## Contents

Acknowledgements	ix
Table of Cases	XV
Table of International Treaties, Conventions and other Legal Instruments	xviii
Table of General Assembly Resolutions	xxiii
Introduction	1
Globalisation and the Democratic Deficit	2
The Democratic Legitimacy of International Law	11
The Structure of the Book	15
1 The Democratic Deficit in Global Governance	22
The 'Vertical' Complaint	23
The 'Horizontal' Complaint	28
The 'Ideological' Complaint	31
The Democratisation of Global Governance	33
Reaffirming Sovereignty	34
A Global Democratic State	43
A Global Democratic Federation	47
A Democratic Peace	50
Perpetual Peace	51
A Law of Peoples	54
Cosmopolitan Democratic Law	60
Democratising International Institutions	64
International Parliamentary Assemblies	65
A UN Parliamentary Assembly	67
The Accountability Deficit	71
The Role of Experts	72
The Accountability of International Organisations	79
Global Discourses: the Role of International Civil Society	83
Conclusion	89
2 Democracy Within and Beyond the State	92
International Law and the Democratic Deficit	94
Politically Decidable Issues	98
Deliberative Democracy	102
Deliberative Majorities	106
Deliberative Politics	108
Human Rights in a Democracy	109
The Parliamentary Principle of Democracy	112

## xii Contents

	Challenging Democratic Truths: the Role of Judicial Review	113
	Deliberative Democracy Beyond the State	115
	Conclusion	121
3	The State as (Democratic) Self-Legislator	123
	The Sovereign State	124
	The State as Self-Legislator	128
	Contractual Autonomy	133
	Law-Making Treaties	135
	Deliberative Diplomacy	138
	The Indeterminacy of International Law Obligations	145
	The Problem of Customary International Law	150
	The Role of the International Law Profession	152
	A Modern Form of Customary International Law	154
	General Principles of Law	155
	The Writings of Publicists and Judgments of Courts	157
	The Writings of Publicists	157
	The Judgments of Courts	158
	Conclusion	161
4	The Constitutionalisation of International Law	163
	From Contract to Governance	164
	Community Interests and Constitutionalisation	171
	The Constitutionalisation of International Law	175
	The Normative Hierarchy of International Law	176
	Article 103, Charter of the United Nations	179
	The International Constitution	182
	The International Constitutional Order	187
	Liberal Democratic Values in International Law	193
	Rule of Law	194
	International Human Rights Law	198
	Human Rights in the United Nations System	202
	The Construction of the Liberal State	207
	Conclusion	210
5	Democracy in International Law	211
	Democracy in International Law	212
	Democratic Self-Determination	213
	A (Human) Right to Democracy	219
	Democracy in the Practice of States	222
	Membership of International Organisations	223
	Democracy in the International Law Order	228

	Contents	xiii
	Democratic Regime Change in International Law	231
	Operation Enduring Freedom (Afghanistan)	235
	Operation Iraqi Freedom	237
	Conclusion	245
6	International Governance by Non-State Actors	247
	Global Governance	249
	International 'Soft' Law	253
	Non-State Actors as Law-Makers	256
	The UN Security Council	257
	'Networks' of Officials: Basel Committee on Banking	
	Standards	264
	Public-Private Partnerships: World Commission on Dams	267
	Private International Governance Schemes	269
	Governance by Non-State Actors	271
7	A Concept of (International) Law	277
	The Concept of (State) Law	277
	Autopoiesis: Law as a Closed System of Communication	280
	Global Bukowina	286
	The Fragmentation of International Law	289
	Constitutionalisation Beyond the State	292
	The Idea of Law	296
	The Idea of Authority	300
	Democracy and the Concept of Authority	303
	A Revised Concept of Law	309
8	Deliberative Democracy Beyond the State	311
	The Idea of Constituent Power	312
	Democracy and the Exercise of Political Authority	315
	Those 'Affected'/'Subjected'	322
	The Political Concept of Global Justice	327
	Conclusion	331
9	Democracy in Conditions of Global Legal Pluralism	334
	Pluralism in Global Governance	335
	Normative Pluralism	338
	What is Legal Pluralism?	341
	Global Legal Pluralism	343
	Rethinking Global Legal Pluralism	345
	State Law and International Law	350
	Relationship Between Democracy and International Law	360
	The Limits of International Law	361
	Democracy-Enhancing International Law	363

## xiv Contents

Constitutional Self-Limitation	365
International Law as a Pre-Commitment Device	368
A Contestable International Rule of Law	369
Conclusion	371
Conclusion: Democracy and the Public International Lawyer	377
Selected Bibliography Index	383 395