

Contents

<i>List of Contributors</i>	xv
1: The Evolution and <i>Gestalt</i> of the Austrian Constitution	1
<i>Ewald Wiederin</i>	
A. Origins of the Current Constitution	3
1. External Cause and Driving Forces	4
2. Models and Influences	7
3. Original Solutions	9
4. Insurmountable Dissent	11
B. The Evolution of the Constitution	12
1. Flexibility and Rigidity of the Constitution	12
2. The Development of the Constitution in the First Republic	17
3. The Development of the Constitution in the Second Republic	20
4. Contributions of Jurisprudence and Doctrine	23
C. Basic Structures and Concepts	25
1. Constitution, Simple Law, and Politics	25
2. Democracy	26
3. Federalism	32
4. Rule of Law	36
5. Separation of Powers	40
6. Fundamental Rights	46
7. Terms for the Entity	50
D. Constitutional Identity	51
1. Continuity between the First and the Second Republic	51
2. Permanent Neutrality	52
3. The Basic Constitutional Order	52
2: The Evolution and <i>Gestalt</i> of the Czech Constitution	55
<i>David Kosař and Ladislav Vyhnánek</i>	
A. Introduction	56
B. The Origins of the Current Constitution	58
1. Sources of Inspiration	60
2. Between Klaus and Havel: Drafting the Constitution	61
3. The Final Product: A Fragile Compromise	63
C. The Evolution of the Constitution (Post-1993 Development of the Czech Constitutional <i>Gestalt</i> and Major Challenges)	65
1. Dealing with the Past and Building the Material <i>Rechtsstaat</i>	65
2. The 1998 Opposition Agreement and the Growing Distrust in Traditional Political Parties	67
3. Accession to the European Union	68
4. Economic Crisis and the Constitutional Dimension of Social Conflicts	73
5. The Two-Headed Executive: Weak Governments and Trouble-Making Presidents	75
6. An Over-Judicialized Constitution	77

7. Where Are the People?	80
8. A Danger of Democratic Backsliding	80
D. Basic Structures and Concepts	82
1. Formal Aspects of the Czech Constitutional <i>Gestalt</i>	82
2. Substantive Aspects of the Czech Constitutional <i>Gestalt</i>	88
E. Constitutional Identity	99
F. Conclusion	107
3: The Evolution and <i>Gestalt</i> of the French Constitution	109
<i>Guillaume Tusseau</i>	
A. Origins of the Current Constitution	109
B. The Evolution of the Constitution	114
1. High-Energy Constitutionalism	114
2. Low Juridicity Constitutionalism	122
C. Basic Structures and Concepts	131
1. Delegative Constitutionalism	132
2. Human Rights Constitutionalism	141
D. Constitutional Identity	146
1. A New (Im)balance of Powers	147
2. The Judicialization of the French Constitutionalism	153
3. The (Lethal?) Internalization of Political Conflict	158
4: The Evolution and <i>Gestalt</i> of the German Constitution	163
<i>Susanne Baer</i>	
A. Origins of the Current Constitution	163
1. Sources, Theories, Texts	164
2. Framing, Drafting	165
3. Commitments, Ideologies, People	166
4. Between Global, Local, and Comparative	166
5. Consensus and Controversies	169
B. The Evolution of the Constitution	171
1. The First Fan: Karlsruhe	172
2. A Slow Start, the 'Never Again,' and 'One of You We Are'	175
3. Post-1968	177
4. Post-1989	179
5. EU Integration	180
6. Globalization	181
7. Changes of the Text	181
8. Changes in Society	184
C. Basic Structures and Concepts	191
1. Position, Standing, Significance	191
2. Fundamental Rights and Proportionality	193
3. Foundational Principles of the State	195
4. Democracy, Elections, Parliament	196
5. Defensive Democracy	200
6. Federalism, Form of State, Units, Territory	201
7. <i>Rechtsstaat</i>	203
8. Welfare State, Protective and Social Dimensions of Fundamental Rights	205
9. Secularism	208
10. Constitutionalization	210
D. Constitutional Identity	211

5: The Evolution and <i>Gestalt</i> of the Hungarian Constitution	217
<i>Gábor Halmai</i>	
A. Origins of the Current Constitution	217
1. The 1989 Constitution	217
2. Two Decades of Constitutional Democracy?	219
3. Hungary's Fundamental Law	222
B. The Evolution of the Constitution	223
1. Cardinal Laws and Amendments to the Fundamental Law	223
2. The Fourth and Fifth Amendments	226
3. The Sixth, Seventh, Ninth, Tenth, and Eleventh Amendments	231
4. No Judicial Review of Constitutional Amendments	236
C. Basic Structures and Concepts	245
1. Government without Checks	245
2. Identity of the Political Community	246
3. Intervention into the Right to Privacy	248
4. Weakening of the Protection of Fundamental Rights	249
5. Constitutional Entrenchment of Political Preferences	251
6. A Populist Illiberal Constitutional System	254
D. Constitutional Identity	257
1. The Abuse of the Concept	257
2. The Instrumental Role of Religion in National Identity	266
6: The Evolution and <i>Gestalt</i> of the Italian Constitution	269
<i>Sabrina Ragone and Giacomo D'Amico</i>	
A. Origins of the Current Constitution	269
1. Historical Experiences Affecting the Constitution	269
2. Foreign Influence and Use of Comparative Law	274
3. Main Critical Points	276
4. Political Equilibria in the Constituent Assembly and their Impact on the Outcome	279
B. The Evolution of the Constitution	283
1. The Evolution of the Form of Government	283
2. The Evolution of Regionalism	286
3. The Evolution of Constitutional Adjudication	289
4. Critical Features and Junctures	292
5. The Development of the Constitution as a Source Subject to Interpretation and Implementation	296
6. Rigidity and Amendability	298
C. Basic Structures and Concepts	302
1. The Value of the Constitution and the Constitutionalization of the Legal System	302
2. Democracy and Sovereignty	304
3. Rule of Law and Protection of Constitutional Rights	307
4. Separation and Distribution of Powers among Constitutional Bodies and Territorial Entities	309
D. Constitutional Identity	316
7: The Evolution and <i>Gestalt</i> of the Lithuanian Constitution	319
<i>Irmantas Jarukaitis</i>	
A. Origins of the 1992 Constitution of Lithuania	319

1. The Early Origins of the Lithuanian Constitutionalism	319
2. Evolution of the Lithuanian Constitutionalism during the Interwar Period	324
3. Re-establishment of the Independence and Adoption of the 1992 Constitution	327
B. The Evolution of the 1992 Constitution: Between the Rigidity and the Flexibility	333
1. Central Role of the CC in Developing the Constitution	333
2. Lithuania's Integration into Trans-Atlantic Structures and its Impact on the Constitution	340
C. Basic Principles and Structures of the 1992 Constitution	352
1. Main Features of the 1992 Constitution and its Role in the National Legal Order	353
2. Basic Constitutional Principles Describing the Republic of Lithuania	356
3. Rule of Law and Fundamental Rights	361
4. Constitutional Organs and Separation of Powers	365
D. The Lithuanian Constitutional Tradition and the Constitutional Identity	376
8: The Evolution and <i>Gestalt</i> of the Dutch Constitution	381
<i>Leonard F M Besselink</i>	
A. Introduction	382
B. Origins of the Current Constitution	384
1. What is the Constitution?	384
2. National Constitutional Development: International Parameters and National Causes	384
3. The Great Transformations	385
4. The Adaptations	394
5. The Minor Amendments	399
6. Perennial Controversies	400
C. The Evolution of the Constitution: The Institutional Parameters of Constitutional Development	401
1. Constitution-Making Power: The Rigidity of the Constitution	401
2. The Role of the Government in Constitution Making	403
3. The Role Played by Parliament	404
4. The Role of Courts: The Unwritten Rules and Principles of Constitutional Law	405
5. The Role of Foreign Constitutional Law	408
D. Basic Structures and Concepts	409
1. The Relation of the Constitution to Other Parts of the Legal Order	410
2. The Relation of the Constitution to Politics and Democracy	415
3. <i>Rechtsstaat</i> : Fundamental Rights and Legality	420
4. Horizontal and Vertical Division of Powers	424
5. The Absence of an Overarching Concept of Political Unity	427
E. Constitutional Identity	428
9: The Evolution and <i>Gestalt</i> of the Polish Constitution	431
<i>Michał Szwaś, Marcin Szwed, and Paulina Starski</i>	
A. The Origins of the Constitution	433
1. Poland's Constitutional Past: Polish Constitutionalism throughout the Centuries	433
2. 'Constitutional Moment' in Times of Transition: The Path to the 1997 Constitution and its Substance	438
B. The Constitution, its Rigidity, and Evolution	444

1. Constitutional Rigidity	444
2. The Constitutional Tribunal as a Catalyst of Constitutional Evolution and a Forum for the Resolution of Constitutional Conflicts	449
C. The Caesura: The Dismantlement of the Constitutional Order	457
D. The Axiology of the Constitution of 1997: Basic Structures and Concepts	463
1. The Constitution and its Supremacy	464
2. The Constitutional Concept of Sovereignty, the 'Nation', and the 'Common Good'	469
3. The Constitution and the 'Democratic State Ruled by Law'	471
4. The Constitutional Protection of Human Rights: Dignity of the Person, Equality, and Freedom	476
5. The Constitution and the Separation of Powers	481
6. The Constitution and the Form of the State	486
7. The Constitution and its Identity	488
E. Conclusions and Outlook	490
Epilogue	490
10: The Evolution and <i>Gestalt</i> of the Romanian Constitution	493
<i>Bogdan Iancu</i>	
A. Origins of the Current Constitution	493
1. Constitutionalism in Romania: Continuities and Discontinuities	493
2. The Genesis of Constitutionalism in Romania	496
3. Return or New Beginning? The Constitution of 1991	508
B. The Evolution of the Constitution	515
1. Shifting Contexts: New Conflicts, New Vocabularies	515
2. The 'Euro-Amendments'	516
3. Constitutional Conflicts	521
4. Anticorruption as a Quasi-constitutional Meta-discourse	524
C. Basic Structures and Concepts	531
1. The Constitutionalization of Romanian Law	531
2. Fundamental Rights and the Rule of Law	536
3. Separation of Powers	542
D. Constitutional Identity	545
11: The Evolution and <i>Gestalt</i> of the Spanish Constitution	549
<i>Victor Ferreres Comella</i>	
A. Origins of the Current Constitution	549
1. Historical Background	549
2. The Constitutional Spirit: The Politics of 'Consenso'	553
3. Foreign Influences and the Impact of Constitutional Scholars	558
B. The Evolution of the Constitution	560
1. Constitutional Rigidity: The Amendment Procedure	560
2. Procedural Dualism and Substantive Limits to Amendments	562
3. Interpretation	564
4. Influential Personalities in the Development of the Constitution	565
C. Basic Structures and Concepts	565
1. The Position of the Constitution in the Legal and Political System	565
2. Democracy	566
3. The Rule of Law: General Principles	569
4. Recognition and Protection of Fundamental Rights	570

5. Constitutional Organs and Separation of Powers	575
6. Political Unity and the Sovereignty of the Spanish People	594
D. Constitutional Identity	597
12: The Evolution and <i>Gestalt</i> of the Swedish Constitution	601
<i>Thomas Bull and Ian Cameron</i>	
A. Origins of the Current Constitution	601
1. The Four Constitutional Documents in Sweden	601
2. Historical Experiences Influencing the Current Instrument of Government	602
3. Major Critical Points During the Constituent Phase of the Instrument of Government and Political Factors Influencing the Outcome	605
4. Issues Explicitly Left Open at the Time of the Adoption of the New Instrument of Government and Subsequent Development of These	608
B. The Evolution of the Constitution	611
1. Major Features of the Constitutional Order	611
2. Foreign Influence and Common Features of Nordic Constitutions	614
3. What Personalities (Judges, Academics, Politicians) and Which Legal Texts have had a Special Importance in the Development of the Constitution?	617
4. The Balance Between Rigidity and Flexibility in the Constitution	618
C. Basic Structures and Concepts	619
1. The Position of the Constitution within the Legal System	619
2. Democracy	622
3. Relationship Between Constitutional Law and International Law	624
4. Relationship Between Constitutional Law and EU Law	626
5. Rights and the Rule of Law	628
6. Constitutional Organs, the Separation of Powers, the Organization of the Courts, and the Independence of the Judiciary	630
7. The Organization of the State	633
8. Citizenship and the 'Political Unity'	635
D. Constitutional Identity	635
13: The Evolution and <i>Gestalt</i> of the Swiss Constitution	639
<i>Giovanni Biaggini</i>	
A. Origins of the Swiss Constitutional System: The Creation of the Federal Constitutions of 1848, 1874, and 1999	640
1. Foundation of the Confederation: The Federal Constitution of 1848	641
2. Expansion of the Constitutional Order of the Confederation: The Fully Revised Constitution of 1874	645
3. Constitutional Renewal: The Federal Constitution of 1999	647
B. The Evolution of the Constitution: Milestones and Formative Factors	653
1. Main Types of Procedure of Constitutional Amendment	653
2. Milestones in the Development of the Constitution	656
3. Actors and 'Neglected Issues' of Constitutional Development	661
C. Basic Structures and Concepts	663
1. The Federal Constitution as a Basis for and Object of Politics	663
2. On the Significance of Structure-establishing Constitutional Principles	664
3. Democracy and the Understanding of Democracy	665
4. The Rule of Law and the Understanding of Fundamental Rights	670
5. Organ Make-up and Understanding of the Separation of Powers	673
6. Federalism and the Understanding of Federalism	680

D. Constitutional Identity: Characteristics and Identity-creating Elements	685
1. Citizens and People, Nation and State in the Light of the Federal Constitution	685
2. Balancing Out of Equality and Inequality as a Never-ending Task	687
14: The Evolution and <i>Gestalt</i> of the British Constitution	689
<i>Martin Loughlin</i>	
A. Introduction	689
B. Origins of the Current Constitution	692
1. Historical Experiences	692
2. International Influences	695
3. Major Debating Points	697
4. Defining Moments	699
5. Influential Texts	701
C. The Evolution of the Constitution	704
1. The Evolving Constitution	704
2. Main Controversies	709
3. Flexibility of the Constitution	717
D. Basic Structures and Concepts	719
1. Constitutional Law and Politics	719
2. Sovereignty and Democracy	721
3. Institutions of Government	727
4. State, Nation, and Citizen	731
E. Constitutional Identity	733
 <i>Index</i>	 737