

## BRIEF CONTENTS

	Introduction: The Call for Collaboration	<i>page</i> 1
	PART I INSTITUTIONS AND INTERACTIONS	
1	Constitutionalism beyond Manicheanism	31
2	The Promise and Perils of Dialogue	58
3	The Case for Collaboration	86
	PART II RIGHTS IN POLITICS	
4	Governing with Rights	121
5	Legislating for Rights	150
6	Legislated Rights: From Domination to Collaboration	170
	PART III JUDGE AS PARTNER	
7	Judge as Partner	205
8	The HRA as Partnership in Progress	230
9	Calibrated Constitutional Review	266
10	Courting Collaborative Constitutionalism	297
	PART IV RESPONSIVE LEGISLATURES	
11	Underuse of the Override	333
12	Declarations, Obligations, Collaborations	363
	Conclusion: The Currency of Collaboration	403

## CONTENTS

*Acknowledgements* page xi  
*List of Abbreviations* xvi

Introduction: The Call for Collaboration	1
1 Collaboration Calling	1
2 The Collaborative Constitution as Practice and Principle	13
3 Constitutions, Comparison, Context	18
4 Outline and Overview	23

### PART I INSTITUTIONS AND INTERACTIONS

1 Constitutionalism beyond Manicheanism	31
1 Introduction	31
2 Clash of the Titans	32
3 The Terror of the Twin Tyrannies	42
4 Political versus Legal Constitutionalism	50
5 Conclusion: A Farewell to Arms	55
2 The Promise and Perils of Dialogue	58
1 Introduction	58
2 Divining Dialogue	60
3 The Canadian Conversation: From Metaphor to Model	64
4 The UK Debate about Dialogue	70
5 Promises	73
6 Perils	76
7 Dialogue, Disagreement, Distortion	80
8 Conclusion	85
3 The Case for Collaboration	86
1 Introduction	86
2 Dividing Constitutional Labour	87
3 Curbing and Counteracting	94

- 4 Comity and Collaboration 97
- 5 Conflict within Constraints: From Showdown to Slowdown 106
- 6 Conclusion 116

## PART II RIGHTS IN POLITICS

- 4 Governing with Rights 121
  - 1 Introduction: A Shared Responsibility 121
  - 2 The Executive and the Constitution 123
  - 3 Executive Engagement with Rights 128
    - a Cabinet, Civil Servants, and Bill Teams 130
    - b The Office of Parliamentary Counsel 132
    - c The Attorney General and the Law Officers 134
    - d The Minister: Claiming Compatibility between Law and Politics 137
    - e The Joint Committee on Human Rights 138
  - 4 Raising Rights-Consciousness 139
  - 5 Envisioning Executive Constitutionalism 142
  - 6 Conclusion 147
- 5 Legislating for Rights 150
  - 1 Introduction 150
  - 2 Unpacking Parliament 151
  - 3 The JCHR as a Hybrid Constitutional Watchdog 156
  - 4 Raising Rights-Consciousness in Parliament 163
  - 5 Conclusion 168
- 6 Legislated Rights: From Domination to Collaboration 170
  - 1 Introduction 170
  - 2 Deconstructing Executive Dominance 172
  - 3 Legislating for Terror 179
  - 4 Legislative Decision, Judicial Distortion, Democratic Debilitation 184
  - 5 Detecting Debilitation? 186
  - 6 Discerning Distortion? 189
  - 7 Claiming Compatibility: A Case Study of Money in Politics 195
  - 8 Conclusion 201

## PART III JUDGE AS PARTNER

- 7 Judge as Partner 205
  - 1 Introduction: Between Supremacy and Subordination 205
  - 2 The Contribution Courts Make 206
  - 3 Janus-Faced Judging in a Joint Enterprise 208
  - 4 From Faithful Agent to Constitutional Partner 212

## CONTENTS

ix

5	Of Common Law Rights and Clear Statements	215	
6	The Principle of Legality as a Presumption of Partnership		220
7	Conclusion	227	
8	The HRA as Partnership in Progress	230	
1	Introduction	230	
2	The Art of the Possible	233	
3	Taking Interpretation to the Limit	238	
4	Interpreting Rights, Declaring Wrongs	243	
5	Declarations as Decision not Dialogue	250	
6	The Hidden Strengths of Weak-Form Review		258
7	Conclusion	264	
9	Calibrated Constitutional Review	266	
1	Introduction: Between Abdication and Usurpation		266
2	Courts as Quality-Control	267	
3	Mapping the Contours of Comity	272	
4	Calibrated Constitutional Review	277	
5	Courting Counter-Terrorism	281	
6	Proportionality in Partnership	287	
7	Conclusion	294	
10	Courting Collaborative Constitutionalism	297	
1	Introduction	297	
2	Legislative Leeway at the End of Life	298	
3	Proportionality and Political Process Review		302
4	Avoiding Pre-emption	308	
5	Court as Catalyst, Judge as Nudge	311	
a	Alerts, Prods, and Pleas	312	
b	Judicial Advice and Soft Suggestions		314
c	Judicial Warnings	319	
6	Stepping in Where Parliament Fears to Tread		322
7	From Passive Virtues to Collaborative Devices		327
8	Conclusion	329	
PART IV RESPONSIVE LEGISLATURES			
11	Underuse of the Override	333	
1	Great Expectations	333	
2	Canada in Context	337	
3	Reconciling Rights and Democracy UK-Style		344
4	Underuse by Design not Demonisation		346

5	From Dialogue and Disagreement to Comity and Collaboration	353
6	The Upshot of Understanding the Override	357
7	Conclusion	360
12	Declarations, Obligations, Collaborations	363
1	Introduction	363
2	Uncovering Conventions	364
a	What Are Conventions?	364
b	Regular Practice	365
c	Normative Obligation	367
3	Patterns of Political Response	368
4	Institutionalising a Compliance-Oriented Approach	370
5	Willing Compliance, Workaday Acceptance	372
6	An Open and Welcoming Response	376
7	Courting Controversy	379
a	When Life Means Life	380
b	Courting Counter-Terrorism	383
c	Rhetoric, Resistance, and Registering Sex Offenders	386
d	Political Wrangling about Prisoner Voting	391
8	A Convention to Comply with Declarations of Incompatibility?	397
9	Conclusion	400
	Conclusion: The Currency of Collaboration	403
1	Collaborative Leitmotifs	403
2	Broadening the Collaborative Horizon	408
3	Collaboration as Currency	411
	<i>Bibliography</i>	417
	<i>Index</i>	486