Constitutionalism Legal Pluralism And International Regimes

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 which the authors' arguments are questioned and challenged by the editor, providing a unique and stimulating approach to the subject. By bringing together leading constitutional theorists of the European Union, this book offers a sharp, challenging and engaging discussion for students and researchers alike.

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.

The last fifty years has seen a worldwide trend toward constitutional democracy. But can constitutionalism become truly global? Relying on historical examples of successfully implanted constitutional regimes, ranging from the older experiences in the United States and France to the relatively recent ones in Germany, Spain and South Africa, Michel Rosenfeld sheds light on the range of conditions necessary for the emergence, continuity and adaptability of a viable constitutional identity - citizenship, nationalism, multiculturalism, and human rights being important elements. The Identity of the Constitutional Subject is the first systematic analysis of the concept, drawing on philosophy, psychoanalysis, political theory and law from a comparative perspective to explore the relationship between the ideal of constitutionalism and the need to construct a common constitutional identity that is distinct from national, cultural, ethnic or religious identity. The Identity of the Constitutional Subject will be of interest to students and scholars in law, legal and political philosophy, political science, multicultural studies, international relations and US politics.

Where does the law and political power of any given territory come from? Until recently it was believed that it came from a single and hierarchical source of constitutional authority, a sovereign people and their constitution. However, how can this model account for the new Europe? Where state constitutions and the European Constitution, which are ultimately equally self-standing sources of constitutional authority, overlap heterarchically over a shared piece of territory. Constitutional pluralism is a new branch within constitutional thought that argues sovereignty is no longer the accurate and normatively superior constitutional foundation. It instead replaces this thought with its own foundation. It emerged on the basis of contributions by the leading EU constitutionalists and has now become the most dominant branch of European constitutional thought. Its claims have also overstepped the European context, suggesting that it offers historic advantages for further development of the idea of constitutionalism and world order as such. This book offers the first overarching examination of constitutional pluralism.Comprehensively mapping out the leading contributions to date and solving the complicated labyrinth they currently form, Klemen Jaklic offers a complete assessment against existing and new criticisms while elaborating his own original vision. Constitutional pluralism thus refined has the potential to rightfully be considered the superior new approach within constitutional thought.

"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"--

European private law has hitherto tended to be conceptualised firmly around ideas of unity and harmony. Yet the discourse within other areas of European law, notably constitutional law scholarship, visibly adopts pluralist perspectives. This book seeks to bridge the gap between 'public' and 'private' law by looking at European private law from various pluralist positions and by investigating old and new ways in which to understand legal pluralism in general. It fills a gap in the wide literature on legal pluralism, as the first book entirely dedicated to offering an insight into legal pluralism from the vantage point of the private law domain. The book addresses critically issues such as what pluralism really means in private law and what conceptions of pluralism it embodies, including discussion about the outer boundaries of any of the pluralist understandings. Contributions address comparative, critical, historical, theoretical and normative aspects. The book provides an opportunity to engage innovatively with problematic conceptual issues which inform the work of European private law scholars, including the debate on the Common Frame of Reference Poject of the European Commision.

The Oxford Handbook of International Legal Theory provides an accessible and authoritative guide to the major thinkers, concepts, approaches, and debates that have shaped contemporary international legal theory. The Handbook features 48 original essays by leading international scholars from a wide range of traditions, nationalities, and perspectives, reflecting the richness and diversity of this dynamic field. The collection explores key questions and debates in international legal theory, offers new intellectual histories for the discipline, and provides fresh interpretations of significant historical figures, texts, and theoretical approaches. It provides a much-needed map of the field of international legal theory, and a guide to the main themes and debates that have driven theoretical work in international law. The Handbook will be an indispensable reference work for students, scholars, and practitioners seeking to gain an overview of current theoretical debates about the nature, function, foundations, and future role of international law.

Since the 1970s, sub-state national minorities in a number of developed liberal democracies have both reasserted their cultural distinctiveness and demanded recognition of it in legal and political terms. This book examines the role played by law in the negotiation of competing rights claims.

"Abstract Global legal pluralism has become one of the leading analytical frameworks for understanding and conceptualizing law in the twenty-first century"--

The book proposes a new approach to constitutional analysis of the EU and its legal framework, arguing that the existence of constitutional rights norms within EU law enables this particular legal order to respond effectively to societal and political challenges within the rigidity of constitutionalism. Providing new perspectives on constitutionalism in the EU, this book considers the way the Court of Justice of the European Union (CJEU) discusses and applies the EU citizenship Treaty norms by analysing the courts approach to decision making, which resembles the balancing and weighing of conflicting principles.

Under pressure from globalisation, the classical distinction between domestic and international law has become increasingly blurred, spurring demand for new paradigms to construe the emerging postnational legal order. The typical response of constitutional and international lawyers as well as political theorists has been to extend domestic concepts - especially constitutionalism - beyond the state. Yet as this book argues, proposals for postnational constitutionalism not only fail to provide a plausible account of the

changing shape of postnational law but also fall short as a normative vision. They either dilute constitutionalism's origins and appeal to 'fit' the postnational space; or they create tensions with the radical diversity of postnational society. This book explores an alternative, pluralist vision of postnational law. Pluralism does not rely on an overarching legal framework but is characterised by the heterarchical interaction of various suborders of different levels - an interaction that is governed by a multiplicity of conflict rules whose mutual relationship remains legally open. A pluralist model can account for the fragmented structure of the European and global legal orders and it reflects the competing (and often equally legitimate) claims for control of postnational politics. However, it typically provokes concerns about stability, power and the rule of law. This book analyses the promise and problems of pluralism through a theoretical enquiry and empirical research on major global governance regimes, including the European human rights regime, the contestation around UN sanctions and human rights, and the structure of global risk regulation. The empirical research reveals how prevalent pluralist structures are in postnational law and what advantages they possess over constitutionalist models. Despite the problems it also reveals, the analysis suggests cautious optimism about the possibility of stable and fair cooperation in pluralist settings.

Sovereignty and the sovereign state are often seen as anachronisms; Globalization and Sovereignty challenges this view. Jean L. Cohen analyzes the new sovereignty regime emergent since the 1990s evidenced by the discourses and practice of human rights, humanitarian intervention, transformative occupation, and the UN targeted sanctions regime that blacklists alleged terrorists. Presenting a systematic theory of sovereignty and its transformation in international law and politics, Cohen argues for the continued importance of sovereign equality. She offers a theory of a dualistic world order comprised of an international society of states, and a global political community in which human rights and global governance institutions affect the law, policies, and political culture of sovereign states. She advocates the constitutionalization of these institutions, within the framework of constitutional pluralism. This book will appeal to students of international political theory and law, political scientists, sociologists, legal historians, and theorists of constitutionalism.

Contemporary debates about the changing nature of law engage theories of legal pluralism, political economy, social systems, international relations (or regime theory), global constitutionalism, and public international law. Such debates reveal a variety of emerging responses to distributional issues which arise beyond the Western welfare state and new conceptions of private transnational authority. However, private international law tends to stand aloof, claiming process-based neutrality or the apolitical nature of private law technique and refusing to recognize frontiers beyond than those of the nation-state. As a result, the discipline is paradoxically ill-equipped to deal with the most significant cross-border legal difficulties - from immigration to private financial regulation - which might have been expected to fall within its remit. Contributing little to the governance of transnational non-state power, it is largely complicit in its unhampered expansion. This is all the more a paradox given that the new thinking from other fields which seek to fill the void - theories of legal pluralism, peer networks, transnational substantive rules, privatized dispute resolution, and regime collision - have long been part of the daily fare of the conflict of laws. The crucial issue now is whether private international law can, or indeed should, survive as a discipline. This volume lays the foundations for a critical approach to private international law in the global era. While the governance of global issues such as health, climate, and finance clearly implicates the law, and particularly international law, its private law dimension is generally invisible. This book develops the idea that the liberal divide between public and private international law has enabled the unregulated expansion of transnational private power in these various fields. It explores the potential of private international law to reassert a significant governance function in respect of new forms of authority beyond the state. To do so, it must shed a number of assumptions entrenched in the culture of the nation-state, but this will permit the discipline to expand its potential to confront major issues in global governance.

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.

Constitutional pluralism has become immensely popular among scholars who study European integration and issues of global governance. Some of them believe that constitutionalism, traditionally thought to be bound to a nation state, can emerge beyond state borders - most importantly in the process of European integration, but also beyond that, for example, in international regulatory regimes such as the WTO, or international systems of fundamental rights protection, such as the European Convention. At the same time, the idea of constitutional pluralism has not gone unchallenged. Some have questioned its compatibility with the very nature of law and the values which law brings to constitutionalism. The critiques have come from both sides: from those who believe in the 'traditional' European constitutionalism based on a hierarchically superior authority of the European Union as well as from scholars focusing on constitutions of particular states. The book collects contributions taking opposing perspectives on constitutional pluralism - some defending and promoting the concept of constitutional pluralism, some criticising and opposing it. While some authors can be called 'the founding fathers of constitutional pluralism', others are young academics who have recently entered the field. Together they offer fresh perspectives on both theoretical and practical aspects of constitutional pluralism, enriching our existing understanding of the concept in current scholarship.

Non-state law is playing an increasing role in both public and private ordering. Numerous organizations have emerged alongside the nation-state, each purporting to provide their members with rules and norms to govern their conduct and organize their affairs. The nation-state increasingly finds itself sandwiched, between two broad and contrasting categories of non-state law. The first - law above the state - captures legal systems that function across the territorial borders of nation-states. The second category - law below the state - includes forms of local customary, religious, and indigenous law. As these forms of non-state law persist and proliferate alongside the nation-state, the relationship between state and non-state law becomes more complex, multifaceted, and tense. This volume addresses this relationship considering whether and to what extent state and non-state law can coexist and how each form of law seeks to influence as well as transform the other.

We live in a world of legal pluralism, where a single act or actor is potentially regulated by multiple legal or quasi-legal regimes imposed by state, substate, transnational, supranational and nonstate communities. Navigating these spheres of complex overlapping legal authority is confusing and we cannot expect territorial borders to solve all these problems. At the same time, those hoping to create one universal set of legal rules are also likely to be disappointed by the sheer variety of human communities and interests. Instead, we need an alternative jurisprudence, one that seeks to create or preserve spaces for productive interaction among multiple, overlapping legal systems by developing procedural mechanisms, institutions and practices that aim to manage, without eliminating, the legal pluralism we see around us. Global Legal Pluralism provides a broad synthesis across a variety of legal doctrines and academic disciplines and offers a novel conceptualization of law and globalization.

This book offers a new account of modern European constitutionalism. It uses the Irish constitutional order to demonstrate that, right across the European Union, the national constitution can no longer be understood on its own, in isolation from the EU legal order or from the European Convention on Human Rights. The constitution is instead triangular, with these three legal orders forming the points of a triangle, and the relationship and interactions between them forming the triangle's sides. It takes as its starting point the theory of constitutional pluralism, which suggests that overlapping constitutional orders are not necessarily arranged 'on top of' each other, but that they may be arranged heterarchically or flatly, without a hierarchy of superior and subordinate constitutions. However, it departs from conventional accounts of this theory by emphasising that we must still pay close attention to jurisdictional specificity in order to understand the norms that regulate pluralist constitutions. It shows, through application of the theory to case studies, that any attempt to extract universal principles from the jurisdictionally contingent interactions between specific legal orders is fraught with difficulty. The book is an important contribution to constitutional theory in general, and constitutional pluralism in particular, and will be of great interest to scholars in the field.

The state-centred 'Westphalian model' of international law has failed to protect human rights and other international public goods effectively. Most international trade, financial and environmental agreements do not even refer to human rights, consumer welfare, democratic citizen participation and transnational rule of law for the benefit of citizens. This book argues that these 'multilevel governance failures' are largely due to inadequate regulation of the 'collective action problems' in the supply of international public goods, such as inadequate legal, judicial and democratic accountability of governments vis-a-vis citizens. Rather than treating citizens as mere objects of intergovernmental economic and environmental regulation and leaving multilevel governance of international public goods to discretionary 'foreign policy', human rights and constitutional democracy call for 'civilizing' and 'constitutionalizing' international economic and environmental cooperation by stronger legal and judicial protection of citizens and their constitutional rights in international economic law. Moreover intergovernmental regulation of transnational cooperation among citizens must be justified by 'principles of justice' and 'multilevel constitutional restraints' protecting rights of citizens and their 'public reason'. The reality of 'constitutional pluralism' requires respecting legitimately diverse conceptions of human rights and democratic constitutionalism. The obvious failures in the governance of interrelated trading, financial and environmental systems must be restrained by cosmopolitan, constitutional conceptions of international law protecting the transnational rule of law and participatory democracy for the benefit of citizens.

Examination of the effects of law's de-nationalisation by placing European law in the context of transnational law.

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.

Through an extensive exploration of comparative constitutional endeavours past and present, near and far, Ran Hirschl shows how attitudes towards engagement with the constitutive laws of others reflect tensions between particularism and universalism as well as competing visions of who 'we' are as a political community. Drawing on insights from social theory, religion, history, political science, and public law, Hirschl argues for an interdisciplinary approach tocomparative constitutionalism that is methodologically and substantively preferable to merely doctrinal accounts. The future of comparative constitutional studies, he contends, lies in relaxing thesharp divide between constitutional law and the social sciences.

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.

Human rights have transformed the way in which we conceive the place of the individual within the community and in relation to the state in a vast array of disciplines, including law, philosophy, politics, sociology, geography. The published output on human rights over the last five decades has been enormous, but has remained tightly bound to a notion 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.

Over the past two decades Global Legal Pluralism has become one of the leading analytical frameworks for understanding and conceptualizing law in the 21st century. Wherever one looks, there is conflict among multiple legal regimes. Some of these regimes are state-based, some are built and maintained by non-state actors, some fall within the purview of local authorities and jurisdictional entities, and some involve international courts, tribunals, and arbitral bodies, and regulatory organizations. Global Legal Pluralism has provided, first and foremost, a set of useful analytical tools for describing this conflict among legal and quasi-legal systems. At the same time, some pluralists have also ventured in a more normative direction, suggesting that legal systems might sometimes purposely create legal procedures, institutions, and practices that encourage interaction among multiple communities. These scholars argue that pluralist approaches can help foster more shared participation in the practices of law, more dialogue across difference, and more respect for diversity without requiring assimilation and uniformity. Despite the veritable explosion of scholarly work on legal pluralism, conflicts of law, soft law, global constitutionalism, the relationships among relative authorities, transnational migration, and the fragmentation and reinforcement of territorial boundaries, no single work has sought to bring together these various scholarly strands, place them into dialogue with each other, or connect them with the foundational legal pluralism research produced by historians, anthropologists, and political theorists. Paul Schiff Berman, one of the world's leading theorists of Global Legal Pluralism, has gathered over 40 diverse authors from multiple countries and multiple scholarly disciplines to touch on nearly every area of legal pluralism research, offering defenses, critiques, and applications of legal pluralism to 21st-century legal analysis. Berman also provides introductions to every part of the book, helping to frame the various approaches and perspectives. The result is the first comprehensive review of Global Legal Pluralism scholarship ever produced. This book will be a must-have for scholars and students seeking to understand the insights of legal pluralism to contemporary debates about law. At the same time, this volume will help energize and engage the field of Global Legal Pluralism and push this scholarly trajectory forward into another two decades of innovation.

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 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 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.

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.

Despite growing skepticism about the value of international law and its compatibility with state sovereignty, states should improve and strengthen international law because it makes a critical contribution to an international order characterized by peace and justice. In recent years, international agreements and institutions have become particularly contentious. China is refusing to abide by the decision of an international arbitration decision implementing UNCLOS rules in the South China Sea, and Donald Trump has withdrawn the US from international agreements including the Paris Agreement on Climate Change of 2015. Such retreats expose widespread ambivalence towards cooperation through international law, and reverse the gains made by long-standing processes of legalization. In Law Beyond the State, Carmen Pavel responds to the ambivalent attitude states have with respect to international law by offering moral and legal reasons for them to improve, strengthen, and further institutionalize its capacity. She argues that the same reasons which support the development of law at the domestic level, namely the cultivation of peace, the protection of individual rights, the facilitation of complex forms of cooperation, and the resolution of collective action problems, also support the development of law at the international level. The argument thus engages in institutional moral reasoning. Pavel shows why it should matter to individuals that their states are part of a rule-governed international order. When states are bound by common rules of behavior, their citizens reap the benefits. International law encourages states to protect individual rights and provides a forum where they can communicate, negotiate, and compromise on their differences in order to protect themselves from outside interference and pursue their domestic policies more effectively, including those directed at enhancing their citizen's welfare. Thus, Pavel shows that international law makes a critical, irreplaceable, and defining contribution to an international order characterized by peace and justice. At a time when challenges of cooperation beyond state boundaries include climate change, health epidemics, and large-scale human rights violations, Law Beyond the State issues a powerful reminder of the tools we have to address them.

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 this book, Stone Sweet and Ryan provide an accessible introduction to Kantian constitutional theory and the law and politics of European rights protection. Part I sets out Kant's blueprint for achieving Perpetual Peace and constitutional justice within and beyond the nation state. Part II applies these ideas to explain the gradual constitutionalization of a Cosmopolitan Legal Order: a transnational legal system in which justiciable rights are held by individuals; where public officials bear the obligation to fulfil the fundamental rights of all who come within the scope of their jurisdiction; and where domestic and transnational judges supervise how officials act. Such an order was instantiated in Europe through the combined effects of Protocol no. 11 (1998) to the ECHR and the incorporation of the Convention into national law. The authors then describe and assess the strengthening of the European Court's capacities to meet the challenge of chronic failures of protection at the domestic level; its progressive approach to the "qualified" rights covering privacy and family life, and the freedoms of expression, conscience, and religion; the robust enforcement of the "absolute" rights, including the prohibition of torture and inhuman treatment; and its determined efforts to render justice to all people that come under its jurisdiction, including non-citizens whose rights are violated beyond Europe. Today, the Strasbourg Court is the most active and important rights-protecting court in the world, its jurisprudence a catalyst for the construction of a cosmopolitan constitution in Europe and beyond.

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.

Westphalian constitutionalism has shaped our understanding of politics, socio-political institutions and personal and political freedom for centuries. It is historically based in the foundations of Western modernity, such as humanism and rationalism, and is organised around familiar principles of national sovereignty, the rule of law, the separation of powers, and democracy. But since the end of the twentieth century, global constitutionalism has gradually emerged, challenging both the constitutional ideology and the constitutional design of Westphalian constitutional law. This book critically assesses the structural and functional transformations in the Westphalian constitutional tradition produced by the emergence of supranational and global constitutionalism. In so doing, it evaluates the theory of global constitutionalism, its legal and socio-political limits, and important issues concerning the supranational constitutionalism of the EU. This leads to an articulation of the constitutional theory of the emerging post-Westphalian constitutionalism, examining its development during a period of significantly increased access to and sharing of information, increased mobility and more open statehood, as well as the rise of human rights and its encounter with populism and nationalism. This book will be of great interest to scholars of constitutional law and theory, particularly those with an interest in globalisation and supranationalism.

Polarization between political religionists and militant secularists on both sides of the Atlantic is on the rise. Critically engaging with traditional secularism and religious accommodationism, this collection introduces a constitutional secularism that robustly meets contemporary challenges. It identifies which connections between religion and the state are compatible with the liberal, republican, and democratic principles of constitutional democracy and assesses the success of their implementation in the birthplace of political secularism: the United States and Western Europe. Approaching this issue from philosophical, legal, historical, political, and sociological perspectives, the contributors wage a thorough defense of their project's theoretical and institutional legitimacy. Their work brings fresh insight to debates over the balance of human rights and religious freedom, the proper definition of a nonestablishment norm, and the relationship between sovereignty and legal pluralism. They discuss the genealogy of and tensions involving international legal rights to religious freedom, religious symbols in public spaces, religious arguments in public debates, the jurisdiction of religious authorities in personal law, and the dilemmas of religious accommodation in national constitutions and public policy when it violates international human rights agreements or liberal-democratic principles. If we profoundly rethink the concepts of religion and secularism, these thinkers argue, a principled adjudication of competing claims becomes possible.

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.

This Handbook introduces scholars and students to the history, philosophy, and evidence of global constitutionalism. Contributors provide their insights from law, politics, international relations, philosophy, and history, drawing on diverse frameworks and empirical data sets. Across them all, however, is a recognition that the international order cannot be understood without an understanding of constitutional theory. The Handbook will define this field of inquiry for the next generation by bringing together some of the leading contemporary scholars.

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.

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.