

INDEX

ad hocism in international law, 157-8 administrative law, global, see global administrative law Aguinas, T., 110 Aristotle, 63-6, 76 Armingeon, K., 4 Bingham, T., Lord, 22, 84 Burke, E., 66-8 Chalmers, D., 56-7 China rule by law, 22-3, 28 commonality Aristotle's theory, 63-6, 76 Burke's theory, 66-8 characteristic of community, 61-3 community and, 73-7 Hegel's theory, 68-71 Nancy's theory, 71, 72–3 community, see also constituent power holders; international community Aristotle's theory, 63-6, 76 Burke's theory, 66-8 characteristics of binarity and commonality, 61-3 commonality and, 73-7 constitutionalism linkage, 47-8 Hegel's theory, 68–71, 111–12 historic concept of, 109-13 Marxist theory, 71-2 Nancy's theory, 71, 72-3 New Haven School, 127-30 problematic aspects, 62 relationship with governance, 61 - 3

role in global constitutionalisation process, 9-10, 188-9 constituency, see also international constituency binary nature, 80-3 constitutionalism linkage, 9-10, 47-8,84-7 international economic law, 233-5 international law, 235-6 possible use in international constitutionalism, 236-41 process, 78-80 role in global constitutionalisation process, 10 terminology, 10, 77 UK, 83-4 constituent power absence in global constitutionalisation, 55 definition, 55, 56 constituent power holders, 54-9, see also community identity, 55, 58-9, 200-2, 236-41, 245,247-8relationship with constitutional governance, 56-9 constituted power definition, 55 constituted power holders, 54-9 identity, 200-2, 236-41, 245 relationship with constitutional governance, 56-9 constitution definitions, 7-8, 14-15 terminology, 136 Constitution European Union, 11



INDEX 267

UK, 19, 83-4	role, 17
US, 19-20	rule of law, 16, 20-1, 22-31, 156-71
constitutional order, 8-9, 15	substantive content, 245
domestic, 8, 243-4	terminology, 4-5, 136
global legal order debate, 8-9, 243-9	UK, 83-4
rule of law essential, 31	cosmopolitanism, 217–20
terminology, 5	, ,
constitutionalisation	democracy
alternatives to sectoral or world	concept, 38–9
categorisation, 142	right of participation, 40–2
coherence debate, 151–5	democratic legitimacy
division between world order and	constitutionalism, 38–43, 183–4
sectoral, 11	global constitutionalisation, 184–90,
Europe, 11–12	195–7, 246
fragmentation, 98, 143–4, 150	international community, 190–5
hierarchy, 151–5	Dicey, A. V., 27–8
process, 15–16	divisions of power, 171–83
rule of law, 170–1, 245–6	constitutionalism, 32–8
rule of law necessary for process, 31	European Union, 34
sectoral, 141, 143–8	executive, legislative and
terminology, 4–5, 136	judicial, 32–4
theories, 136–40	geographical, 34–6
Verdross' arguments, 118–21	global constitutionalisation
world order, 141–2, 148–51	theories, 183, 246
constitutionalism	organisational constitutionalisation,
arguments against use beyond	177–82
domestic level, 45–9	state and domestic orders in
community or constituency, 84–7	international law, 172–7
continuity, 18	United States, 35–6
democratic legitimacy, 38-43,	domestic law
183–4, 246	China, 22–3, 28
distinction between constitutional	
theories and paradigms, 18–19	erga omnes obligations, 147–8,
divisions of power, 32-8, 246	166–7, 169
domestic, 8, 243-4	European Court of Human Rights,
Europe, 11–12	161
global legal order debate, 8-9, 243-9	European Court of Justice, 161
as goal for global governance, 248	European Union (EU)
legitimacy aspect, 17–18	constitutionalisation, 11–12
normative content, 1–3, 8,	geographical divisions of power, 34
20-1, 51-3	subsidiarity, 11–12
norms, 22, 24-43, 245-7, 248	exceptionalism
norms omitted from study, 21-2	rule of law, 157–8
political actors, 16	
relationship between domestic and	fragmentation, 94-8
global, 44–51	constitutionalisation, 98, 143–4,
relationship with global constitu-	150
tionalisation, 3, 10–11, 12–14	Franck, T., 213-17
	• •



> 268 INDEX

global administrative law, 102-5, human rights 228 - 32judicial activities, 163-4 global constitutionalisation absence of constituent power, 55 community's role in process of, 9-10, 47-8, 188-9 constituency or community debate, 241-3 institutional constituency's role in process of, 10,47-8content, 135 democratic legitimacy, 184-90, 195-7,246divisions of power, 183, 246 historical antecedents, 108-33 judicial activism, 159-64 meaning, 45 objections to, 140-1 other international law approaches, 106-7 reasons for aspiration towards, 136 relationship between domestic and global constitutionalism, 44-51 relationship with constitutionalism, 3, 10-11, 12-14 rule of law, 245-6 theories, 140-51 Verdross' and New Haven's influence, 132-3 world order constitutionalisation. 149 - 51global governance, see international law global governance networks, 98-102 global institutionalisation international community, 220-5 global law terminology, 5 global legal pluralism, 90-4 facet of sectoral constitutionalisation, 143-4 Goodhart, A. L., 28 Hegel, G. W. F., 68-71, 111-12 Henkin, L.

rule of law, 164-5 human rights law, 96, 146-7 constitutionalisation theories, 163-4 ICJ, see International Court of Justice constitutionalisation, 144-8 institutional law, 144 international community cosmopolitanism, 217-20 democratic legitimacy, 190-5 early modern international law, 205-9 Franck's theory, 213-17 global institutionalisation, 220-5 Hobbes' philosophy, 209–11 Kant's philosophy, 211–12 Stoic philosophy, 202-5 theories in contemporary international law, 212-20 unsuitable for identifying constituent power holders, 247 international constituency global administrative law, 228–32 Henkin's discussion, 226-8, 235 identifying constituent power holders, 247-8 international constitutional law, 45, 189 international constitutionalism possible use of constituency, 236 - 41International Court of Justice (ICJ), 161-2, 168-9, 191 international economic law, 233-5 international law ad hoc nature, 157-8 attraction of constitutionalism, 3-4 consent and non-consent based, 167 consistency, 157-8 constituency, 235-6 cosmopolitanism, 217-20 current debate, 87, 88-90 current position and future development, 5 development, 205-9 elements, 189

international constituency,

226 - 8,235Hobbes, T., 111, 209-11



INDEX 269

fragmentation, 94-8	Lauterpacht, H., 45
Franck's theory on community,	laws of nations, 189
213–17	League of Nations
global administrative law, 102-5,	neutrality, 116, 117
228-32	legal pluralism, 90–4
global governance networks, 98-102	Loughlin, M., 27
global legal pluralism	
approach, 90–4	Macdonald, K., 230-2, 235-6
historical approaches, 87–8, 90,	Macdonald, T., 230-2, 235-6
108–33	majoritarianism, 41
history of the philosophy of, 109–13	Marxism
implications of sectoral and world	on community, 71–2
order constitutionalisation	,,.
theories, 11	Nancy, J., 71, 72–3
jus cogens, 113–16, 165–7	neutrality
Kant's philosophy, 211–12	Verdross' work, 113–16
neutrality, 113–16	New Haven School, 100, 108, 121–33
New Haven approach, 108, 121–33	community, 127–30
relationship between	influence on international law, 132–3
domestic and global	intergovernmental
constitutionalism, 44–51	organisations, 130–1
rule by law, 22–3	New International Economic
sovereignty, 31	Order, 223
terminology, 5	O1de1, 223
theories, 89, 106–7	Peters, A., 4, 5
Verdross' influence, 108–9, 132–3	pluralism
International Law Commission	global constitutionalism, 143–4
(ILC), 97	political actors
International Monetary Fund (IMF)	constitutionalism, 16
constituency, 233–5	public opinion, 40–1
international organisations	public opinion, 40-1
	Pag I 25 6
constitutionalisation arguments, 177–82	Raz, J., 25–6
	rule by law, 22–3, 28
New Haven School, 130–1	China, 22–3, 28 rule of law
Verdross' work, 113–16	
international public law, 189	constitutionalisation, 170–1, 245–6
indicial activism	constitutionalism, 16, 20–1, 22–31,
judicial activism	156-71
global constitutionalisation, 159–64	democratic elements, 30
judicial review, 162	essential elements, 29, 30
jus cogens norms, 113–16, 147–8,	exceptionalism, 157–8
168, 169	human rights, 164–5
rule of law, 165–7	interconnecting constitutionalism
V I 211 12	and politics, 31
Kant, I., 211–12	judicial activism, 159–64
Kingsbury, B., 229–30	jus cogens, 165–7
Klabbers, J., 4–5, 44	necessary for constitutionalisation
Koskenniemi, M., 24–5	process, 31



270 INDEX

sectoral constitutionalisation,
141, 143–8
fragmentation, 143–4
pluralism facet, 143–4
sovereignty, 118
international law perspective, 31
power, 32
Suárez, F., 110–11, 207–9
subsidiarity
European Union, 11–12
Switzerland
membership of League of Nations
and UN, 117

trade law, 145–7, *see also* World Trade Organization (WTO)

United Kingdom Constitution, 19, 83-4 constitutional structure, 83-4 democratic history, 39-40 lack of geographical division of power, 37 United Nations (UN), 131 constitutional nature, 186 hierarchal issues versus WTO, 152-3 United Nations Charter, 117-18, 119, 120, 121, 145, 156-7, 169 organisational constitutionalisation, 178 - 82United Nations General Assembly, 144 United Nations Security Council, 117, 162 - 3

terror lists, 157 United States Constitution, 19–20 divisions of power, 35–6

Verdross, A., 108–21
constitutionalisation, 118–21
historic influences, 109–13
influence on international law,
108–9, 132–3
international organisations, 113–16
jus cogens, 113–16
neutrality issues, 113–16
Vitoria, Francisco de, 206–7

Walter, C., 45-6 Wheatley, S., 41 World Bank constituency, 233-5 world constitutionalisation fragmentation, 150 world order constitutionalisation, 141-2, 148-51 World Trade Organization (WTO), 131 constitutionalisation debate, 145-6, 160-1Dispute Settlement Body, 97, 145-6, 152, 160-1 hierarchal issues versus UN, 152-3 implications of fragmented systems of law, 97 Uruguay Round, 145