

# Bounded Cosmopolitanism and a Constitutional Common Law

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## INTRODUCTION

Law is now viewed in increasingly transnational terms, in the sense that legal norms and institutions extend beyond national boundaries. Thus, the way we conceive of applicable law and subjects of the law have grown to reflect a transnational orientation. Yet, there remains deep uncertainty regarding the growing transnational nature and scope of law. This uncertainty is in part answered by, but also fuelled by, current cosmopolitan theories. Such theories—including Jeremy Waldron’s conception of a ‘*ius gentium*’<sup>1</sup> as a body of principles shared by the legal world, and Neil Walker’s articulation of ‘global law’<sup>2</sup>—are decidedly cosmopolitan in nature by articulating legal orders and systems that see the individual as part of a shared human community.<sup>3</sup> While these theories make valuable contributions to legal studies, they have overreached by asserting an extensive level of transnational consensus, consensus which is not fully represented in current transnational dialogue. What is needed is a framework that balances the cosmopolitan impulse with awareness of the current experience of transnational law, and the historical and cultural limitations on transnational dialogue. With this contextual background in mind, I propose the idea of ‘bounded cosmopolitanism’, which harnesses the power of cosmopolitanism but restrains the cosmopolitan impulse through awareness of the interplay between convergence and divergence that is central to the experience of transnational law. As an instance of bounded cosmopolitanism, the article advances a cosmopolitan common law constitution, which embodies the convergent influence of common law methods and principles with the divergent elements of specific constitutional design in individual common law jurisdictions.

In Part Two of this article, I briefly assess the impact of transnational interactions on legal discourse, explaining the need for a normative underpinning for the myriad

<sup>1</sup> Waldron, J (2012) *Partly Laws Common to All Mankind* Yale University Press.

<sup>2</sup> See Walker, N (2014) *Intimations of Global Law* Cambridge University Press; Goodwin, M (2012) ‘What I Talk About When I Talk About Global Law’ (17) *Tilburg Law Review* 269; Domingo, R (2010) *The New Global Law* Cambridge University Press.

<sup>3</sup> Cosmopolitanism is used in this article to express the core idea of a shared community among all humanity, regardless of national social or political affiliation. See Anderson-Gold, S (2001) *Cosmopolitanism and Human Rights* University of Wales Press at 1-13; Kleingeld, P and Brown, E (2014) ‘Cosmopolitanism’ in Zalta, EN (ed) (2014) *The Stanford Encyclopedia of Philosophy*, available at: <<http://plato.stanford.edu/archives/fall2014/entries/cosmopolitanism/>>.

# Cosmopolitanism In Constitutional Law

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## **Cosmopolitanism In Constitutional Law:**

**Judicial Cosmopolitanism** Giuseppe Franco Ferrari, 2019-09-24 *Judicial Cosmopolitanism The Use of Foreign Law in Contemporary Constitutional Systems* offers a detailed account of the use of foreign law by supreme and constitutional Courts of Europe America and East Asia The individual contributions highlight the ways in which the use of foreign law is carried out by the individual courts and the path that led the various Courts to recognize the relevance for the purpose of the decision to foreign law The authors try to highlight reasons and types of the more and more frequent circulation of foreign precedents in the case law of most high courts At the same time they show the importance of this practice in the so called neo constitutionalism

[A Cosmopolitan Legal Order](#) Alec Stone Sweet, Clare Ryan, 2018-05-01 In this book Alec Stone Sweet and Clare Ryan provide an accessible introduction to Kantian constitutional theory and the law and politics of European rights protection Part I sets out Kant s blueprint for achieving Perpetual Peace and constitutional justice within and beyond the nation state Part II applies these ideas to explain the gradual constitutionalization of a Cosmopolitan Legal Order a transnational legal system in which justiciable rights are held by individuals where public officials bear the obligation to fulfil the fundamental rights of all who come within the scope of their jurisdiction and where domestic and transnational judges supervise how officials act Such an order was instantiated in Europe through the combined effects of Protocol no 11 1998 to the European Court of Human Rights ECtHR and the incorporation of the Convention into national law The authors then describe and assess the strengthening of the European Court s capacities to meet the challenge of chronic failures of protection at the domestic level its progressive approach to the qualified rights covering privacy and family life and the freedoms of expression conscience and religion the robust enforcement of the absolute rights including the prohibition of torture and inhuman treatment and its determined efforts to render justice to all people that come under its jurisdiction including non citizens whose rights are violated beyond Europe Today the Strasbourg Court is the most active and important rights protecting court in the world its jurisprudence a catalyst for the construction of a cosmopolitan constitution in Europe and beyond

**The Cosmopolitan Constitution** Alexander Somek, 2014-07-31 Originally the constitution was expected to express and channel popular sovereignty It was the work of freedom springing from and facilitating collective self determination After the Second World War this perspective changed the modern constitution owes its authority not only to collective authorship it also must commit itself credibly to human rights Thus people recede into the background and the national constitution becomes embedded into one or other system of peer review among nations This is what Alexander Somek argues is the creation of the cosmopolitan constitution Reconstructing what he considers to be the three stages in the development of constitutionalism he argues that the cosmopolitan constitution is not a blueprint for the constitution beyond the nation state let alone a constitution of the international community rather it stands for constitutional law reaching out beyond its national bounds This cosmopolitan constitution has two faces the first political face reflects the

changed circumstances of constitutional authority It conceives itself as constrained by international human rights protection firmly committed to combating discrimination on the grounds of nationality and to embracing strategies for managing its interaction with other sites of authority such as the United Nations The second administrative face of the cosmopolitan constitution reveals the demise of political authority which has been traditionally vested in representative bodies Political processes yield to various and often informal strategies of policy coordination so long as there are no reasons to fear that the elementary civil rights might be severely interfered with It represents constitutional authority for an administered world

Grounding Cosmopolitanism Garrett Wallace Brown, 2009-09-14 In a new interpretation Garrett Wallace Brown considers Kant's cosmopolitan thought as a form of international constitutional jurisprudence that requires minimal legal demands He explores and defends topics such as cosmopolitan law cosmopolitan right the laws of hospitality a Kantian federation of states a cosmopolitan epistemology of culture and a possible normative basis for a Kantian form of global distributive justice

*The Cosmopolitan State* H Patrick Glenn, 2013-05-23 For more than two centuries the idea of the nation state has been widespread The expression is now widely used and is even to be unavoidable The nation state implies that the population of a state should be homogenous in terms of language religion and ethnicity the nation and the state should coincide However history demonstrates that there never has been and there never will be a nation state Human diversity is manifest in states of all sizes locations and origins This wide ranging book argues that there should be no regret in the recognition of this empirical reality since the notion of a nation state has been the justification for some of the worst atrocities in human history Since the nation state is impossible all states are cosmopolitan in character They are cosmopolitan regardless of the language of their constitutions or official teaching and regardless of the extent to which they officially recognize their own diversity The most successful states are those which are most successful in their own forms of cosmopolitanism Cosmopolitan ways are infinitely varied however and must be sought in the intricate workings of individual states The cosmopolitan character of states is necessarily reflected in their law The main instruments of legal cosmopolitanism have been those of common laws constitutionalism and what is best described as institutional cosmopolitanism The relative importance of these legal instruments has changed over time but all three have been constantly operative even in times of attempted national and territorial closure All three remain present in the contemporary cosmopolitan state understood in terms of cosmopolitan citizens cosmopolitan sources and cosmopolitan thought The cosmopolitan state is moreover the only appropriate conceptualization of the state in a time of globalization This book outlines the subtlety of the law of cosmopolitan states law which has survived through periods of nationalism and which provides the working methods for the reconciliation of diverse populations Combining law history political science political philosophy international relations and the new logics it demonstrates that the idea of the nation state has failed and should yield to an understanding of the state as necessarily cosmopolitan in character This will be invaluable reading to all those interested in constitutional law international law and

political theory     **The Cosmopolitan Constitution** Alexander Somek,2014 Originally the constitution was expected to express and channel popular sovereignty It was the work of freedom springing from and facilitating collective self determination After the Second World War this perspective changed the modern constitution owes its authority not only to collective authorship it also must commit itself credibly to human rights Thus people recede into the background and the national constitution becomes embedded into one or other system of peer review among nations This is what Alexander Somek argues is the creation of the cosmopolitan constitution Reconstructing what he considers to be the three stages in the development of constitutionalism he argues that the cosmopolitan constitution is not a blueprint for the constitution beyond the nation state let alone a constitution of the international community rather it stands for constitutional law reaching out beyond its national bounds This cosmopolitan constitution has two faces the first political face reflects the changed circumstances of constitutional authority It conceives itself as constrained by international human rights protection firmly committed to combating discrimination on the grounds of nationality and to embracing strategies for managing its interaction with other sites of authority such as the United Nations The second administrative face of the cosmopolitan constitution reveals the demise of political authority which has been traditionally vested in representative bodies Political processes yield to various and often informal strategies of policy co ordination so long as there are no reasons to fear that the elementary civil rights might be severely interfered with It represents constitutional authority for an administered world

*Kant, Global Politics and Cosmopolitan Law* Claudio Corradetti,Taylor & Francis Group,2021-12-13 This book argues that to understand the complexities of our current legal institutional arrangements we first need an insight into Kant s global politics and highlights the potential fruitfulness of Kant s cosmopolitan thought for contemporary political thinking

Constitutional Law Archibald Hall Throckmorton,1917     **International Journal of Constitutional Law** ,2008

**Hearst's International Combined with Cosmopolitan** ,1906     **The Cosmopolitan** ,1886     *Cosmopolitan* ,1891

*From Cosmopolitanism to Human Rights* Olivier de Frouville,2023-07-13 This book is a collection of essays written from 2012 to 2018 as part of research project at the French University Institute Institut Universitaire de France     Theories of Justice, Human Rights and the Constitution of International Markets Ernst-Ulrich Petersmann,2003     *Cosmopolitan* Helen

Gurley Brown,1995-10     Cases on Constitutional Law James Parker Hall,1913     **Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts** Massachusetts. Supreme Judicial Court,1923     *Debates and Proceedings of the Constitutional Convention of the State of California, Convened at the City of Sacramento, Saturday, September 28, 1978* California,1881

**Dialogue Among Courts: Towards a Cosmopolitan Constitutional Law** Quirino Camerlengo,2012     The Centennial History of the Harvard Law School, 1817-1917 Harvard Law School. Association (1886- ),Harvard Law School,1918

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