

Contents

<i>List of Abbreviations</i>	xi
Introduction: Liberal Constitutional Democracy, its Illiberal Challengers, and the Question of Distributive Justice	1
I Situating the Nexus between Liberal Constitutionalism and Distributive Justice in its Historical and Theoretical Context	4
II Searching for Liberal Constitutionalism's Distributive Justice Baseline: The Journey from Rawls's "Constitutional Essentials" to the Constitution's "Justice Essentials"	19
III Organization of the Book	22
PART I NEW CHALLENGES AND THREATS	
1. Disembodied Law, Reinvigorated Religion, and Tribal Politics	31
I Imagining an Ideal of a Just Constitution and Laws for Each, All, and their Multiple Competing Ideologies	31
II The Road to Alien and Disembodied Law	40
(a) Transnationalization and multiplication of a plurality of legal regimes that foster layering and segmentation	44
(b) Fragmentation and compounding complexity through administrative regulation, selection of applicable law by the economically powerful, and the move from public adjudication to private arbitration	48
(c) Asymmetrical uses and evasions of existing legal norms to foster unprecedented relationships based on domination and control of the individual's needs and objectives	50
III The Redeployment of Religion as a Politic Against Institutional Secularism	53
IV From Adversary to Enemy: The Rise of Tribal Politics	61
2. Local versus Global, Material Well-Being, States of Stress, and the Erosion of Justice	65
I Introduction	65
II The Justice Essentials Confront the Divide between Redistribution and Recognition	67
III The Global Economy, Exacerbation of Economic Inequalities, and the Justice Essentials	68
IV The Minimum of Justice and the Contrast Between First- and Second-Generation Constitutional Rights	75

(a) Philosophy and the correlation between right and duty	75
(b) Social and economic rights in comparative constitutional law	78
(c) Second-generation rights versus first-generation rights and their respective policy-based and budgetary implications	84
V Economic Globalization, Transnational Plurality of Legal Regimes, and Constitutional Redistribution under Minimum Justice	87
VI Constitutional Democracies Confront the Stress of Global Terrorism and Worldwide Pandemics	89
(a) Conditions of stress as halfway between ordinary times and times of crisis	90
(b) The stress of global terrorism	94
(c) Stress and the COVID-19 pandemic	98

PART II REVISITING AND RECONFIGURING THE PHILOSOPHICAL GROUNDING OF LIBERAL CONSTITUTIONALISM'S IDEAL OF JUSTICE

3. Confronting the Gulf between Law and Solidarity: Kelsen Encounters Freud	105
I Introduction	105
II Kelsen's Kantian Pure Theory of Law and the Minimum of Universal Justice According to Law	107
III Freud's Psychoanalytic Account of the Passage from Individual Singularity to Group Identity	113
IV Kelsen's Turn to Freud to Bolster his Conception of the State as Pure Law	122
V The Broader Implications of the Encounter between Kelsen and Freud	124
4. Law <i>Redux</i> : Schmitt, CLS, and the Drift to Politics; from Posner Back to Marx and the Absorption of Law into Economics	129
I Introduction	129
II Schmitt's Secular Theology and its Politics of Division Rallying Friends Against Enemies	132
III Critical Legal Studies (CLS) and Law as Indeterminate and Political All the Way Down	140
IV Posner's Economic Framing of Law to Conform with the Ideology of Wealth Maximization	145
V Rereading Marx on Law as a Tool in the Arsenal of a Materialist Political Economy	151
5. Kantian Universalism Reframed for a Post-Totalitarian Age: The Legacy of Rawls, Habermas, and Dworkin	160
I Introduction	160
II Kant's Categorical Imperative and the Severing of Justice from the Good	161

III Rawls' Hypothetical Social Contract, His Two Principles of Justice, and the "Constitutional Essentials"	167
IV Habermas' Dialogical Proceduralism, the Dynamic between System and Lifeworld, and the Call for Constitutional Patriotism	174
V Dworkin's Substantive Political Philosophy and Liberal Egalitarian Constitutional Jurisprudence: A Path to the Justice Essentials?	185
6. Tragic Deconstruction Set Against the Impenetrable Singular and Reconstruction as Spectacle and Administration: From Derrida to Agamben	197
I Introduction	197
II Derrida's Deconstruction of the Nexus between Law and Justice: Confronting Irreducible Fissures in the Context of Interpretation and Ethics	199
III The Nietzschean and Heideggerian Roots of Derrida's Radical Conception of Singularity	202
IV Derrida's Insurmountable Gap between Law and Justice: A Pure or Merely Relative Tragedy?	210
V Agamben's Reconstruction: Law's Split into the Glow of Divine Glory and the Minutiae of Administration	212
VI Assessing the Coupling of Derrida's Deconstruction and Agamben's Reconstruction from the Standpoint of the Justice Essentials	219

PART III BUILDING A COMMONLY SHARED BASIS TOWARD A PLURALIST INCLUSIVIST CONSTITUTION

7. The Dialectics of Comprehensive Pluralism: Approaching the Justice Essentials from the Middle	227
I Introduction	227
II Comprehensive Pluralism's Negative and Positive Dialectical Moments and Their Hegelian Origins	229
III The Normative Case for Comprehensive Pluralism	238
IV Comprehensive Pluralism's Responses to Critics	245
8. Justice Essentials Minima and Comprehensive Pluralism's Fixed-core Minimum Set Against its Plural Maximum	249
I The Justice Minima under Comprehensive Pluralism: Linking Justice to Identity, Autonomy, and Solidarity	249
(a) The bare bones of pluralist justice	249
(b) Minimal identity as mediation between inward retreat and outward lurch	254
(c) The combined minimum of autonomy and solidarity within a just constitutional order: care and concern for insiders without demeaning the dignity of outsiders	263

II Comprehensive Pluralism’s Approach to the Justice Essentials: The Dialectic between the Fixed-core Minimum and the Plural Maximum	271
III Challenges and Pathologies Confronting Comprehensive Pluralism’s Quest to Meet the Justice Essentials	282
Conclusion: Projecting the Nexus between Liberal Constitutionalism and the Justice Essentials into Its Conceivable Futures	287
<i>Bibliography</i>	293
<i>Index</i>	303