INTRODUCTION

Global constitutionalism is the international legal term *du jour*. The last years have seen a great influx of debates on constitutionalism in international law, sparked by various globalisation processes. All manner of terms, ranging from 'international community', 'global rule of law' to 'global governance' have been engaged to explain increased interdependence, cooperation, and collaboration in the *international*, *intranational* and *transnational* sphere. The increased multifariousness of activities in the sphere that transcends the national has made the idea of a legal umbrella to frame the various activities and impulses an attractive enterprise. The unifying terminology is all the more interesting amidst the growing importance of the fragmentation of international law. One such legal umbrella that has been suggested is that of a global constitution.

This book critically examines public international law contributions to the debate on global constitutionalism. There is of course no single recognised global constitution; rather there are a number of visions of what a global constitution is and should be and what constitutionalisation in the international sphere is spurred by. The following takes a step back from the debate to call into question these prevailing visions, attempting to bring into focus the ideas which they entail. A critical examination highlights that contemporary visions of global constitutionalism are predominantly shaped by central tenets of the political form of government referred to as liberal democracy which is predicated on the ideology of political liberalism. Liberalism in this sense is characterised by the two elements of formal autonomy and abstract equality; democracy is characterised by popular representation in the public sphere. Public international law contributions to the debate on global constitutionalism are largely animated by a belief that these liberal democratic ideas define not only constitutionalism in nation States, but also constitutionalism for a global order. Indeed, they are often regarded as the only available ideas. This leads to significant limitations including the creation of an environment that favours hegemonic ambitions at the possible expense of diversity. In an effort to reengage with constitutionalism on a global scale, a suggestion is made as to how such limitations can be reduced, by employing an approach that I refer to as ‘organic global constitutionalism’.

What then is global constitutionalism? So as to avoid exclusions from the outset, the term ‘constitution’ is not predetermined here. I will predominantly refer to ‘constitutionalism’ as the theory and practice pertaining to something that is ‘constitutional.’ In order not to leave readers completely in the dark (although this is unlikely, even impossible, since the term itself evokes a number of associations), as a first step to examining the idea of global
constitutionalism, one can break the term down to its components of ‘global’ and of ‘constitutionalism’. The word ‘global’ refers to the assumption of the universality of the concept. In the very broadest sense, the word ‘constitutionalism’ pertains to a certain social, political, cultural, economic, and legal system of ideas. The suffix ‘ism’ denotes a belief in or a practice of the system of ideas. At this stage, this extremely broad definition of global constitutionalism as a universal system of certain social, political, cultural, economic and legal ideas will have to suffice. This study aims at being as inclusive as possible and therefore shies away from exclusion through definitions. The constitutionalism that is the object of this book has been referred to as ‘international constitutionalism’, ‘transnational constitutionalism’ or ‘global constitutionalism’. Although these terms are often used synonymously, the following discusses constitutionalism that is believed to concern matters between States (international constitutionalism) as well as constitutionalism that is believed to concern matters beyond States (transnational constitutionalism). Worldwide visions of constitutionalism are examined; this means that although the discussions on regional visions of constitutionalism (such as the constitutional treaty for the European Union) are mentioned, indeed are key to some of the ideas of global constitutionalism, this book focuses on visions concerning the whole world. The term ‘global constitutionalism’ thus seems most fitting.

There are two main reasons for the timeliness of this book. Firstly, although there have been many contributions by international lawyers to what they view as ‘the global constitution’ or what they view as features of ‘global constitutionalism’, there has been no comprehensive analysis of these contributions, particularly in terms of situating them within a particular political tradition. The second reason for the timeliness is a shift that has supposedly taken place through the events surrounding 9/11. While in the 1990s there was much debate about diversity, recognition, and inclusion, the 9/11 attacks have arguably provoked something of a reorientation towards a search for a global common set of values and the exclusion of those that do not share these values. The Western States, led by the United States, have engaged in a policy of identifying allies and enemies respectively in the fight against terrorism. This has been the source of the emergence of a clear and accepted divide between those who operate within the liberal democratic consensus and those who are wary of its possible hegemonic implications. Against this background, there has crystallised a feeling that there is no need to question the premises on which liberal democracy is predicated. This book hopes to heighten awareness that it is still (or perhaps even more so) necessary to question dominant political forms. I hope to sensitise the reader to the fact that such political forms should not be applied to a global sphere – and, to that extent, universalised – without questioning the validity and generality of their premises.

As is customary with such research, the first Chapter sets the scene: It identifies and categorises the contemporary debates on public international law