## Contents

Sei	ries E	ditors'	Preface		page xvii
Pre	eface				xix
	•	ledgem	ents		xxi
		f Cases			xxii
In	trod	uction	ι		1
1	The	e EU T	reaty Fr	amework as Constitutional	
	Tot	ichsto	ne		21
	Int	roduct	ion		21
	1	The T	reaty Fi	ramework and Internal	
			itutiona		23
		1.1	The For	indations of the Treaty Framework as	
				utional Touchstone	24
		1.2		Treaty Framework's Scope of	
			~ ~	tion as Constitutional Touchstone	26
		1.3		rmative Power of the EU Treaty	
			Framev	vork as Constitutional Touchstone	30
	2	The E	U Treat	ies and the Three Issues for EU	
		Const	itutiona	alism	32
		2.1	Constit	utional Issue No. 1: What Is the Forma	1
			Status o	of Union Law under the Treaties and	
			under V	What Conditions Does It Apply within	
			Membe	r States?	34
			2.1.1	The Formal Status of Union Law	34
			2.1.2	The Domestic Application of EU Law	37
		2.2	Constit	utional Issue No. 2: The Locus of EU	
			Politica	l Authority within the EU Legal Order	41
			2.2.1	Constituent Authority	42
			2.2.2	Political Authority for Union Policymakin	g 43

		2.3	Constitutional Issue No. 3: The Objectives, Values and Limits of EU Integration 2.3.1 The Objectives of European Integration	48 49				
			2.3.2 The Values of European Integration	51				
	0	1 1.	2.3.3 The Limits on European Integration	53				
	Co	nciuai	ng Remarks	57				
2			Treaty Framework and the Constitutional					
	Co	ntext	of European Integration	60				
	Introduction							
	1 The Space between: The EU Treaties and the							
		Constitutional Context of EU Integration						
	2	Cons	titutional Supplementation	63				
		2.1	Inter-Institutional Agreements	64				
		2.2	Comitology	67				
		2.3	The Court's Jurisprudence on 'General					
			Principles'	68				
	3		titutional Contestation	71				
		3.1	The Luxembourg Compromise (1966)	71				
		3.2	The Establishment of the European					
		3.3	Council (1974)	73				
		3.3	The Decision on the New Settlement for the UK within the EU (2016)	7.0				
	4	Cons	. ,	76				
	T	Constitutional Supplementation, Constitutional Contestation and the Dynamics of EU Treaty						
		Refor		78				
		4.1	Normalisation through Treaty Amendment	79				
	_		The Court of Justice as Intermediary	81				
	5		zone Crisis Management: A Study in					
			titutional Contestation in the Political					
		Spher		83				
		5.1	The Eurozone Crisis: Background and Political					
		5.2	Responses The Function of Calculation 1	85				
		3.2	The Eurozone Crisis and Constitutional Contestation					
				87				
			5.2.1 Challenges to the Locus of EU Political Authority	07				
			5.2.2 Challenges to Objectives, Values and	87				
			Limits of EU Integration	90				
		5.3	Towards Normalisation with the EU Treaty	90				
			Framework	91				
		5.4	The Court's Role as Intermediary in Eurozone	- 1				
			Crisis Management	91				
	Con	cludin	ng Remarks	97				

				CONTENTS	xiii	
3	Th	e Coui	rt of Ju	stice, the Treaty Framework and		
	Co	Constitutional Issue No. 1				
	Int	roduci	ion		98	
	1 The EU Treaties and the Normative Framework of					
	_		nationa		100	
		1.1		ational Law as a Normative Framework	100	
		1.1		uring Inter-State Co-operation	102	
			1.1.1	What Limits Does International Law		
				Impose on States' Contractual Freedom?	102	
			1.1.2	To What Extent Does International Law by		
				Its Own Authority Provide for the Direct		
				Penetration of Domestic Legal Systems?	104	
			1.1.3	What Tools Are Available to States in		
				Domestic Law to Manage the Internal		
			5	Application of International Treaty Norms?	105	
			1.1.4	What Tools Are Available to States in		
				International Law to Manage the Internal	400	
		1.2	The EL	Application of International Treaty Norms?  J Treaties as Instruments of	107	
		1.4		ational Law	109	
			1.2.1	Adoption, Amendment and Ratification	110	
			1.2.2	The Domestic Effect of EU Norms under	110	
				the Treaty Framework	111	
			1.2.3	The EU Treaty Framework: Innovative		
				Features	113	
	2 Colliding Worlds: The Court of Justice contra the					
	EU Treaty Framework			115		
		2.1		ourt of Justice and Constitutional		
			Issue N		116	
		2.2	The Co	ourt's Position on Constitutional		
			Issue N	No. 1: Origins and Evolution	118	
	3 The Court of Justice, Constitutional Issue					
		No. 1	and th	e 'Constitutionalisation' of the		
		EU L	egal Oro	der	122	
		3.1	_	ourt of Justice and the	122	
				itutionalisation' of the EU Legal Order	123	
		3.2		rt from the Sidelines: EU Legal		
			Schola		127	
	Coı	ncludi	ng Rem	arks	130	
4	The Court of Justice, the Treaty Framework and					
	Constitutional Issue No. 2					
	Introduction					
	1	Cons	tituent	Authority: The Court of Justice		
	versus the EU Treaty Framework				135	
		1.1		J Treaty Framework and Constituent		
			Author		136	

B

		1.2	Judici	al Challenges to Constituent Authority	137	
			1.2.1	Judicial Challenges to Member States'	107	
				Competence to Revise the Treaties	138	
			1.2.2	Judicial Challenges to Member States'	100	
				Acts of Constitutional Supplementation	142	
		1.3	The C	ourt of Justice: From Agent to Trustee	149	
	2	Unio	n Polic	ymaking: The Court of Justice versus		
		the I	EU Trea	ty Framework	151	
		2.1		licymaking and the EU Treaties: Political		
		4	Institu	itions, Attributed Powers and Institutional		
			Balanc	re	152	
			2.1.1	Political Institutions	152	
			2.1.2	Attributed Powers	153	
			2.1.3	Institutional Balance	154	
		2.2	Consti	tutional Contestation: The Court as Direct	-	
			Policy		156	
			2.2.1	The Origins of the Court's Direct		
			12.00	Policymaking Platform	158	
			2.2.2	The Evolution of the Court's Role as Direct		
			2.2.0	Policymaker	161	
			2.2.3	The Impact of the Court's Direct		
				Policymaking Role on the Institutional		
			224	Dynamics of EU Policymaking	163	
			2.2.4	The Resilience of the Court's Platform		
	Con	ماري طائم	- D	for Direct Policymaking	166	
	COL	iciudii	ng Rema	arks	167	
5	The Court of Justice, the Treaty Framework and					
	Constitutional Issue No. 3					
		Introduction				
	1		e Values of EU Policymaking: The Court of		169	
		Inctic	o tropour	the Ell Track B		
		1.1	Air Tra	s the EU Treaty Framework	172	
		1.1	Air Tra: 1.1.1	-	173	
			1.1.1	Judicial Challenges to Regulation 261/2004		
			1.1.2	EU on Air Passenger Compensation Rights	173	
			1.1.4	Judicial Challenges to EU Regulations on Aircraft Licensing		
		1.2	Union (	Citizenship	176	
			1.2.1	Entitlements to Social Security Benefits	179	
			1.2.2	Residence Rights	180	
		1.3		art of Justice and the EU Legislature	182 186	
			1.3.1	The Emergence of European Representative	100	
				Democracy as a Normative Value under		
				the EU Treaty Framework	188	
			1.3.2	The Court of Justice and Representative	100	
				Democracy as a Normative Value under		
				the Treaty Framework	190	

	2	The Limits on EU Policymaking: The Court of					
		Justic	ce versu	is the EU Treaty Framework	193		
		2.1		on Union Policymaking under the Treaty			
			Frame	work	195		
		2.2		ourt as Direct Policymaker: Functional			
			Expect		196		
		2.3		ourt and Treaty Exclusions on EU			
			_	tive Policymaking	200		
			2.3.1	The Reimbursement of the Costs of Medical	0.04		
			2.3.2	Treatments Received Abroad	201		
		2.4		The Right to Strike purt of Justice as 'Detached' Policymaker	204 207		
	Cor		ng Rem				
	COI	iciudii	ng Kem	d1 K5	211		
6	The	e Feed	back L	oop: The Court of Justice and Its			
	Int	erlocu	itors		213		
	Int	roduct	ion		213		
	1	Mem	ber Sta	te Responses to Judicial Constitutional			
				a: Constitutional Issue No. 1	215		
		1.1	The Co	ollective Response: Member States			
				nty Signatories	216		
			1.1.1	Negative References to Direct Effect in			
				the Treaty Framework	217		
			1.1.2	Declaration No. 17 on the Primacy of			
			440	Union Law	218		
			1.1.3	Protocol No. 8 on EU Accession to the	222		
			1.1.4	European Convention on Human Rights	220		
			1.1.4	Normalisation as Part of the EU Accession Acquis	221		
		1.2	The Na	ational Response: Member States and	221		
		1.2		al Courts	222		
			1.2.1	Domestic Responses: Overview	223		
			1.2.2	Domestic Responses: The Role of National			
				Courts	225		
			1.2.3	Explaining Domestic Constitutional			
				Adjustment	227		
	2	Mem	ber Stat	te Responses to Judicial Constitutional			
		Contestation: Constitutional Issues No. 2					
		and No. 3					
		2.1	The Co	llective Response: Member States as			
				Signatories	230		
			2.1.1	Member State Interventions to Recast			
				Judicial Policy Choices	231		
			2.1.2	Member State Interventions to Manage			
		2.2	The Mr-	the Scope for Future Judicial Policymaking	233		
		2.2		ational Response: Member States and all Courts	226		
			HOLLDER	ai Coults	236		

			2.2.1	The German Federal Constitutional Court in Honeywell	236	
			2.2.2	'Push Back' as a Broader Constitutional Phenomenon		
	2	Dama			239	
	3 Reponses in the EU Scholarship				242	
		3.1		olars and the Formal Status of EU Law: ling the Judicial Vision	243	
		3.2		Scholarship on the Court: A Fivefold	243	
		0.2	Typolo		245	
		3.3	0 1	Scholarship on the Court: Summary	255	
	Co	ncludi	ng Rem	-	256	
			Ü		15	
7				ee Contemporary Problems,	260	
		Four Reform Proposals				
		roduct			260	
	1			mporary Problems for EU Judicial		
			naking		262	
		1.1		m No. 1: Judicial Challenges to		
		4.0		tuent Authority	262	
		1.2		m No. 2: Judicial Challenges to Treaty	0.50	
		1.3		on EU Policymaking	263	
		1.5		n No. 3: Judicial Challenges to EU tive Frameworks	265	
	2	The T	_	ontemporary Problems: Challenges	200	
	_			macy of European Integration	266	
	3		_	_	200	
	3			Justice and the EU Treaty		
		Framework as Constitutional Touchstone: Four				
		-		Reform	269	
		3.1		al No. 1: Closer Judicial Engagement ne Treaty Framework	250	
			3.1.1	Article 67 EEC on Capital Movements	270 272	
			3.1.2	Standing Rights in Annulment Proceedings	273	
			3.1.3	EU Citizenship	275	
		3.2		al No. 2: A Revised Approach to Scrutiny	2,0	
			of the (		277	
	3.3		Proposa	al No. 3: Improving the Quality of		
				Treaty Framework	279	
		3.4	_	al No. 4: Establishing a New EU		
	_	. 1. 1.		work for Compliance Monitoring	280 283	
	Concluding Remarks					
7. 7						
Ind	ex				288	

288