

Contents

Table of Cases

xi

Chapter 1	Introduction	I
Chapter 2	Constitutional Identity	13
	2.1 Introduction	13
	2.2 The idea of constitutional ethics	14
	2.3 Elements of the argument from constitutional identity	25
	2.3.1 United States	32
	2.3.2 South Africa	38
	2.3.3 Germany	42
	2.4 Value of constitutional identity	46
	2.4.1 Particular constitutional identity	50
	2.4.2 General constitutional identity	53
	2.5 Conclusion	56
Chapter 3	Common Sentiment	59
	3.1 Introduction	59
	3.2 Elements of the argument from common sentiment	60
	3.2.1 United States	63
	3.2.2 European Convention on Human Rights	68
	3.2.3 Canada	72
	3.3 Moral ontology of common sentiments	76
	3.3.1 The emotivist element	80
	3.3.2 The relativist element	89
	3.4 Conclusion	95
Chapter 4	Universal Reason	97
	4.1 Introduction	97
	4.2 Elements of the argument from universal reason	99
	4.2.1 United States	102
	4.2.2 South Africa	108
	4.2.3 Israel	113
	4.3 Normativity of foreign law	120
	4.3.1 The deductive view	121
	4.3.2 The reflective view	130
	4.4 Conclusion	141

Chapter 5	Values and Normative Judgment	143
	5.1 Introduction	143
	5.2 The theoretical and practical perspective	145
	5.2.1 Suppression	146
	5.2.2 Denial	148
	5.2.3 Rationalization	150
	5.3 The theoretical: values and contingency	152
	5.3.1 Evolutionary origins of values	154
	5.3.2 Diminishing evolutionary influence	160
	5.3.3 Expanding evolutionary influence	165
	5.3.4 Defying evolution	170
	5.4 The practical: confidence and reflection	173
	5.4.1 Confidence	174
	5.4.2 Reflection	180
	5.5 Conclusion	189
Chapter 6	Constitutional Ethics, Confidence, and Reflection	191
	6.1 Introduction	191
	6.2 From metaethics to constitutional ethics	192
	6.2.1 Identity	196
	6.2.2 Sentiment	200
	6.2.3 Reason	204
	6.3 Constitutional ethics and constitutional dilemmas	208
	6.3.1 Diachronic changes	208
	6.3.2 Synchronic differences	212
	6.4 Conclusion	220
Chapter 7	Conclusion	223
	<i>Bibliography</i>	227
	<i>Index</i>	237