

Detailed Contents

<i>Acknowledgements</i>	v
<i>Cases</i>	xv
<i>Documents</i>	xxi

PART I: VISIONS OF POSTNATIONAL LAW

1 <i>Postnational Law in Search of a Structure</i>	3
I. Climax and Crisis	3
II. Postnational Politics—Postnational Law?	5
1. Law at the Domestic–International Frontier	6
2. Changing Practices and the Rise of Postnational Law	11
3. Framing Law and Legitimacy	13
III. Structural Visions	14
1. Three Approaches: Containment, Transfer, Break	14
2. Containment’s Bleak Prospects	17
Domestic Constitutionalism and its Limits	18
Flaws of the Domestic Route	21
IV. Constitutionalism or Pluralism? The Plan of the Book	23
2 <i>The Promise and Perils of Postnational Constitutionalism</i>	27
I. Models of Postnational Order	28
1. The European Debate	29
2. Global Analogues	31
3. Problems of Translation	35
II. Competing Constitutionalisms	38
1. Constitutions as Limitation and Foundation	40
Revolutions	41
Indecision	42
Settlement	44
2. Foundational Constitutionalism and the Modern Political Project	47
3. Foundational Constitutionalism’s Contemporary Appeal	50

III.	Foundational Constitutionalism in the Postnational Order	52
1.	Constitutionalism's Implications	52
2.	Foundational Constitutionalism in Postnational Society	58
3.	Constitutionalism vs Diversity?	61
	Options	62
	Trade-Offs	63
	Limits	64
IV.	Conclusion: Beyond Constitutionalism?	67
3	<i>The Case for Pluralism</i>	69
I.	The Pluralism of Pluralisms	71
II.	Pluralist Virtues	78
1.	Adaptation	78
2.	Contestation	81
3.	Checks and Balances	85
III.	Pluralism and Public Autonomy	89
1.	Pluralisms of Choice	90
2.	Public Autonomy and the Scope of the Polity	92
3.	From Public Autonomy to Pluralism in Postnational Law	96
	Social Practices	96
	Public Autonomy	99
	Plural Politics and Institutions	100
IV.	Conclusion	103
PART II: PLURALISM IN POSTNATIONAL PRACTICE		
4	<i>The Open Architecture of European Human Rights Law</i>	109
I.	The Openness of European Human Rights Law	112
1.	The Spanish Embrace and its Limits	114
2.	The French <i>dialogue des juges</i>	119
II.	Mutual Accommodation in a Pluralist Order	126
1.	Judicial Conversations between European Courts	129
2.	The British Turn toward Strasbourg	134
3.	Strasbourg's Accommodation Strategies	139
III.	Pluralism's Appeal	143
1.	The Success of the European Human Rights Regime	143

2. The Decision-Making of Courts	146
3. The Impact of Pluralism	149
IV. Conclusion	151
5 <i>Sanctions and Rights between Hierarchy and Heterarchy</i>	153
I. The Transformation of UN Sanctions Administration	154
II. Sanctions Amid a Multiplicity of Laws	160
1. The Enmeshment of Laws	160
2. Pluralism and Principle in the Judicial Response to Sanctions	165
3. Europe's Internal Pluralism	172
III. Pluralism vs Effectiveness in Security Governance?	176
1. The Security Council's Authority in a Pluralist Order	177
2. Destabilizing Pluralism?	179
3. Pluralism and Regime Design	183
Change	183
Signals	184
Power	185
IV. Conclusion	187
6 <i>Pluralism in Postnational Risk Regulation</i>	189
I. The GMO Dispute	190
II. The GMO Dispute in a Pluralist Order	197
1. Horizontal Pluralism in the Global Food Safety Regime Complex	197
2. Vertical Pluralism: National Law, European Law, WTO Law	201
III. A Pluralism of Competing Collectives	206
IV. Disruptive Pluralism?	212
V. Conclusion	220

PART III: PLURALISM'S VIRTUES (AND VICES)

7 <i>Cooperation and Power in a Pluralist World</i>	225
I. The Shape of Postnational Pluralism	226
Contexts	227
Time	229
Directions	231
Modes of Action	232
II. Pluralism, Cooperation, and Stability	234
Two Dimensions	235

Constitutionalism and Pluralism: Costs and Benefits	238
The Domestic Angle	241
The Politics of Authority	245
Incrementalism	247
III. Pluralism and the Problem of Power	250
A Mixed Empirical Picture	251
Forum-shopping and Institutionalized Power	252
Capture, Information, and the Demand for Change	255
Trajectories of Normative Change	256
Constitutionalism, Power, and Change	258
IV. Conclusion	261
8 <i>Pluralist Challenges</i>	263
I. Democratic Accountability in a Pluralist Postnational Order	264
1. The Challenge of Translating Democracy	264
2. Three Parameters	268
Institutions: The Plurality of Governance Sites	268
Society: The Multiplicity of <i>Demoi</i>	269
Concepts: Multidimensional Democracy	270
3. Democracy and Pluralist Contestation	271
Accountability, Revisability, and Contestation	272
Representing Multiple <i>Demoi</i>	273
4. Democracy: Pluralist or Constitutionalist?	275
II. Pluralism vs the Rule of Law?	276
The Rule of Law and Integrity in a Pluralist Order	276
Fact and Fiction in the Rule of Law	278
An Absolute Rule of Law?	280
Competing Values in the Postnational Order	282
The Place of the Rule of Law	285
III. The Construction of Interface Norms	285
1. Structures	286
Taking into Account	286
Varieties of Conditional Recognition	287
Minimalism	290
2. Courts' Multiple Identities	291
3. Interface Rules and their Substance	294

9	<i>Conclusion: Postnational Pluralism and Beyond</i>	297
I.	Pluralism in Postnational Law and Politics	297
II.	Pluralism in the Postnational Sphere and Beyond	302
	<i>References</i>	309
	<i>Index</i>	351