

Contents

Integration and Fundamental Rights in Europe	1
I. Introduction	1
1. The Scope of the Monograph	5
2. An Overview of the Chapters	7
II. The Theoretical Approach: ‘Integration Through Rights’ (ITRs) as a Normative Concept	10
1. The Theory of Dialogic Constitutionalism: A Brief Introduction	11
2. Authority or Agency Governing Europe? A Framework for Discussion	13
III. The Methodology	16
1. Socio-Legal Research	17
2. Comparative Methodology	18
3. Case-Study Approach	19
IV. The Key Argument	20
References	21
 Expanding Theories of Constitutionalism and Legal Pluralism: ‘Integration Through Rights’ in Europe	25
I. Introduction	25
II. Council of Europe (CoE) and European Union (EU)	27
III. Court of Justice of the EU (CJEU)	29
IV. CJEU and European Court of Human Rights (ECtHR)	32
V. The Accession Process So Far	34
VI. Constitutionalism and Legal Pluralism: An Understanding of the Concepts in Their National Application	36
VII. Constitutionalism and the European Union	39
VIII. Theories to Describe the Relationship Between the EU and Its Member States	40
IX. European Convention of Human Rights (ECHR)	45

X. What Theory for (a Future) Europe?	48
XI. Conclusions	49
References	50
Dialogic Constitutionalism and Its Application to Fundamental Rights	57
I. Introduction	57
II. The Interplay Between Overlapping Legal Sources on Fundamental Rights in Europe	60
III. Dialogic Constitutionalism for a New Judicial Harmony in Europe	63
IV. The Application of the Theory of Dialogic Constitutionalism to Fundamental Rights	67
1. The ‘Area of Freedom, Security and Justice’ (AFSJ) and the Constitutional Principle of ‘Mutual Trust’	70
2. An Evaluation of Dialogic Constitutionalism Through an Analysis of Case Law on Dublin Transfer Mechanisms	72
V. Conclusions	78
References	79
European Integration Through Rights: A Balancing Exercise and the Quest for Uniformity	85
I. Introduction	85
II. The Role of the Two Supranational Courts as Protectors of Fundamental Rights	87
1. The Fundamental Rights Agenda and the Strive for Uniformity	87
2. The Margin of Appreciation and the Quest for Consensus	91
III. Human Dignity Through the Lens of the European Courts	94
1. <i>Omega</i> and Dignity: The Interplay Between Fundamental Rights and Fundamental Freedoms	95
2. <i>Vinter</i> : Life Sentences, Dignity and the Right to Hope	99
3. Re-thinking the Pan-European Concept of Human Dignity	102
IV. Luxembourg and Strasbourg: So Close, No Matter How Far	104
V. Conclusions	105
References	106
The Concept of Agency in Making Policy on Fundamental Rights	111
I. Introduction	111
II. Making Law and Policy in the European Union	113
1. The ‘Trade’ of Negotiating Agreements	114
2. Democratic Legitimacy and Accountability of Policymaking	116
3. Collective Agency, Integration and Policymakers	118
III. Negotiating the EU Draft Accession Agreement to the ECHR: A Step Forward Toward Europeanisation?	122
IV. Negotiating the UK Withdrawal Agreement from the EU: A Step Backwards?	126

V. Assessing the Role of the Policymakers in the Current Cycle of Integration	131
VI. Conclusions	133
References	134
Current Obstacles and Future Challenges of Integration in Europe	141
I. Introduction	141
II. Any Policy Priority for Europe? An Analysis of EU Policy of the Last Decade	143
III. The Court of Justice: Past, Present and Future Actor of Integration	146
IV. The CJEU's Legitimacy Control of the Policymakers' Accession Agreement: The Logic of Opinion 2/2013	151
1. The Scope of the Notion of Autonomy in the CJEU's Case Law	154
2. European Integration at a Crossroads: Does No Accession Mean Less Integration?	157
V. The Role of the ECtHR in European Integration	159
VI. Conclusions	162
References	164
Conclusions	171
I. Introduction	171
II. The Main Contributions of the Monograph	173
1. The Objects of Integration: A Set of Common Values	174
2. The Main Actors Involved in the Process of Integration	176
3. Interactions Between Actors: Conflicting Interests and Tensions	180
III. Final Remarks: The Way Forward	181
References	186
Appendix 1	191
Interview Templates	191
A) CJEU Judges	191
B) ECtHR Judges	195
C) EU Officials	199
Appendix 2	203
Ethical Documentation	203
A) Information Sheet Judges	203
B) Information Sheet Policymakers	206
C) Consent Form	209
References	211