

Contents

<i>Preface</i>	v
<i>Abbreviations</i>	xi
<i>Note on texts and translations</i>	xiii
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxv
 1. Introduction: Some Peculiarities of German Constitutional Law and Jurisprudence	 1
 2. The Rise of Constitutionalism in Germany—Traditions and Concepts	 9
A Historical Context of the Creation of the Basic Law	9
B Historical Traditions and Experiences	13
C Constitutional Developments	21
Conclusion	23
 3. The Fundamental Principles of the Constitution and Democratic Legitimacy	 25
Part I Foundations	25
A Five Fundamental Principles	25
B Fundamental Principles and Democratic Legitimacy	26
C Juridical Character of the Fundamental Principles	29
Part II The Democratic Principle	30
A Democracy in the Basic Law	30
B The Chain of Democratic Legitimation and Responsibility	34
Part III The Rechtsstaat Principle	35
A The Concept of Rechtsstaat	35
B The Principle of Legality	37
C Supremacy of the Constitution	39
D Judicial Remedies and Judicial Rights	39
E Certainty of the Law (Definiteness, Reliability, Protection of Confidence)	41

F Principle of Proportionality	42
G Restitution of Legality	43
Part IV The Social State Principle	44
Part V Republican Form of Government	46
Part VI Federalism as Fundamental Principle	47
Conclusion	47
4. The Federal System	49
Part I Foundations	49
A Concepts	49
B Origins and History	51
C Legitimation	52
Part II The Constitutional Principles of Federalism	53
Part III Structure of Functions and Competences in German Federalism	58
A General Defining Features	58
B Legislation	58
C Administration and Executive Power	62
D Judicial Power	64
E The Fiscal Constitution	65
F International Relations	67
G The Role of the Federal Council (<i>Bundesrat</i>)	69
H Conflicts between the Federal Government and the Länder and their Settlement	71
Part IV From Dual to Cooperative Federalism and Beyond	73
Part V Federalism within a Multilevel Structure of Government	77
A Local Government	77
B German Federalism and the European Union	79
Conclusion	83
5. Separation of Powers and Parliamentary Government	85
Part I Separation of Powers as a Constitutional Principle	85
Part II The People	88
A The People as a State Organ	88
B Functions of Elections	88
C Electoral System	89

Part III The Political Parties as a Link between State and Society	92
Part IV The Bundestag—The German Parliament	100
A Members of Parliament	100
B Institutional Structure	102
C Functions of the Bundestag	106
1 The Legislative Process	107
2 Delegation of Legislative Authority	110
3 Parliamentary Legislation in the Constitutional System	112
4 Power of the Purse	114
5 Foreign Affairs and Military Matters	116
6 Electoral Function	118
7 Parliamentary Control	118
8 Expressive Function	120
D Parliament and European Integration	120
Part V Parliamentary Government	122
Conclusion	123
6. Government and Administration	127
Introduction	127
Part I Cabinet and Federal Government	128
A The Formation of the Cabinet	128
B Legal Principles	130
C Functions	131
D A Chancellor Democracy?	134
Part II The Federal President	136
A Status and Election	136
B Competences and Functions	138
Part III Administration	140
A Administration within the Separation of Powers Concept	140
B Structural Principles of Administration	142
C The Transformation of Administrative Law	144
D Privatisation and Outsourcing, Regulation and Deregulation	150
Part IV The Military	153
Conclusion	157

7. The Constitutional Role of the Judiciary and the Constitutional Court	159
Part I The Courts	159
A Constitutional Principles	159
B The Court System	166
Part II The Constitutional Court	167
A Constitutional Status	167
B Selection of Justices and Structure of the Court	169
C The Powers of the Constitutional Court	170
D Legal Effects of Decisions	176
E Court Competences and Interpretation	178
F Compliance, Implementation, Impact	181
G Legitimation of Constitutional Review within the Separation of Powers System	183
H The Court and European Integration	186
Conclusion	188
8. The System of Fundamental Rights	191
A Foundations	191
B Dogmatic Structure of Fundamental Rights	192
C Constitutional Functions of Fundamental Rights	198
D Human Dignity and the Right to Life	201
E Art 2 I BL and the System of Fundamental Rights	204
F Equality	208
G Fundamental Rights and the Economy	213
H Rights of Communication and their Consequences	218
I Religious Freedom, the Churches and the State	223
Conclusion	227
9. Epilogue	229
<i>Index</i>	231