

Constitutional Identity

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ELVIS MADELYNN

Limitations of National Sovereignty through European Integration Cambridge University Press
 What does it mean to say you're English, Scottish, British? Does it matter much to people? Has devolution and constitutional change made a difference to national identity? Does the future of the UK depend on whether or not people think they are British? Social and political scientists answer these questions vital to the future of the British state.

Static Or Dynamic? Bloomsbury Publishing

Founding moments are landmark events that break ties with the ancien régime and lay the foundation for the establishment of a new constitutional order. They are often radically disruptive episodes in the life of a state. They reshape national law, reset political relationships, establish future power structures, and influence happenings in neighbouring countries. This edited collection brings together leading and emerging scholars to theorise the phenomenon of a founding moment. What is a founding moment? When does the 'founding' process begin and when does it end? Is a founding moment possible without yielding a new constitution? Can a founding moment lead to a partial or incomplete transformation? And should the state be guided by the intentions of those who orchestrated these momentous breaks from the past? Drawing from constitutions around the world, the authors ask these and other fundamental questions about making and remaking constitutions.

The Constitutional Identity of Member States and the Primacy of European Union Law Duke University Press

The European Yearbook of Constitutional Law (EYCL) is an annual publication devoted to the study of constitutional law. It aims to provide a forum for in-depth analysis and discussion of new developments in the field, both in Europe and beyond. This fourth volume of the EYCL addresses the underexplored and contentious topic of whether the EU possesses a constitutional identity of its own. To date, the main focus of scholarship and case law concerns the constitutional identities of the Member States of the EU. This is because the EU has to respect such identities according to article 4(2) TEU. The attention for Member States' constitutional identities stands in stark contrast to the notion of an EU constitutional identity. Such an identity features very little in the literature and debate on constitutional identity and the legal architecture of the EU. Consequently, this edition of the European Yearbook of Constitutional Law addresses the gap in legal research by studying constitutional identity with a focus on the EU itself. The book explores various views on whether the EU possesses such an identity and what any possible identity might entail. In this way, a fuller and more inclusive picture can be formed of constitutional identity as it relates to the multilevel constitutional order inhabited by the EU and its Member States. This volume will be of special interest to constitutional and legal scholars who are interested in EU and national constitutional law, as well as to political scientists. In addition, the book is relevant for judges, government officials, judges and policy-makers who work with EU (constitutional) law and its relationship with national (constitutional) law. Jurgen de Poorter is State Councillor at the Dutch Council of State and professor at Tilburg Law School, Department of Public Law and Governance. Gerhard van der Schyff is associate professor at Tilburg Law School, Department of Public Law and Governance. Maarten Stremmer is assistant professor at Maastricht University, Faculty of Law, Department of Public Law. Maartje De Visser is associate professor at SMU School of Law, Singapore. Ingrid Leijten is professor at Tilburg Law School, Department of Public Law and Governance. Charlotte van Oirsouw is PhD researcher at Utrecht University, Department of Constitutional and Administrative Law.

The Abuse of Constitutional Identity Springer

Christine M. Korsgaard presents an account of the foundation of practical reason and moral obligation. Moral philosophy aspires to understand the fact that human actions, unlike the actions of

the other animals, can be morally good or bad, right or wrong. Few moral philosophers, however, have exploited the idea that actions might be morally good or bad in virtue of being good or bad of their kind - good or bad as actions. Just as we need to know that it is the function of the heart to pump blood to know that a good heart is one that pumps blood successfully, so we need to know what the function of an action is in order to know what counts as a good or bad action. Drawing on the work of Plato, Aristotle, and Kant, Korsgaard proposes that the function of an action is to constitute the agency and therefore the identity of the person who does it. As rational beings, we are aware of, and therefore in control of, the principles that govern our actions. A good action is one that constitutes its agent as the autonomous and efficacious cause of her own movements. These properties correspond, respectively, to Kant's two imperatives of practical reason. Conformity to the categorical imperative renders us autonomous, and conformity to the hypothetical imperative renders us efficacious. And in determining what effects we will have in the world, we are at the same time determining our own identities. Korsgaard develops a theory of action and of interaction, and of the form interaction must take if we are to have the integrity that, she argues, is essential for agency. On the basis of that theory, she argues that only morally good action can serve the function of action, which is self-constitution.

Book of Abstracts Peter Lang GmbH, Internationaler Verlag Der Wissenschaften

This book addresses the complex role of and mutual relation between the concepts of constitutional democracy, constitutional identity, and political and human rights culture. It brings together updated papers presented at the conference Political and Human Rights Culture as Prerequisites of Constitutional Democracy which convened at the Faculty of Political Science, University of Belgrade in November 2012. The first part of the book is devoted to practical and theoretical challenges to constitutional democracy at both the transnational and national level. The second section reassesses some of the most influential foundationalist doctrines on human rights. The final part covers the problems of identity, as well as political and human rights culture in a selected number of transitional non-EU countries of Eastern Europe. As these concepts have become even more pertinent in times of economic crisis, the book will be of interest to scholars and policy makers in this field. (Series: Democracy and the Rule of Law - Vol. 2)

India's Constitutional Identity Yale University Press

On January 6, 2021, white supremacists, Christian nationalists, and other supporters of President Donald Trump stormed the US Capitol in an attempt to overturn the results of the 2020 presidential election. The insurrection was widely denounced as an attack on the Constitution, and the subsequent impeachment trial was framed as a defense of constitutional government. What received little attention is that the January 6 insurrectionists themselves justified the violence they perpetrated as a defense of the Constitution; after battling the Capitol police and breaking doors and windows, the mob marched inside, chanting "Defend your liberty, defend the Constitution." In *Real Americans: National Identity, Violence, and the Constitution* Jared A. Goldstein boldly challenges the conventional wisdom that a shared devotion to the Constitution is the essence of what it means to be American. In his careful analysis of US history, Goldstein demonstrates the well-established pattern of movements devoted to defending the power of dominant racial, ethnic, and religious groups that deploy the rhetoric of constitutional devotion to express their national visions and justify their violence. Goldstein describes this as constitutional nationalism, an ideology that defines being an American as standing with, and by, the Constitution. This history includes the Ku Klux Klan's self-declared mission to "protect and defend the Constitution of the United States," which served to justify its campaign of violence in the 1860s and 1870s to prevent Black people from exercising the right to vote; Protestant Americans who felt threatened by the growing population of Catholics and Jews and organized mass movements to defend their status and power by declaring that the Constitution was made for a Protestant nation; native-born Americans who resisted the rising

population of immigrants and who mobilized to exclude the newcomers and their alien ideas; corporate leaders arguing that regulation is unconstitutional and un-American; and Timothy McVeigh, who believed he was defending the Constitution by killing 168 people with a truck bomb. *Real Americans: National Identity, Violence, and the Constitution* reveals how the Constitution as the central embodiment and common ground of American identity has long been used to promote conflicting versions of American identity and to justify hatred, violence, and exclusion.

Identity, Political and Human Rights Culture as Prerequisites of Constitutional Democracy T.M.C. Asser Press

Constructs an original dialogue between constitutional law, film, and identity by using Hong Kong as a case study.

Self-Constitution Oxford University Press

The essays in this collection were first presented at an October 1991 conference on comparative constitutionalism under the auspices of the Jacob Burns Institute for Advanced Legal Studies, and the Cardozo-New School Project on Constitutionalism. Essays are organized in sections on the rebirth of constitutionalism, the legitimation of constitution making, the identity of the constitutional subject, the struggle between identity and difference, and the role of property rights. Annotation copyright by Book News, Inc., Portland, OR

Constitutional Identity in Italy Springer

"Argues that a constitution acquires an identity through experience--from a mix of the political aspirations and commitments that express a nation's past and the desire to transcend that past. It is changeable but resistant to its own destruction and manifests itself in various ways, as Jacobsohn shows in examples as far flung as India, Ireland, Israel, and the United States. Jacobsohn argues that the presence of disharmony--both the tensions within a constitutional order and those that exist between a constitutional document and the society it seeks to regulate--is critical to understanding the theory and dynamics of constitutional identity"--Jacket.

Constitutional Identity, Fundamental Rights and the Issue of Divergent Rights Standards in the EU BRILL

This book theorizes illiberal constitutionalism by interrogation of the Rule of Law, democratic deterioration, and the misuse of the language and relativization of human rights protection, and its widespread emotional and value-oriented effect on the population. The work consists of seven Parts. Part I outlines the volume's ambitions and provides an introduction. Part II discusses the theoretical framework and clarifies the terminology adopted in the book. Part III provides an in-depth insight into the constitutional identity of Poles and Hungarians and argues that an unbalanced constitutional identity has been moulded throughout Polish and Hungarian history in which emotional traits of collective victimhood and collective narcissism, and a longing for a charismatic leader have been evident. Part IV focuses on the emergence of illiberal constitutionalism, and, based on both quantitative and qualitative analyses, argues that illiberal constitutionalism is neither modern authoritarianism nor authoritarian constitutionalism. This Part contextualizes the issue by putting the deterioration of the Rule of Law into a European perspective. Part V explores the legal nature of illiberal legality when it is at odds and in compliance with the European Rule of Law, illiberal democracy, focusing on electoral democracy and legislative processes, and illiberalization of human rights. Part VI investigates whether there is a clear pattern in the methods of remodeling, or distancing from constitutional democracy, how it started, consolidated, and how its results are maintained. The final Part presents the author's conclusions and looks to the future. The book will be an invaluable resource for scholars, academics and policy-makers interested in Constitutional Law and Politics.

Identity, Rights and Constitutional Transformation Routledge

The field of comparative constitutional law has grown immensely over the past couple of decades. Once a minor and obscure adjunct to the field of domestic constitutional law, comparative constitutional law has now moved front and centre. Driven by the global spread of democratic government and the expansion of international human rights law, the prominence and visibility of the field, among judges, politicians, and scholars has grown exponentially. Even in the United States, where domestic constitutional exclusivism has traditionally held a firm grip, use of comparative constitutional materials has become the subject of a lively and much publicized controversy among various justices of the U.S. Supreme Court. The trend towards harmonization and international borrowing has been controversial. Whereas it seems fair to assume that there ought to be great convergence among industrialized democracies over the uses and functions of commercial contracts, that seems far from the case in constitutional law. Can a parliamentary democracy be compared to a presidential one? A federal republic to a unitary one? Moreover, what about differences in ideology or national identity? Can constitutional rights deployed in a libertarian context be profitably compared to those at work in a social welfare context? Is it perilous to compare minority rights in a multi-ethnic state to those in its ethnically homogeneous counterparts? These controversies form the background to the field of comparative constitutional law, challenging not only legal scholars, but also those in other fields, such as philosophy and political theory. Providing the first single-volume, comprehensive reference resource, the 'Oxford Handbook of Comparative Constitutional Law' will be an essential road map to the field for all those working within it, or encountering it for the first time. Leading experts in the field examine the history and methodology of the discipline, the central concepts of constitutional law, constitutional processes, and institutions - from legislative reform to judicial interpretation, rights, and emerging trends.

Constitutional Identity Routledge

Based on the author's thesis (doctoral)--University of Leuven, 2013.

EU Law, Constitutional Identity, and Human Dignity Routledge

The book analyses the position of the ECtHR which has been more and more confronted with criticism coming from the national sphere, including the judiciary. This culminated in constitutional court judgments declaring a particular ECtHR judgment non-executable, for reasons of constitutional law. Existing scholarship does not differentiate enough between cases of mere political unwillingness to execute an ECtHR judgment and cases where execution is blocked for legal reasons (mainly of constitutional law nature). At the same time, the discussion under EU law on national/constitutional identity limiting the reach of the former has been only loosely linked with the ECHR context. This book presents a new dogmatic concept - 'principled resistance' - to analyse such cases. Taking up examples from the national level, it strives to find out whether the legal reasoning behind 'principled resistance' shows enough commonalities in order to qualify such incidents as expression of a 'new paradigm'.

Principled Resistance to ECtHR Judgments - A New Paradigm? Bloomsbury Publishing

The book considers the changes which national sovereignty has undergone through the supranational European integration. In various contributions by renowned academics and high judges demonstrate the serious impacts of supranationality on the EU member states and even on third countries which are connected with the EU by international treaties. It becomes clear that primacy of EU law, the most significant expression of supra-nationality, collides with national sovereignty as anchored in the national constitutions. The studies clearly show that most member states do not fully deny EU law primacy but are aware of the need to find an adequate balance

between the supranational and the national orders. The result from the analyses of the authors from various European countries is that the upcoming constitutional paradigm is "constitutional identity", a concept established by jurisprudence in Germany, France, Czech Republic (without being named so) and debated also in Poland which, herself, denies supranational impact on the national Constitution entirely. Studies on selected EU member states clarify the specific national approaches towards the limitations of their sovereignty as developed by the constitutional jurisprudence (Poland, Czech Republic, Hungary, Romania, Italy, Germany with comparative references to United Kingdom and France). It is illuminated that traditionally strong sovereignty concepts (UK, France) are considerably relativized and functionally opened towards the integration challenges. Basic issues are furthermore reflected, such as the supranational impact on the State's power to reform its Constitution, the relation of national and constitutional identity and the national and supranational perspectives of identity. The book also includes Europe beyond the EU by research on the supranational character of association treaties (from a Ukrainian perspective) and on the Europeanization of a third country preparing EU membership (Albania).

The Oxford Handbook of Comparative Constitutional Law Harvard University Press

The paper examines the notion of constitutional identity in Italy, with the aim to question whether the highest constitutional authorities of the Italian state have identified a core or fundamental elements of the Constitution which define its individuality. By analyzing the words and deeds of the President of the Republic and the case law of the Constitutional Court the paper claims that these two supreme constitutional authorities always refused to identify a set of constitutional values which cannot be touched by the European Union (EU). On the contrary, the paper suggests that both the President of the Republic and the Constitutional Court have endeavoured to emphasize the axiological overlap between the Italian Constitution and the project of European integration, considering Italy's membership to the EU as the best way to fulfil the Constitution's mandate. As the paper maintains, the same approach is visible in the recent Taricco judgment of the Italian Constitutional Court: while in this reference to the European Court of Justice (ECJ) the Constitutional Court mentioned for the first time ever the words 'constitutional identity', its ruling was mostly grounded on the notion of common constitutional traditions. The Constitutional Court invited the ECJ to revisit a previous ruling, emphasizing how that substantially conflicted not only with Italy's Constitution, but also with the principles enshrined in the EU Charter of Fundamental Rights. As the paper suggests, therefore, the Italian case offers an example of a founding EU member state where no identity narrative has been developed as a defense against the EU.

Constitutional Identity Politics? Harvard University Press

In *The Constitutional Identity of Contemporary China: The Unitary System and Its Internal Logic*, Han Zhai an account of constitutional identity merging with China's constitutional history and her constitutional complex from a comparative perspective.

European Yearbook of Constitutional Law 2022 Routledge

Few terms in political theory are as overused, and yet as under-theorized, as constitutional revolution. In this book, Gary Jacobsohn and Yaniv Roznai argue that the most widely accepted accounts of constitutional transformation, such as those found in the work of Hans Kelsen, Hannah Arendt, and Bruce Ackerman, fail adequately to explain radical change. For example, a "constitutional moment" may or may not accompany the onset of a constitutional revolution. The consolidation of revolutionary aspirations may take place over an extended period. The "moment" may have been under way for decades--or there may be no such moment at all. On the other hand, seemingly radical breaks in a constitutional regime actually may bring very little change in constitutional practice and identity. Constructing a clarifying lens for comprehending the many ways in which constitutional revolutions occur, the authors seek to capture the essence of what happens when constitutional paradigms change.

Constitutional Identities in Central and Eastern Europe Oxford Studies in European Law

In this book Bosko Tripkovic develops a theory of value-based arguments in constitutional adjudication. In contrast to the standard question of constitutional theory that asks whether the courts get moral answers wrong, it asks a more fundamental question of whether the courts get the morality itself wrong. Tripkovic argues for an antirealist conception of value -one that does not presuppose the existence of mind-independent moral truths- and accounts for the effect this ought to have on existing value-based arguments made by constitutional courts. The book identifies three dominant types of value-based arguments in comparative constitutional practice: arguments from constitutional identity, common sentiment, and universal reason, and explains why they fail as self-standing approaches to moral judgment. It then suggests that the appropriate moral judgments emerge from the dynamics between practical confidence, which denotes the inescapability of the self and the evaluative attitudes it entails, and reflection, which denotes the process of challenging and questioning these attitudes. The book applies the notions of confidence and reflection to constitutional reasoning and maintains that the moral inquiry of the constitutional court ought to depart from the emotive intuitions of the constitutional community and then challenge these intuitions through reflective exposure to different perspectives in order to better understand and develop the underlying constitutional identity. The book casts new light on common constitutional dilemmas and allows us to envisage new ways of resolving them.

Constitutionalism, Identity, Difference, and Legitimacy Springer

The constitutional identity of the Member States is a topic of increasing importance in understanding the interaction between the EU and its Member States. This is because the EU is enjoined to respect the constitutional identities of its Member States in accordance with Article 4(2) TEU. There is also a trend among Member States to articulate their constitutional identities, in particular in relation to European integration. In this regard, this volume fills a need in scholarship by presenting critical analyses of the constitutional identities of selected Member States. Leading and well-placed experts contribute country studies on a range of states, which are compared using a framework that can be applied to other Member States as well. The analyses and comparison of Member States' constitutional identities take place in the context of the EU's multilevel architecture.

European Constitutional Identity OUP Oxford

An analysis of selective aspects of India's constitutional identity, this book provides an analytical account of the changing and changed texture of India's constitutional identity bearing in mind the historical context in which it is articulated. The book conceptualizes the gradual evolution of an idea by tracing the history of India's constitutionalism with reference to its conceptual roots, historical antecedents and the landmark judicial pronouncements in which the concern for its retention and protection is always privileged. The author examines specific constitutional designs that the 1950 Constitution of India put in place and argues that constitutional identity, despite being drawn on specific constitutional provisions, is also changeable in view of the rapidly transforming socio-economic milieu. He demonstrates that there are numerous instances where India's constitutional identity has undergone a metamorphosis in circumstances where newer politico-ideological values and norms are privileged. A valuable addition to the literature on constitutionalism and constitutional practices in general and their manifestation in India's democratic experiences, in particular, this book will be of interest to academics in the fields of Government, Political Science, Law and Jurisprudence, Constitutional and Legal History and Asian Studies.