Contents

Prologue

Contributors Table of Cases Table of Legislation

PART I: NATIONAL REPORTS

1. Report on Belgium

HERVE BRIBOSIA General Introduction

Doctrinal Review

Conditions of domestic applicability Direct applicability Supremacy over conflicting domestic law *Kompetenz-Kompetenz* Contextual observations "Specificity" of European Community law Political and constitutional context Evolution of jurisprudence References XX1 XXIII XXXV

4

4

6

10

21

28

28

29

33

37

41

41

42

50

54

55

71

77

77

79

79

81

V

2. Report on France

JENS PLOTNER

The Reception of the Direct Effect and Supremacy Doctrine by the French Supreme Courts

Doctrinal development of the three supreme courts

Kompetenz-Kompetenz

The Social Context of Legal Change Concerning European Union Law in France

Chronology of the social context The influence of doctrine on jurisprudence

xvi Contents

Doctrine, Jurisprudence and Beyond Doctrinal shifts of the Federal Constitutional Court's jurisprudence and their possible causes The European Courts and national courts Beyond doctrine Conclusions

4. The Italian Constitutional Court and the Relationship Between the Italian Legal System and the European Union

133

133

135

140

MARTA CARTABIA

The theoretical bases of the Italian membership to the European Union

The Italian Constitutional Court case-law concerning the supremacy of European law: from the denial of supremacy to the supremacy under condition

The Italian Constitutional Court case-law concerning the direct effect of European law

The Italian Constitutional Court and the kompetenz-kompetenz principle

The contribution of "*la doctrine*" to the development of the Italian Constitutional Court's attitude towards European integration 142

144

5. Report on Italy 147 P. RUGGERI LADERCHI Introduction 147 148 Beyond the Doctrine The actors—judges 148 The actors—la doctrine 152 155 Cross-fertilisation Looking back at the "Community path" of the Constitutional 157 Court The origin of the Constitutional Court's doctrine: a device used to avoid declaring the EC Treaty contrary to the Constitution 157 Error! Reference source not found—some observations on the

post-Granital case law The problem of competence 166

169

171

172

172

178

6. Report on the Netherlands
MONICA CLAES and BRUNO DE WITTE
The Dutch Sources of the European Court's Doctrine
Direct effect and supremacy of international treaties in
the Netherlands prior to Van Gend en Loos
The influence of the Dutch legal order on the European
Court's doctrine

Contents xvii

The Reception of the European Court's Doctrine in the	
Netherlands	181
The Question of "Kompetenz-Kompetenz"	187
Beyond the Law: the Search for Explanations	188
The traditional openness of the Dutch legal system	188
Separation of powers and the judicial function	190
Judicial empowerment?	191
The comparative dimension as a factor in the explanation	192
Judicial dialogue	193
Legal pragmatism	194

7. Report on the United Kingdom
P. P. CRAIG
Constitutional Doctrine within the United Kingdom: the Impact of the EC
Supremacy: the traditional debate in the United Kingdom
Supremacy and the judicial response prior to *Factortame*Supremacy and the *Factortame* litigation
Supremacy and Community law after *Factortame*Direct effect
Preliminary rulings *"Kompetenz-Kompetenz"*: Practice and Doctrine
Doctrine, Jurisprudence and Beyond
Iudicial identity, national identity and biting the

Judicial identity, national identity and biting the			
constitutional bullet		209	
The balance of power between different branches of	1		
government: the not-so-hidden agenda		212	
Judicial empowerment, national courts and new tasks		216	
The impact of legal culture: the common law method and			
the reception of community law		218	
Judicial discourse: the vertical dimension		220	
Judicial discourse: the horizontal dimension		222	
Individual litigants: national courts and the ECJ		222	
Judicial composition and the role of individual judges		223	
Conclusion		224	

PART II: COMPARATIVE ANALYSES 8. Explaining National Court Acceptance of European Con

Explaining National Court Acceptance of European Court
Jurisprudence: a Critical Evaluation of Theories of Legal
Integration
KAREN ALTER
National Courts: the Critical Intermediaries in Legal Integration
Alternative Explanations of National Judicial Behaviour in
Legal Integration
Legalism: legal logic and legal reasoning as the motor of
legal integration

xviii Contents

Neo-realism: national interests as the motor of legal integration
Neo-functionalism: self-interest as the motor of legal integration
Inter-court competition explanations: bureaucratic politics as
the motor of legal integration
Conclusion: Legal Integration in a Comparative Political
Perspective

234

238

241

246

247

277

281

281

287

293

293

301

305

306

306

308

312

312

317

319

324

325

305

Political support as a pre-condition for continued legal integration?

Preliminary ruling system and the ECJ as a pre-condition for

		continued legal integration?	249
		References	251
- AND REAL	9.	The Role of National Courts in the Process of European Integration: Accounting for Judicial Preferences and Constraints WALTER MATTLI AND ANNE-MARIE SLAUGHTER	253
		Introduction	253
		The Role of National Courts in EC Legal Integration	257
		Judicial preferences	259
		Constraints on the process of legal integration	265
	_	Conclusion	276
P	10.	Sovereignty and European Integration: the Weight of Legal	
, me	1	Tradition	277

BRUNO DE WITTE

Introduction

Sovereignty and the Demands of Community Law: the Development of "Peaceful Coexistence" (1945–1990) Limitation of sovereignty as the constitutional basis of

EC membership

Sovereignty as a limit to the reception of Community law Sovereignty and the European Union: an Unavoidable Conflict? The reassertion of state sovereignty in the aftermath of "Maastricht"

Sovereignty: resilient or obsolete?

11. Constitutional Dialogues in the European Community ALEC STONE SWEET Introduction

Constitutionalising the Treaty System The process of constitutionalising the treaty system Understanding constitutionalisation Constitutional Dialogues: Three Problems of Supremacy Supremacy and the problem of constitutional review Supremacy and the problem of fundamental rights Supremacy and the constitutional limits to integration A preliminary assessment A criticism

Contents xix

Constitutional Dialogues: Supremacy, Litigation and Policy-making325Study the case law of national courts326(Re)-specify judicial interests327Correlate judicial outcomes with factors external to the law329Study the behaviour of litigators330Conclusion330

12. Constitutional or International? The Foundations of the Community Legal Order and the Question of Judicial

Kompetenz-Kompetenz

J. H. H. WEILER AND ULRICH R. HALTERN

13. Epilogue: The European Courts of Justice: Beyond "Beyond Doctrine" or the Legitimacy Crisis of European Constitutionalism 365J. H. H. WEILER

Index

393

1

331

