

Table of Contents

<i>Preface</i>	v
<i>Table of Cases</i>	xiii
<i>List of Abbreviations</i>	xvii
 1. Setting the Scene	 1
<i>Jan Klabbers</i>	
1. Introduction	1
2. The Plan of this Book	3
3. Fragmentation, Pluralization, Verticalization (and Privatization)	11
4. On Constitutionalization	19
5. A Pluralist Constitutionalism	25
6. Forms and Techniques	31
7. On Legitimacy	37
8. Conclusions: Towards a Legitimate Constitutional Order?	43
 2. Institutions and Competences	 45
<i>Geir Ulfstein</i>	
1. Introduction	45
2. Organizational Framework	46
2.1 Formal international organizations	46
2.2 Treaty bodies	48
2.3 Soft law organizations	51
3. Constitutional Guarantees	55
3.1 Political accountability	55
3.2 Rule of law	59
4. The Relationship between International Institutions	67
4.1 The need for consistency	67
4.2 Principles for organizing the relationship	68
4.3 The competence to act at the external level	71
5. The Relationship to Member States	74
6. Protection of Human Rights	77
7. Conclusions	80

3. Law-making and Constitutionalism	81
<i>Jan Klabbers</i>	
1. Introduction	81
2. An Infinite Variety	85
3. Recent Theorizing	93
4. A Functionalist Turn?	99
5. Law versus Non-law	106
6. Towards Presumptive Law	111
7. Some Outstanding Issues	122
8. Conclusions	124
 4. The International Judiciary	 126
<i>Geir Ulfstein</i>	
1. Introduction	126
2. Due Process	127
2.1 Expertise	128
2.2 Independence	130
2.3 Equal access	132
2.4 Fair hearing	133
3. The Need for Consistency	135
3.1 International tribunals	135
3.2 National courts	142
4. Democratic Control	147
4.1 National legislator	147
4.2 International legislator	149
5. Conclusions	150
 5. Membership in the Global Constitutional Community	 153
<i>Anne Peters</i>	
1. The Constitutional Community	153
2. Individuals	157
2.1 Primary international legal persons	157
2.2 The individual's right to have international rights	158
2.3 Individual rights to participation: towards individuals' law-making power	159
2.4 Towards individualized law-enforcement	161
2.5. The expansion of international human rights	167
2.6. Beyond human rights	168
2.7. Individuals as creditors of international responsibility	171

2.8. Individual agency in the law of diplomatic protection	172
2.9. International individual obligations	174
2.10. By way of conclusion: from <i>bourgeois</i> to <i>citoyens</i>	177
3. States	179
3.1. States as <i>pouvoirs constitués</i> , not <i>pouvoirs constituants</i>	179
3.2. The effectiveness and legitimacy of states	180
3.3. Sovereignty	182
3.4. Equality	190
3.5. The constitutional functions of states in a constitutionalized world order	196
3.6. By way of conclusion: the domestic analogy reversed	200
4. International Organizations	201
4.1. Sectoral constitutionalization	201
4.2. Hybridity: treaty-constitutions	203
4.3. Constitutional principles containing member states	205
4.4. Autonomy as a proxy for sovereignty and as trigger for constitutionalist demands	208
4.5. Accountability of international organizations towards citizens	210
4.6. Rule of law and human rights responsibilities of international organizations	212
4.7. (Judicial) constitutionalization of and through adjudication	215
4.8. The constitutionalization of organizations as judicial self-empowerment	217
5. Non-governmental Organizations	219
5.1. Towards a principle of openness	220
5.2. A constitutionally appropriate accreditation of NGOs	222
5.3. NGO participation in international law-making: 'voice', not 'vote'	225
5.4. NGO participation in law-enforcement	227
5.5. The legitimacy and accountability of NGOs	235
5.6. By way of conclusion: NGO voice as a constitutional condition of global governance	239
6. Business Actors	240
6.1. The international economic constitution as a framework for business actors	240
6.2. Rendering business actors responsible	243
6.3. International partnerships, outsourcing public functions, and constitutional limits	246
6.4. International law-making with business actors	248

6.5. The enforcement of international hard and soft law by business actors	251
6.6. The legitimacy of business actors	255
6.7. The accountability of business actors	256
6.8. By way of conclusion: towards trilateral partnerships with governmental residual responsibility	258
6. Dual Democracy	263
<i>Anne Peters</i>	
1. Democracy as a Principle of the Global Constitutional Order	263
1.1. The duality of global democracy	264
1.2. The meanings and merits of democracy	265
1.3. The democratic deficits of global governance	267
1.4. New types of democracy for the global level?	268
2. First Track: The Democratization of International Governance via Democratic Nation States	271
2.1. States as democratic mediators	271
2.2. Towards a global constitutional principle of domestic democracy	273
2.3. Persisting problems of the statist track of democratization	286
3. Second Track: Citizenship as the Basis of a Non-state Democratization of International Governance	296
3.1. Transnational citizenship	297
3.2. 'Who speaks of humankind cheats'?	302
3.3. Looking forward: the globalization of citizenship	307
4. Second Track: The Role of Civil Society Actors in Global Democracy	313
4.1. Global civil society	313
4.2. Democratic benefits of NGO involvement	315
5. Second Track: Institutional Design for a Non-state Democratization of Global Governance	318
5.1. Transnational referendums and consultations	318
5.2. Modes of citizens' representation	319
5.3. Parliamentary assemblies	322
5.4. More transparency	326
5.5. Impracticalities of non-state democratization	330
5.6. Practical benefits of non-state democratization	332
6. Tensions between the Two Tracks	333
7. Complementary Mechanisms of Legitimacy and Accountability	338

7. Conclusions	342
<i>Anne Peters</i>	
1. A Paper Tiger?	342
2. Sneaking into Legitimacy?	344
3. Unpacking Global Constitutionalism?	345
4. Constitutional Pluralism	346
5. Compensatory Constitutionalism	347
6. Global Constitutionalism as a Hermeneutic Device	347
7. The Problem and Promise of Politics	348
8. Global Constitutionalism's Critical Potential	351
 <i>Bibliography</i>	 353
<i>Index</i>	385