Contents

1	Introduction: comparative constitutional law – history and contours				
2	Constitution-making				
	2.1	Why make a constitution?	10		
	2.2	The foundation of constitution-making: the			
		constituent power	13		
	2.3	The processes of constitution-making: questions			
		about inclusiveness	19		
	2.4	The substance of constitution-making: scope and			
		comprehensiveness	24		
	2.5	Why comply with the constitution?	36		
	2.6	Conclusion	38		
3	The structures of constitutional review and some				
	implications for substantive constitutional law				
	3.1	Introduction	40		
	3.2	Establishing constitutional review	41		
	3.3	Political constitutionalism as an alternative to			
		constitutional review in the courts	44		
	3.4	The classical issues in the structure of constitutional			
		review	48		
	3.5	New structures of constitutional review	56		
	3.6	The relation between structures of constitutional			
		review and second- and third-generation			
		constitutional rights	63		
	3.7	The structure of constitutional review and third-			
		generation rights	67		
	3.8	Conclusion	69		
4	The structure of rights analysis: proportionality, rules and				
		national law	70		
	4.1	Introduction	70		

vi	ADVAN	CED INTRODUCTION TO COMPARATIVE CONSTITUTIONAL LAW		
	4.2 4.3	Balancing, proportionality and rules compared Explaining the difference	71 83	
	4.4 4.5	A different alternative to proportionality review The role of international law in domestic	88	
	4.3	constitutional law	91	
5	The structure of government			
	5.1	The classical enumeration of the branches of		
		government and its modification	94	
	5.2	An emerging fifth branch of government?	96	
	5.3	Beyond the fifth branch – or modifying the three-		
		branch model	108	
	5.4	Conclusion	112	
6	Conclusion		114	
	6.1	Forms of constitutionalism other than liberal		
		constitutionalism	114	
	6.2	Constitutions for modern and highly divided nations:		
		contradictory definitions of "thin" constitutions	116	
References				
Index			127	