

Contents

<i>Dedication</i>	vii
<i>Acknowledgements</i>	xiii
Introduction	1
 PART ONE	
Why Constitutional Identity and for Whom?	15
 1 The Constitutional Subject: Singular, Plural or Universal?	17
1.1 Who Is the Constitutional Subject?	18
1.2 Constitutional Identity and the Dynamic Between Sameness and Selfhood	27
 2 The Constitutional Subject and the Clash of Self and Other: On The Uses Of Negation, Metaphor and Metonymy	37
2.1 The Constitutional Self and the Clash Between Self and Other	38
2.2 Construction, Deconstruction and Reconstruction of Constitutional Identity	41
2.3 The Constructive Tools of Constitutional Discourse: Negation, Metaphor and Metonymy	45
2.3.1 Negation	46

2.3.2	Metaphor	51
2.3.3	Metonymy	53
2.4	Constitutional Discourse as Interplay Between Negation, Metaphor and Metonymy	58
2.5	The Constitutional Subject and the Potential Reconciliation of the Singular, the Plural and the Universal	65
 PART TWO		
	Producing Constitutional Identity	71
3	Reinventing Tradition Through Constitutional Interpretation: The Case of Unenumerated Rights in the United States	73
3.1	Building and Differentiating Constitutional Identity	73
3.2	Setting American Unenumerated Rights Against Tradition	75
3.3	The Metaphoric and Metonymic Dimensions of Tradition	78
3.4	Reinventing Tradition Through Overdetermination: From the Sanctity of Marriage to the Dignity of Homosexual Sex	81
3.4.1	Griswold and the Metonymic Path from Marriage to Contraception	82
3.4.2	The Lockean Gloss on Griswold	90
3.4.3	Eisenstadt and Molding the Tradition to Encompass Non-Marital Heterosexual Sex	96
3.4.4	Roe and the Challenge of Fitting Abortion within the Reinvented Tradition	99
3.4.5	The Reinvented Tradition's Contradictory Approaches to Homosexual Sex	104
3.4.5(i)	Bowers: Drawing the Line at Homosexual Sodomy	105
3.4.5(ii)	Lawrence's Encompassing of Homosexual Sex within the Reinvented Tradition	110
3.5	The Reinvented Tradition and the Clash Between Liberalism and Illiberalism	116
3.6	The Reinvented Tradition and Reliance on Foreign Legal Authorities	119
3.7	Concluding Remark: Overdetermination and Blending Tradition and Counter-tradition	123

4	Recasting and Reorienting Identity Through Constitution-Making: The Pivotal Case of Spain's 1978 Constitution	127
4.1	Constitution-making in Context	128
4.2	The Place of Violence in Constitution Making	132
4.3	The Extraordinary Case of Spain's Peacefully Pacted Constitution	134
4.3.1	The King as Repository of National and Constitutional Unity	142
 PART THREE		
	Constitutional Identity as Bridge between Self and Other: Binding Together Citizenship, History and Society	147
5	Constitutional Models: Shaping, Nurturing and Guiding the Constitutional Subject	149
5.1	The German Constitutional Model	152
5.2	The French Constitutional Model	156
5.3	The American Constitutional Model	158
5.4	The British Constitutional Model	163
5.5	The Spanish Model	169
5.6	The European Transnational Constitutional Model	172
5.7	The Post-Colonial Constitutional Model	179
6	Models Of Constitution Making	185
6.1	The Revolution-Based Model	188
6.2	The Invisible British Model	191
6.3	The War-Based Model	194
6.4	The Pacted Transition Model	197
6.5	The Transnational Model	201
6.6	The Internationally Grounded Model	206
6.7	Constitutional Amendment, Revision and Reform	209
7	The Constitutional Subject and Clashing Visions of Citizenship: Can We Be Beyond What We are Not?	211
7.1	The Theoretical Foundations of Modern Citizenship: Universal Equality within a Particular Nation	213
7.1.1	Historical Nexus Between Equal Citizenship and the Nation-State	215

7.1.2	Social Contract Theory and Modern Equal Citizenship	217
7.2	The Functional Dimension of Citizenship	221
7.3	The Identitarian Dimension of Citizenship and the Evolution from the Mono-Ethnic to the Multi-Ethnic Polity	223
7.3.1	The Feminist Case for Differentiated Citizenship	225
7.3.2	National Minorities and the Problematization of Differentiated Citizenship	227
7.4	Global Migration and the Decoupling of the Functional and the Identitarian Dimensions of Citizenship	233
7.5	Transnational Citizenship and Recasting the Dynamic between Function and Identity	235
7.5.1	The Case of EU Citizenship	236
7.5.2	The Changing Dynamic between EU and Member-State Citizenship	239
7.5.3	Transnational Citizenship Beyond the EU?	241
8	Can The Constitutional Subject Go Global? Imagining a Convergence of the Universal, the Particular and the Singular	243
8.1	Constitutional Reordering in an Era of Globalization and Privatization	245
8.2	The Nexus between Human Rights and Constitutional Rights	251
8.3	Constitutional Patriotism as Transnational Constitutional Identity?	258
8.3.1	Constitutional Patriotism in Historical Perspective	259
8.3.2	Constitutional Patriotism in a Layered and a Segmented Transnational Legal Order?	261
8.4	Concluding Remarks: Reaching for the Transnational Constitutional Subject by Reconciling the Universal and the Singular Through the Plural	269
	Notes	281
	Bibliography	309
	Index	319