Contents

Preface ix

1 Introduction 1
   EU Constitutionalism 3
   European Rights and Sovereignty 5
   Political Rights 8
   Social Rights 9
   Implementation of Rights and the Role of Elites 12
   The Implications for the Discipline of European Union Law 16

2 European Rights and Sovereignty 23
   Introduction 23
   Who Framed EU Fundamental Rights and Policies? 27
      The Market Mentality of the European Court of Justice 29
      Constitutionalising Competition Law 31
   Endogenous Judicial Reasoning: One Europe and/or Several? 38
      Sovereignty and the Constitutional Ombudsmen:
         Who is Right? 44
      The Bundesverfassungsgericht and the Politics of Dissent 47
   One Legal Order or Two? 51
      Sovereignty and the Legacy of Communism in
         the New Member States 55
   The Judiciary as Sovereignty’s Care(Under)taker? 59
   Conclusion 65

3 Political Rights 67
   Introduction 67
      Political Rights and European Union Citizenship 71
   Citizenship and Spheres of Belonging and Participation 80
      The Analogy of the Medieval City-States 80
      EU Citizenship and the Sense of Belonging 82
      The Good European 84
      Access to Public Service Employment 91
   Conclusion 94

4 Social Rights 97
   Introduction 97
   Embracing Diversity 101
   The European Union’s Social Sphere 103
### Contents

Social Rights and Sovereignty — *Europe sans et avec Frontières*  
Social Citizenship and the Freedom of Movement 109  
The Europeanisation of Health Care  
Rights to Health Care in the European Union 113  
Cross-Border Access to Health Care in the European Union 118  
The Europeanisation of Rational Decision-making 120  
Conclusion 129

5 **Implementation of Rights and the Role of Elites** 133  
Introduction 133  
Citizenship, Sovereignty and Identity  
European Rights 134  
Sovereignty and Identity 135  
Challenging the National Heritage(s) 137  
The Implementation of Rights and  
the European Convention on the Future of Europe 139  
The Principle of Loyal Co-operation 140  
Loyalty, Elites and the State 142  
Language Rights and the Language of the Rights Regime 149  
The European Union's Language Regime: Status 150  
Language Rights Policies in the European Union  
regarding Official Language Use 153  
Language and Democratic Legitimacy 157  
The Duty of Clarity under EC Law 160  
Conclusion 163

6 **Conclusion** 165  
The Impact of European Rights  
Sovereignty 165  
Political Rights 166  
Social Rights 166  
The Emerging Rights Regime in Europe 167  
Implementation of Rights and the Role of Elites 168  
Transforming Elite Behaviour 170  
EU Constitutionalism in Theory and in Practice 172  
The Modest Proposal of EU Constitutionalism 174

*Select Bibliography* 177

*Index* 203