## Contents

1

	ord XI Luciano Vandelli owledgments XV			
	luction: The European Charter of Local Self-Government as an national Treaty with Constitutional Significance 1			
The H	istorical Legitimacy of the Charter 5			
I	The Roots of Chartered Rights of Local Authorities 5			
	Charters as a Medieval Invention 5			
	2 Municipal Freedom as a Common European Modern			
	Narrative 9			
	Local Self-Government as Autonomie Locale 12			
II '	The Origins of the Charter within the Council of Europe 17			
	A Tool for Municipal Federalism or for Federal Municipalism? 17			
	The Rocky Path towards the Charter's Signature 20			
	The Efforts for Strengthening the Charter's Obligations 24			
,	3.1 The European Charter on Local and Regional			
	Finances 24			
	3.2 The European Charter of Regional Self-Government 27			
	3.3 The Additional Protocol to the Charter 28			
III	The Normative Guidance Beyond the Originary Council of Europe			
	Borders 30			
The C	Charter as a Source of International, EU and Domestic Law 34			
I	I to a still a sel Tugoty I ovy			
	1 Undertakings à la Carte (Articles 1 and 12) 35			
	2 Techniques of Interpretation of the Charter 39			
	2.1 The Context of the Treaty: Subsequent Practice and			
	Evolutive Approach 39			
	2.2 Council of Europe's Established Practice 42			
	2.3 The "Margin of Appreciation" and the "Core Area"			
	Doctrines 44			
	3 Sources of Monitoring Mechanisms 49			
	3.1 The "Weak" Monitoring Mechanism of the Charter			
	(Article 14) 49			

			0.0	The "Strong" Monitoring Mechanism of the Congress 52
			3.2	
				3.2.1 Legal Basis in Council of Europe Law 52
				3.2.1.1 Monitoring Ex Officio 56
				3.2.1.2 Monitoring upon Request 58
				3.2.2 Legal Nature of Recommendations and
				Resolutions 63
			3.3	Monitoring Mechanisms as a Tool for Ensuring
			-1	Developmental Interpretation 66
	II			ter's Guarantees as General Principles of EU Law? 67
	III			of the Charter under Domestic Law of Council of Europe
		Men	nber S	States 73
3	Con	cept a	and D	esign of Local Self-Government in Europe 83
	I	The	Chart	ter's Concept of Local Self-Government 83
		1	Gove	ernment: Substantial Share of Public Affairs 83
		2	Loca	al Government: Territorial Local Authorities 87
		3	Loca	al Self-Government: Own Responsibility and Democracy 92
			3.1	Deliberative Bodies Ought to be Elected, Executive Bodies
				Can be Appointed 96
			3.2	Universal Direct Suffrage 103
				3.2.1 An Institutional Right to Direct Election in the
				Charter 103
				3.2.2 An Individual Right to Direct Election in Protocol 1
				ECHR 113
			3.3	The Free Mandate of Local Elected Representatives 119
				3.3.1 The Right to Compensation 123
				3.3.2 The Incompatibilities Regime 126
			3.4	Citizens as Holders of Other Limited Rights: Direct and
			0 1	Participatory Democracy 128
		4	Cons	stitutional Local Self-Government: Constitutional
		•		rantees 134
		5		clusion—Institutional Arrangement of Neo-Corporatist
		5		ure? 138
	II	Insti		nal Design of Local Self-Government 146
		1		Principles and Rights on Allocation of Powers and
				onsibilities 146
			1.1	The Right to a Substantial Share of Basic Powers and
				Responsibilities Rooted in Law 147
			1.2	The Right to Universal Jurisdiction of Local Authorities
			_	Closest to the Citizens 150

2

1.3	The Vertical Subsidiarity Principle as a Double Sided Coin:
	Decentralisation and Re-Centralisation 154
1.4	The Principle of Full and Exclusive Powers and

- Responsibilities 161

  The Duty to Consult as a Principle of Loyal Cooperation 166
- 3 A Limited Right to Territorial Integrity 174
- 4 Freedom of Organisation 181
  - 4.1 The Power to Shape and Adapt Administrative Structures 181
  - 4.2 The Power of Staff-Recruitment and Principles on Conditions of Service 187
- 5 The Right to a Limited Administrative Supervision 191
  - 5.1 Supervisory Procedures Established by Means of Law 192
  - 5.2 Administrative Supervision Confined to Legality 195
  - 5.3 Administrative Supervision Pursuant to Proportionality 199
- 6 Rights and Principles Ensuring Adequate Financial Conditions 202
  - 6.1 The Principle of Adequate Own Financial Resources 204
  - 6.2 The Principle of Concomitant Financing: Mandatory Compensation for Additional Tasks 210
  - 6.3 The Right to Financial Autonomy: Local Taxes and Tax-Rate Fixation 218
  - 6.4 Principles of Diversified and Buoyant Local Finance Systems 224
  - 6.5 The Duty of the State to Establish Reasonable Equalisation
    Procedures 228
  - 6.6 The Right to Consultation for the Establishment of Equalisation Procedures 237
  - 6.7 General Purpose Grants Instead of Earmarked Grants 239
  - 6.8 Taking Out Loans as a Residual Tool of Financing 241
- 7 The Right to Free Cooperation and Association 245 7.1 The Right to Inter-Municipal Cooperation 24
  - 7.1 The Right to Inter-Municipal Cooperation 245
    7.1.1 The Right to Cooperation and the Limits Set to be
    Coerced into it 246
    - 7.1.2 The Right to Enter Interterritorial Cooperation Agreements 252
  - 7.2 Association as a Freedom under the Charter, but not under the ECHR 257

- 8 The Right to a Judicial Remedy 263
  III Conclusions 273
- 4 The Relevance of the Charter for International and Comparative Public Law 281
  - I Advancing Public International Law 281
  - II Establishing a European Constitutional Local Government Law 287
  - III Integrating Different Local Government Models 291

Bibliography 303 Index 330