	100
(b) Towards a rhetorical conception of legal knowledge	102
(c) The analytical and instrumental objections in context	105
The Politics of Definition of Constitutional Law	107
(a) Classical liberal constitutionalism	108
(i) Protecting private power through the politics of definition	110
(b) 'New constitutionalism'	113
(i) Problematising private power through the politics of definition	114
Conclusion	115
7: Rights Constitutionalism and the Counterhegemonic Difficulty	119
Constitutional Globalization in Political Context	120
(a) Modern constitutionalism as limitations on the state	123
Remaking Rights Constitutionalism?	126
(a) The Application to State Institutions (ASI) model	126
(i) Extending the reach of constitutional rights?	128
(ii) The politics of adjudication: pluralist v classical liberalism	130
(iii) The politics of definition: the enduring hold of	
classical liberalism	133

Contents ix

(b) Application to Law (LAW) model	136
(i) Expanding the scope of constitutional rights?	137
(ii) The counterhegemonic limits of the LAW model	140
Conclusion	142
Conclusion: Towards a Legal Pluralist Constitutionalism	145