

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	

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