Contents

Prologue v
Contributors xxvi
Table of Cases xxviii
Table of Legislation xxx

PART I: NATIONAL REPORTS

1. Report on Belgium 1
   HERVE BRIBOSIA
   General Introduction 1
   Doctrinal Review 4
      Conditions of domestic applicability 4
      Direct applicability 6
      Supremacy over conflicting domestic law 10
      Kompetenz-Kompetenz 21
   Contextual observations 28
      "Specificity" of European Community law 28
      Political and constitutional context 29
      Evolution of jurisprudence 33
   References 37

2. Report on France 41
   JENS PLOTNER
   The Reception of the Direct Effect and Supremacy Doctrine 41
      by the French Supreme Courts 41
   Doctrinal development of the three supreme courts 42
   Kompetenz-Kompetenz 50
   The Social Context of Legal Change Concerning European 54
      Union Law in France 54
      Chronology of the social context 55
      The influence of doctrine on jurisprudence 71

3. Report on Germany 77
   JULIANE KOKOTT
   Introduction 77
   Doctrinal Matrix 79
      Constitutional law background 79
      Doctrinal matrix before and after the Maastricht decision 81
### Contents

**Doctrine, Jurisprudence and Beyond**

- Doctrinal shifts of the Federal Constitutional Court's jurisprudence and their possible causes
- The European Courts and national courts
- Beyond doctrine
- Conclusions

**4. The Italian Constitutional Court and the Relationship Between the Italian Legal System and the European Union**

*Marta Cartabia*

- The theoretical bases of the Italian membership to the European Union
- The Italian Constitutional Court case-law concerning the supremacy of European law: from the denial of supremacy to the supremacy under condition
- The Italian Constitutional Court case-law concerning the direct effect of European law
- The Italian Constitutional Court and the *kompetenz-kompetenz* principle
- The contribution of "la doctrine" to the development of the Italian Constitutional Court's attitude towards European integration

**5. Report on Italy**

*P. Ruggeri Laderchi*

- Introduction
- Beyond the Doctrine
  - The actors—judges
  - The actors—*la doctrine*
- Cross-fertilisation
- Looking back at the "Community path" of the Constitutional Court
  - The origin of the Constitutional Court's doctrine: a device used to avoid declaring the EC Treaty contrary to the Constitution
- Error! Reference source not found—some observations on the post-Granital case law
- The problem of competence

**6. Report on the Netherlands**

*Monica Claes and Bruno De Witte*

- The Dutch Sources of the European Court's Doctrine
  - Direct effect and supremacy of international treaties in the Netherlands prior to *Van Gend en Loos*
  - The influence of the Dutch legal order on the European Court's doctrine
| The Reception of the European Court's Doctrine in the Netherlands | 181 |
| The Question of “Kompetenz-Kompetenz” | 187 |
| Beyond the Law: the Search for Explanations | 188 |
| The traditional openness of the Dutch legal system | 188 |
| Separation of powers and the judicial function | 190 |
| Judicial empowerment? | 191 |
| The comparative dimension as a factor in the explanation | 192 |
| Judicial dialogue | 193 |
| Legal pragmatism | 194 |
| 7. Report on the United Kingdom | 195 |
| P. P. CRAIG | |
| Constitutional Doctrine within the United Kingdom: the Impact of the EC | 195 |
| Supremacy: the traditional debate in the United Kingdom | 195 |
| Supremacy and the judicial response prior to Factortame | 197 |
| Supremacy and the Factortame litigation | 200 |
| Supremacy and Community law after Factortame | 203 |
| Direct effect | 204 |
| Preliminary rulings | 205 |
| “Kompetenz-Kompetenz”: Practice and Doctrine | 206 |
| Doctrine, Jurisprudence and Beyond | 209 |
| Judicial identity, national identity and biting the constitutional bullet | 209 |
| The balance of power between different branches of government: the not-so-hidden agenda | 212 |
| Judicial empowerment, national courts and new tasks | 216 |
| The impact of legal culture: the common law method and the reception of community law | 218 |
| Judicial discourse: the vertical dimension | 220 |
| Judicial discourse: the horizontal dimension | 222 |
| Individual litigants: national courts and the ECJ | 222 |
| Judicial composition and the role of individual judges | 223 |
| Conclusion | 224 |

**PART II: COMPARATIVE ANALYSES**

| 8. Explaining National Court Acceptance of European Court Jurisprudence: a Critical Evaluation of Theories of Legal Integration | 227 |
| KAREN ALTER | |
| National Courts: the Critical Intermediaries in Legal Integration | 227 |
| Alternative Explanations of National Judicial Behaviour in Legal Integration | 229 |
| Legalism: legal logic and legal reasoning as the motor of legal integration | 230 |
## Contents

| Neo-realism: national interests as the motor of legal integration | 234 |
| Neo-functionalism: self-interest as the motor of legal integration | 238 |
| Inter-court competition explanations: bureaucratic politics as the motor of legal integration | 241 |
| Conclusion: Legal Integration in a Comparative Political Perspective | 246 |
| Political support as a pre-condition for continued legal integration? | 247 |
| Preliminary ruling system and the ECJ as a pre-condition for continued legal integration? | 249 |

### References | 251 |


**Walter Mattli and Anne-Marie Slaughter**

**Introduction** | 253

**The Role of National Courts in EC Legal Integration** | 257

Judicial preferences | 259

Constraints on the process of legal integration | 265

**Conclusion** | 276

### 10. Sovereignty and European Integration: the Weight of Legal Tradition | 277

**Bruno De Witte**

**Introduction** | 277

**Sovereignty and the Demands of Community Law: the Development of “Peaceful Coexistence” (1945–1990)** | 281

Limitation of sovereignty as the constitutional basis of EC membership | 281

Sovereignty as a limit to the reception of Community law | 287

Sovereignty and the European Union: an Unavoidable Conflict? | 293

The reassertion of state sovereignty in the aftermath of “Maastricht” | 293

Sovereignty: resilient or obsolete? | 301

### 11. Constitutional Dialogues in the European Community | 305

**Alec Stone Sweet**

**Introduction** | 305

**Constitutionalising the Treaty System** | 306

The process of constitutionalising the treaty system | 306

Understanding constitutionalisation | 308

**Constitutional Dialogues: Three Problems of Supremacy** | 312

Supremacy and the problem of constitutional review | 312

Supremacy and the problem of fundamental rights | 317

Supremacy and the constitutional limits to integration | 319

A preliminary assessment | 324

A criticism | 325
Constitutional Dialogues: Supremacy, Litigation and Policy-making 325
Study the case law of national courts 326
(Re)-specify judicial interests 327
Correlate judicial outcomes with factors external to the law 329
Study the behaviour of litigators 330
Conclusion 330

12. Constitutional or International? The Foundations of the Community Legal Order and the Question of Judicial Kompetenz-Kompetenz 331
J. H. H. WEILER AND ULRICH R. HALTERN

13. Epilogue: The European Courts of Justice: Beyond “Beyond Doctrine” or the Legitimacy Crisis of European Constitutionalism 365
J. H. H. WEILER

Index 393