
Contents

Part I Parliament

1	Unicameral or Bicameral Parliaments	3
	Albrecht Weber	
1.1	Overview of the External Organisational Structure of Parliaments	3
1.1.1	Historical Context and Function	3
1.1.2	Structural Approach	4
1.2	Monocameral Parliaments	4
1.3	Bicameral Parliaments	8
1.4	Remarks	12
	References	18
2	The Deputy	21
	Wolfgang Babeck	
2.1	Status of a Deputy: The Free Mandate, Its Limitation and Protection	21
2.1.1	Overview over the Status of a Deputy	21
2.1.1.1	Free Mandate, Incompatibility, Loss of Mandate	22
2.1.1.2	Purpose and Function of the Rules	22
2.1.1.3	Historical Context	23
2.1.1.4	Related Topics	24
2.1.1.5	Structural Approach and Guiding Questions	25
2.1.2	Details of the Clause	25
2.1.2.1	Is the Mandate Free or Imperative?	25
2.1.2.2	Is the Mandate (In)compatible with Other Occupations?	28
2.1.2.3	Does the Constitution Provide for the Deputy's Salary?	31
2.1.2.4	Does the Constitution List Causes That Lead to a Loss of the Mandate?	32

	2.1.2.5	Are the Rules Regulated in the Constitution or by National Laws? . . .	35
2.2		The Deputy: Immunity and Indemnity	36
	2.2.1	Overview over Immunity and Indemnity	36
	2.2.1.1	Definition	37
	2.2.1.2	Purpose and Function of Immunity and Indemnity	37
	2.2.1.3	Legal Nature/Character	38
	2.2.1.4	Historical Context	38
	2.2.1.5	Structural Approach and Guiding Questions	38
	2.2.2	Details of the Clause	38
	2.2.2.1	Is Indemnity Guaranteed at All?	38
	2.2.2.2	What Is the Scope of Indemnity?	39
	2.2.2.3	Are There Exceptions for Certain Crimes?	42
	2.2.2.4	Is There a Temporal Limit of Indemnity?	43
	2.2.2.5	Is Immunity Guaranteed at All?	44
	2.2.2.6	What Is the Scope of Immunity?	45
	2.2.2.7	Is There a Temporal Limit to Immunity?	48
	2.2.2.8	Can Immunity/Indemnity Be Lifted?	49
	2.2.2.9	Can a Court Review the Decision?	53
		References	54
3		Political Parties and Thresholds	55
		Wolfgang Babeck	
3.1		Rules Around Political Parties	55
	3.1.1	Overview of the Clauses Referring to Political Parties	55
	3.1.1.1	Definition, Purpose and Function of Political Parties	56
	3.1.1.2	Historical Context	56
	3.1.1.3	Procedural Questions	57
	3.1.1.4	Structural Approach and Guiding Questions	57
	3.1.2	Details of the Clauses Concerning Political Parties . . .	57
	3.1.2.1	Qualification as Political Party	58
	3.1.2.2	Protection of Political Parties	59
	3.1.2.3	Ban and Dissolution	63
	3.1.2.4	Party Financing	65
	3.1.2.5	Necessity of a Constitutional Rule Concerning Political Parties	66
3.2		Election Thresholds Including Allocation of Non-counting Votes	69

3.2.1	Overview of the Threshold Clause	69
3.2.1.1	Definition	69
3.2.1.2	Historical Context and Purpose of a Threshold Clause	69
3.2.1.3	Disadvantages of a Threshold Clause	69
3.2.1.4	Structural Approach and Guiding Questions	70
3.2.2	Details of a Threshold Clause in a Constitutional System	70
3.2.2.1	Majority System	70
3.2.2.2	Proportional System	71
3.2.2.3	Level of the Threshold	72
3.2.2.4	Does the Threshold Apply to Parties or Party Coalitions?	73
3.2.2.5	Exemptions to Support Regionally Strong Parties	74
3.2.2.5.1	Option 1: (Alternative) Threshold on District Level	74
3.2.2.5.2	Option 2: No Application of Threshold if Party Wins Several Seats in a Constituency	75
3.2.2.6	Allocation of "Wasted" (i.e. Unallocated) Votes	78
3.2.2.7	Regulation on Constitutional Level or by Ordinary Law?	80
	Electoral Laws Referred to in This Chapter	81
	References	82
4	Internal Organisation of Parliament and Role of the Opposition . . .	85
	Wolfgang Babeck	
4.1	Overview of the Organisation of Parliament (Speaker, Praesidium, Committees, Factions and the Opposition)	85
4.1.1	Historical Context	86
4.1.2	Purpose and Function of Parliament	87
4.1.3	Procedural Questions	88
4.1.4	Structural Approach and Guiding Questions	89
4.2	Details of the Clauses	89
4.2.1	The Speaker	89
4.2.2	The Presidium	90
4.2.3	Committees	94
4.2.4	Faction	95
4.2.5	Opposition	98
4.2.5.1	Constitutional Establishment of the Main Principles	101

4.2.5.2	Status of Members of Parliament	101
4.2.5.3	Financial Resources of Factions	102
4.2.5.4	Non-parliamentary Actors	102
4.2.5.5	Allocation of Positions of Responsibility	103
4.2.5.6	Procedural Decisions Within Parliament	103
4.2.5.7	Allocation of Speaking Time	104
4.2.5.8	Amendments by the Opposition to Proposed Bills	104
4.2.5.9	Qualified Majorities for Bills	104
4.2.5.9.1	Participation by the Opposition in the Appointment of Senior Office Holders	105
4.2.6	Detail of Regulation	106
References		107
5	Investigative Committees and Inquisitorial Rights	109
	Wolfgang Babeck	
5.1	Investigative Committees	109
5.1.1	Overview of the Investigative Committee	109
5.1.1.1	Definition	109
5.1.1.2	Historical Context	110
5.1.1.3	Function	110
5.1.1.4	Caveat: Limits of the Function	111
5.1.1.5	Procedural Questions	111
5.1.1.6	Structural Approach and Guiding Questions	111
5.1.2	Details of the Clause Concerning Investigative Committees	112
5.1.2.1	How Can the Parliament form an Investigative Committee?	112
5.1.2.1.1	What Organ Is Responsible for the Formation?	112
5.1.2.1.2	What Majority Is Required?	112
5.1.2.2	What Is the Subject and Scope of the Investigation?	114
5.1.2.3	How Is the Committee Composed?	116
5.1.2.4	What Rights and Limits of Investigation or Intervention Does the Committee Have?	117
5.1.2.4.1	General Powers	117
5.1.2.4.2	Exceptions and Prerequisites	120
5.1.2.5	How Do the Findings Relate to the Judiciary?	121

	5.1.2.6	When and How Is the Committee Dissolved?	123
	5.1.2.7	Regulation on Constitutional Level or by Ordinary Law?	124
5.2	Inquisitorial Rights		126
	5.2.1	Overview of Inquisitorial Rights	126
	5.2.1.1	Definition	126
	5.2.1.2	Historical Context	127
	5.2.1.3	Function	127
	5.2.1.4	Structural Approach and Guiding Questions Concerning Inquisitorial Rights	128
	5.2.2	Details of the Clauses Concerning Parliament's Inquisitorial Rights	128
	5.2.2.1	Right of Questioning	128
	5.2.2.1.1	Overview	128
	5.2.2.1.2	Written Enquiries	129
	5.2.2.1.3	Institutionalized Regular Question Time	129
	5.2.2.1.4	Means of Enforcing the Right of Questioning	130
	5.2.2.2	Right of Interpellation	131
	5.2.2.2.1	Overview	131
	5.2.2.2.2	Initiation Threshold	132
	5.2.2.2.3	Addressee	133
	5.2.2.2.4	Duty to Personally Attend	133
	5.2.2.2.5	Obligation to Respond	134
	5.2.2.3	Allowed Scope of Questions	134
	References		135
6	Legislation		137
	Albrecht Weber		
6.1	Overview		137
6.2	Legislative Initiative		138
	6.2.1	Detailed Provisions	138
	6.2.2	Remarks	139
6.3	Reading of Laws		147
	6.3.1	Detailed Provisions	147
	6.3.2	Remarks	147
6.4	Solution of Bicameral Conflicts		151
	6.4.1	Detailed Provisions	151
	6.4.2	Remarks	151
6.5	Approval and Control of Legislative Acts		156
	6.5.1	Detailed Provisions	156
	6.5.2	Remarks	156

6.6	Parliamentary Reservation and Delegated Legislation	161
6.6.1	Overview	161
6.6.2	Parliamentary Reservation	162
6.6.3	Remarks	163
6.6.4	Delegated Legislation	167
6.6.5	Remarks	168
	References	174

Part II President

7	The Presidential Office: Qualification, Election and Term	179
	Wolfgang Babeck	
7.1	Qualification and Oath	179
7.1.1	Overview of the Presidential Qualifications and Oath	179
7.1.1.1	Definitions	179
7.1.1.2	Historical Context	180
7.1.1.3	Qualification Clause	180
7.1.1.4	Oath	181
7.1.1.5	Potential of Misuse	181
7.1.2	Structural Approach and Guiding Questions and Qualifications	182
7.1.2.1	Age Restrictions	182
7.1.2.2	Citizenship	184
7.1.2.2.1	Citizenship Requirements	184
7.1.2.2.2	Controversy "Natural-Born"	185
7.1.2.2.3	Term Citizenship "By Origin"	186
7.1.2.2.4	Citizenship Requirements for Relatives	186
7.1.2.3	Residence	187
7.1.2.4	Right to Vote and Eligibility	187
7.1.2.5	Education and Religion	189
7.1.2.5.1	An Issue in Poor and Religious Countries	189
7.1.2.5.2	Recommendation for a Democratic Society	191
7.1.2.6	Incompatibilities	192
7.1.2.6.1	Ineligibility	192
7.1.2.6.2	Other Reasons for Incompatibility	192
7.1.2.7	Possible Solutions to Prevent Misuse and Negative List	194
7.1.2.8	Clause to Restrict Amendments	194
7.1.3	Oath	194
7.2	Election of the President	196

7.2.1	Overview	196
7.2.1.1	Definition and Purpose of the Provision . . .	196
7.2.1.2	Historical Context	196
7.2.1.3	Criteria for a “Good” Election Clause	197
7.2.2	Procedural Questions	197
7.2.3	Structural Approach	197
7.2.4	Details of the Election Clause	198
7.2.4.1	When Does the Election Take Place?	198
7.2.4.2	How Are the Candidates Pre-selected? . . .	199
7.2.4.3	Direct or Indirect Election?	201
7.2.4.4	In Case of an Indirect Election, Which Body Elects the President?	202
7.2.5	Which Majority Is Required To Be Voted into Office?	203
7.2.6	Is There a Minimum Turnout Rate?	205
7.2.7	What Happens if the Candidate Does Not Obtain the Required Majority?	206
7.2.8	Supplementing Provisions	207
7.3	Duration of Presidential Term	208
7.3.1	Overview	208
7.3.1.1	Definition	208
7.3.1.2	Purpose and Function of the Rule	208
7.3.1.3	Historical Context	208
7.3.2	Structural Approach and Guiding Questions	210
7.3.3	Details of the Clause Concerning the Duration of Office	210
7.3.3.1	Is a Limitation of the Duration of Office at All Required?	210
7.3.3.2	Which Duration Is Advisable?	210
7.3.3.3	Is a Limit of Possible Re-elections Advisable?	212
7.3.3.4	Limited Number of Re-elections After Regular Election into Office	213
7.3.3.5	Limited Number of Re-election After Not Being Elected into Office	215
7.3.3.6	How Many Re-elections Should Be Possible?	215
7.3.3.7	Should There Be Exemptions from the Limit of Re-elections?	216
7.3.4	Eternal Guarantee	218
7.3.5	Conclusion	219
	References	220
8	Presidential Powers and Veto Rights	223
	Wolfgang Babeck and Albrecht Weber	
8.1	Competencies of the President	223
8.1.1	Overview and Structural Approach	223

8.1.2	Various Functions of the President	224
8.1.2.1	Guardian and Guarantee Functions	224
8.1.2.2	Control of Constitutionality of State Action	225
8.1.2.3	Remarks	225
8.1.2.4	Guarantee Function in Times of Crisis . . .	227
8.1.2.5	Remarks	228
8.1.2.6	Arbitral and Mediation Function	231
8.1.2.7	Executive Functions	232
8.1.2.8	Remarks	232
8.2	Countersigning	235
8.2.1	Overview	235
8.2.1.1	Definition	235
8.2.1.2	Purpose	235
8.2.1.3	Historical Context	235
8.2.1.4	Structural Approach and Guiding Questions	236
8.2.2	Details of the Clause	236
8.2.2.1	Does the Article Feature a Positive or Negative Nature?	236
8.2.2.2	Who Is the Person to Countersign?	237
8.2.2.3	What Are the Consequences of No Countersignature?	238
8.2.2.4	What Are the Exceptions from Countersignature?	238
8.2.2.4.1	Ceremonial Prerogatives	238
8.2.2.4.2	Protector of the State and Constitution	240
8.2.2.4.3	Organisation of Office	242
8.2.2.4.4	President as Mediator	242
8.2.2.5	Executive Powers	243
8.3	Veto Powers	243
8.3.1	Overview of the Presidential Veto Powers	243
8.3.1.1	Definition	244
8.3.1.2	Purpose and Function of the Rule	244
8.3.1.3	Historical Context	245
8.3.1.4	Procedural Questions	246
8.3.1.5	Structural Approach and Guiding Questions	246
8.3.2	Details of the Clause Relating to the Veto Right	247
8.3.2.1	Absolute or Suspensive Veto Power	248
8.3.2.2	Limitations of the Veto Power	248
8.3.2.3	Effects of the Exercise of the Veto	249
8.3.2.4	Legislative Overriding Procedures	250
	References	252

9	Dissolution of Parliament and Impeachment of President	255
	Wolfgang Babeck	
9.1	Dissolution of Parliament	255
9.1.1	Overview of the Dissolution of Parliament	255
9.1.1.1	Definition	256
9.1.1.2	Purpose and Function of the Rule	256
9.1.1.3	Historical Context	257
9.1.1.4	Procedural Questions	257
9.1.2	Details of the Dissolution Clause	258
9.1.2.1	Should Parliament be Immune from Dissolution by the Executive?	258
9.1.2.2	Which Organ Should Be Able to Dissolve Parliament?	259
9.1.2.3	In What Circumstances Should the Right of Dissolution Be Exercised?	260
9.1.2.4	Which Limitations and Restrictions Should Be Provided?	262
9.1.2.5	Which Constitutional Organ(s) Should Be Involved in the Dissolution?	263
9.2	Impeachment	266
9.2.1	Overview of the Impeachment Clause	266
9.2.1.1	No Anti-impeachment Clause	266
9.2.1.2	Historical Context and the Unsuitable Example of the US Constitution	267
9.2.1.3	Additional Considerations for Presidential Systems	268
9.2.1.4	Procedural Questions	268
9.2.1.5	Structural Approach and Guiding Questions	268
9.2.2	Details of the Impeachment Clause	269
9.2.2.1	Which Officials Aside from the President Can Be Impeached?	269
9.2.2.2	Organ and Majority to Initiate Impeachment Process	270
9.2.2.3	No Immediate Substitution of the President	272
9.2.2.4	What Constitutes the Misconduct?	272
9.2.2.4.1	What Right of Defence Is Vested in the Constitution?	274
9.2.2.4.2	Does a Court Review the Alleged Misconduct and Are Those Findings Binding?	275
9.2.2.5	Decision Making: What Organ(s) and Majorities Are Required to Impeach the President?	276

9.2.2.6	Who Replaces the Impeached Person? . . .	280
9.2.2.7	Timeframe Between Procedural Steps and Limitations to Impeachment	281
	References	282

Part III Government

10	Government	287
	Wolfgang Babeck and Albrecht Weber	
10.1	Role and Function of Government	287
10.2	Governmental Leadership and Organisation	289
10.2.1	Prime Minister/Minister-President/Chancellor	290
10.2.2	Principles of Organisation: Departmental-Collegiate Principle	291
10.3	Appointment and Dismissal of Government	294
10.3.1	Overview	294
10.3.1.1	Historical Context	295
10.3.1.2	Structural Approach and Guiding Questions	296
10.3.2	Details of the Clauses	296
10.3.2.1	Appointment of the Head of Government	296
10.3.2.2	Dismissal of the Head of Government and of Individual Ministers	298
10.3.2.3	Separation of Appointment from Selection of Candidate	301
10.3.2.4	Forming Government in Case of Uncertain Majorities	302
10.3.2.5	Timeframes When Forming Government	305
10.3.2.6	Detail of Appointment/Dismissal Clauses	305
10.4	Vote of Confidence Clause	308
10.4.1	Overview of the Vote of Confidence Clause	308
10.4.1.1	Definition	308
10.4.1.2	Purpose and Function of the Rule	308
10.4.1.3	Norm Addressee	309
10.4.1.4	Legal Nature/Character	309
10.4.1.5	Historical Context	309
10.4.1.6	Procedural Questions	311
10.4.1.7	Structural Approach and Guiding Questions	311
10.4.2	Details of the Vote of Confidence Clause	311
10.4.2.1	Why Do Many Parliamentary Democracies Have a Vote of Confidence?	311

10.4.2.2	Who Has the Power to Initiate a Vote of Confidence?	313
10.4.2.3	What Organ(s) Are Required to Initiate the Vote?	313
10.4.2.4	What Are the Prerequisites for Invoking a Vote of Confidence?	314
10.4.2.5	What Majority Is Needed?	315
10.4.2.6	What Are the Time Limits of the Vote?	316
10.4.2.7	What Are the Legal Consequences of a Vote of Confidence?	317
10.4.2.7.1	A. Resignation of Government	318
10.4.2.7.2	B. Dissolution of Parliament	318
10.4.2.7.3	C. New Elections	319
10.5	Vote of No Confidence Clause	319
10.5.1	Overview of the Vote of No Confidence Clause	319
10.5.1.1	Definition	319
10.5.1.2	Purpose and Function of the Rule	319
10.5.1.3	Norm Addressee	321
10.5.1.4	Legal Nature/Character	321
10.5.1.5	Historical Context	321
10.5.1.6	Procedural Questions	322
10.5.1.7	Structural Approach and Guiding Questions	322
10.5.2	Details of the Clause	323
10.5.2.1	How Is the Vote of No Confidence Initiated?	323
10.5.2.2	Who Is Subject to the Vote of No Confidence?	323
10.5.2.2.1	A. Government as a Whole or the Head of Government	323
10.5.2.2.2	B. Individual Ministers	324
10.5.2.2.3	C. Other Subjects	326
10.5.2.3	What Are the Procedural Criteria of the Vote?	326
10.5.2.3.1	A. Formal Requirements of the Vote	326
10.5.2.3.2	B. Majority Required for the Vote of No Confidence	327
10.5.2.3.3	C. Further Procedural Requirements of the Vote/Exclusion Criteria	328
10.5.2.4	What Are the Time Limits of the Vote?	330

10.5.2.5	How Does Third Power Intervention Verify the Vote of No Confidence?	331
10.5.2.6	What Are the Consequences of a Vote of No Confidence?	332
10.5.2.6.1	A. Consequences of a Successful Vote of No Confidence Against an Individual Minister	332
10.5.2.6.2	B. Overview of Consequences After a Successful Vote of No Confidence Against the Government as a Whole or the Head of Government	333
10.5.2.6.3	C. Resignation or Removal of the Government	333
10.5.2.6.4	D. Dissolution of Parliament and Re-Elections	336
10.5.2.6.5	E. Constructive Vote of No Confidence	337
10.5.2.6.6	F. Timeframe for Consequences	338
	References	339

Part IV Judiciary

11	Constitutional Courts: Supreme Courts	343
	Albrecht Weber	
11.1	Overview of Constitutional Jurisdiction and Judges	343
11.1.1	Introduction	343
11.1.2	Normative Status	345
11.1.3	Nomination of Judges: Organs and Election	346
11.1.4	Remarks	346
11.1.5	Independence of Judges	350
11.1.5.1	Duration of Office	352
11.1.5.2	Remarks	352
11.1.5.3	Irrevocability	356
11.1.5.4	Remarks	359
11.1.5.5	Indemnities/Immunities	360
11.1.5.6	Remarks	360
11.1.5.7	Incompatibilities	360
11.1.5.8	Remarks	362
11.2	Competences of Constitutional/Supreme Courts	362
11.2.1	Abstract Control of Norms	363
11.2.1.1	Retroactive Control ("a posteriori")	364
11.2.1.2	Preventive Control ("a priori")	364

11.2.2	Diffuse and Centralized Judicial Review of Norms . . .	364
11.2.2.1	Historical Context and Definition	364
11.2.2.2	Centralized Judicial Review	369
11.2.2.3	Mixed Models	369
11.2.2.4	Remarks	372
11.2.2.5	Decentralized Judicial Review (“Diffuse Review”)	373
11.2.2.6	Remarks	373
11.2.3	Individual Complaints: Popular Complaints (“Actio Popularis”)	375
11.2.3.1	Overview	375
11.2.3.2	Remarks	376
11.2.4	Conflict of Competences	380
11.2.4.1	Introduction	380
11.2.4.2	Remarks	381
11.2.5	Control of Elections, Mandates, Referenda	381
11.2.5.1	Overview	381
11.2.5.2	Remarks	385
11.2.6	Protecting the Constitution	385
11.2.6.1	Overview	385
11.2.6.2	Remarks	388
	References	390
12	General and Special Jurisdictions and Public Prosecution	393
	Albrecht Weber	
12.1	Overview of General and Special Jurisdictions	393
12.1.1	Definition	394
12.1.2	Establishment of Courts and Appointment of Judges	394
12.1.2.1	Establishment of Courts	395
12.1.2.2	Remarks	395
12.1.2.3	Appointment of Judges	402
12.1.2.4	System of Appointment	402
12.1.2.5	Remarks	403
12.1.2.6	Relevance of Political Forms of State on the Appointment	406
12.1.2.7	The Role of Self-Governing Bodies (“High Councils of Judges”)	406
12.1.2.8	Independence of Judges	409
12.1.2.9	Budget of the Judiciary	410
12.1.2.10	Remarks	410
12.2	Public Prosecution Service	416
12.2.1	Overview	416
12.2.2	Remarks	417
	References	422

Part V Territorial Structure

13 Territorial Structure	427
Albrecht Weber	
13.1 Overview: Terms and Definitions	427
13.1.1 Typology	428
13.1.2 Structural Approach Relating to Territorial Structures	429
13.2 Details of the Territorial Structures	434
13.2.1 Unitary Systems	434
13.2.2 Remarks Relating to Unitary Systems	444
13.2.3 Regionalised Systems	446
13.2.4 Remarks Relating to Regional Systems	446
13.2.5 Federal Systems	447
13.2.6 Remarks Relating to Federal Systems	447
13.2.7 Local Government	450
13.2.8 Remarks Relating to Local Government	450
References	452

Part VI State of Emergency

14 State of Emergency	457
Wolfgang Babeck	
14.1 Overview of the State of Emergency	457
14.1.1 Definition	457
14.1.2 Purpose and Function of the Rule	458
14.1.3 Norm Addressee	459
14.1.4 Historical Context and Corona Virus Responses	459
14.1.5 Structural Approach	462
14.2 Details of the State of Emergency Clauses	463
14.2.1 Types of Emergency Rule	463
14.2.2 Procedure for Declaring the State of Emergency	464
14.2.3 Substantive Requirements	467
14.2.3.1 Shift of Competencies During Emergency	467
14.2.3.2 Protection and Limitation of Human Rights	469
14.2.3.3 Important Restrictions	469
14.2.3.4 Effective Period of the State of Emergency	473
14.2.4 Legal Consequences	474
14.2.5 Legislative Control	475
14.2.6 Judicial Review	476
14.3 Remarks	477
14.3.1 Specification of the Emergency	477

14.3.2	Notification	479
14.3.3	The Principle of Non-derogation or Limitation of Fundamental Rights	479
14.3.4	The Principle of Proportionality	481
14.3.5	Supervision	482
14.3.6	Conclusion	482
	References	483

Part VII Defence

15	Defence	489
	Albrecht Weber	
15.1	Military Forces: National Security Institutions	489
15.2	Remarks to Status and Role of Military Functions	490
15.3	Power of Military Command	504
15.4	Power to Declare War or Emergency	505
15.4.1	Power to Declare War	505
15.4.2	Emergency Powers	505
	15.4.2.1 Parliamentary Control of Emergency and War Powers	506
	15.4.2.2 Emergency Powers	507
15.5	Oversight of War Powers	507
15.6	Remarks	508
	References	510

Part VIII Budget, Finance and Central Banks

16	Budget, Finance and Central Banks	513
	Wolfgang Babeck	
16.1	Budget Clause and Control Chamber	513
16.1.1	Overview of the Budget Clause	513
	16.1.1.1 Definition	513
	16.1.1.2 Purpose and Function	514
	16.1.1.3 Legal Nature/Character	514
	16.1.1.4 Historical Context	514
	16.1.1.5 Procedural Questions	515
	16.1.1.6 Structural Approach and Guiding Questions	516
16.1.2	Details of the Budget Clause	516
	16.1.2.1 Who Has the Right to Propose the Budget?	516
	16.1.2.2 Who Needs to Approve of the Budget? . . .	517
	16.1.2.3 Can Another Institution Amend the Proposed Bill?	518
	16.1.2.4 Absence of a Budget Before the New Fiscal Term. Can an Emergency Budget Be Enacted?	521

	16.1.2.5	What Can Be Done If the Expenses Exceed the Budget?	523
16.2	Taxes		524
	16.2.1	Overview of the Financial Constitution	524
	16.2.1.1	Definition	524
	16.2.1.2	Purpose and Function of the Rules	524
	16.2.1.3	Ways to Generate Income	525
	16.2.1.4	Sovereignties Regarding Taxes	525
	16.2.1.5	Supervision	526
	16.2.1.6	Historical Context	526
	16.2.1.7	Procedural Questions	526
	16.2.1.8	Structural Approach and Guiding Questions	526
	16.2.2	Details of the Income Clause	527
	16.2.2.1	Limitation of Public Debt	527
	16.2.2.2	Limitation on Burdening Citizens	530
	16.2.2.3	Duration of Taxation	530
	16.2.2.4	What Provisions Need to Be in the Constitution?	531
	16.2.3	Details of the Control Chamber Clause	531
	16.2.3.1	Control and Revision of Expenses	531
	16.2.3.2	Scope of Review	532
	16.2.3.3	Composition of the Control Chamber	533
16.3	Central Banks		535
	16.3.1	Overview	535
	16.3.1.1	Definition	535
	16.3.1.2	Historical Context	536
	16.3.1.3	Structural Approach and Guiding Question	537
	16.3.2	Details of the Central Bank Clause	538
	16.3.2.1	National Bank as a Mandatory Part of the Constitution	538
	16.3.2.2	Scope of Provisions	538
	16.3.2.3	Establishment Clause	539
	16.3.2.4	Allocation of Powers	539
	16.3.2.5	Executive Body	539
	16.3.2.6	Term of Office	542
	16.3.2.7	Personal Qualification	542
	16.3.2.8	Appointment of Board Members	543
	16.3.2.9	Appointment of a Chairperson	544
	16.3.2.10	Accountability	547
	16.3.2.11	Sublegal Reference	547
	References		548

Part IX Referendum

17 The Referendum	553
Wolfgang Babeck	
17.1 Overview of the Referendum Clause	553
17.1.1 Definition	555
17.1.2 Historical Context	556
17.1.3 Purpose and Function of Referendums	557
17.1.4 Procedural Questions	558
17.1.5 Structural Approach and Guiding Questions	559
17.2 Details of the Referendum Clause	559
17.2.1 Is a Referendum Clause Required?	559
17.2.2 What Body Is Competent to Initiate a Referendum?	561
17.2.3 Which Body Has the Power to Determine the Scope and Subject of the Referendum?	565
17.2.4 What Topics Can Be the Subject of a Referendum?	566
17.2.5 What Are the Procedural Specifications for a Referendum?	569
17.2.6 What Is the Regional Scope of a Referendum?	572
17.2.7 What Are the Temporal Requirements of a Referendum?	573
17.2.8 What Quorum Is Required for a Successful Referendum?	575
17.2.9 Is a Referendum's Outcome Binding?	576
17.2.10 Is a Referendum's Outcome Subject to Judicial Review?	578
References	580

Part X Amending the Constitution

18 Amendment Power	585
Wolfgang Babeck	
18.1 Overview of the Rule on Constitutional Amendments	585
18.1.1 Definition: Distinction Between Constitution-Making, Constitutional Amendment and Transformation	585
18.1.2 Chances and Risks of Rigid and Flexible Constitutions	586
18.1.3 The Rules on Constitutional Amendment: Overview of the Requirements	587
18.2 Details of the Clause: Structural Approach and Guiding Questions	588
18.2.1 Formal Requirements	588
18.2.1.1 Organs and Majorities Required to Initiate the Amendment	589
18.2.1.2 What Organs and Majorities Are Required to Adopt the Amendment?	591

18.2.1.3	Electoral System	594
18.2.1.4	Constitutional Development	594
18.2.1.5	Constitutional Referendum and Alternatives	594
18.2.1.6	Timeframe for the Legislative Advice and Adoption	595
18.2.1.7	Approval by (Mandatory/Optional) Referendum	597
18.2.1.8	Method of the Textual Revision	599
18.2.2	Substantive Requirements	600
18.2.2.1	Which Sections of a Constitution Are Immutable?	600
18.2.2.2	Amendment of the Rules on Constitutional Amendments	605
18.2.2.3	Moratorium	605
18.2.3	Involvement of the Constitutional Court	606
18.3	Remarks	608
	References	609
Index		611