Contents

LIS	st of Figures	XV
Ta	able of Cases	xvii
	able of Legislation	XXV
Lis	st of Abbreviations	xxix
	DIDEL EUROPIZING CONCERNITURIONIA CONFIL	O.T.
	PART I THEORIZING CONSTITUTIONAL CONFLIC	CT
1.	Introduction	3
	1 Setting the Stage	5
	2 The Judicial Triangle as an Analytical Tool	7
	3 Methods	13
	3.1 Sources	13
	3.2 Definitions and Scope	15
	3.2.1 United Kingdom	16
	3.2.2 Excluded Member States: Finland, Greece, the Netherlands,	
	and Sweden	19
	3.3 Limitations	21
	4 Aims and Outline of the Book	22
2.	Theoretical Framework: Constitutional Pluralism	25
	1 Introduction	25
	2 The Plurality of Pluralisms	27
3.	Constitutional Pluralism as a Descriptive Theory	32
	1 Competing Claims to Ultimate Authority	33
	2 Heterarchy and the Question of the Final Arbiter	38
	3 The Auto-correct Function	46
	4 Analysis of Judicial Vocabulary	49
4.	Constitutional Pluralism as a Normative Theory	56
	1 The Normative Core of Constitutional Pluralism	57
	2 Constructive Constitutional Conflict	59
	2.1 Juízes Portugueses	63
	2.2 FX	64
	2.3 Grossmania	65
	3 Destructive Constitutional Conflict	66
	4 Conclusion	71

PART II THE JURISPRUDENCE

٥.	ltra Vires Review	75
	Introduction	75
	Introducing Direct Effect and Primacy	78
	An Explicit Assertion to the Final Say by the Court of Justice	82
	Expanding the Self-referential System of the Treaties to External	
	Action	86
	Substantive Expansions of the Self-referential System of the Treaties	88
	Claims to Ultra Vires Review of EU Action	94
	6.1 Germany	95
	6.2 The Czech Republic	106
	6.3 Denmark	114
	Rule of Law and Judicial Independence	123
	Conclusion	127
	Lauretten Danier	120
Э.	lentity Review	129
	Introduction	129
	Constitutional Identity	130
	2.1 Constitutional Identity as an Unconditional Limit to the	101
	Primacy of EU Law	131
	2.2 Constitutional Identity as a Conditional Limit to the Principle of	120
	Primacy	138
	2.2.1 Poland	139
	2.2.2 France	146
	2.2.3 Spain	148
	2.2.4 Italy	151
	2.2.5 Portugal	154
	Article 4(2) TEU (the National Identity Clause)	156
	3.1 National Identity as an Expression of Public Policy	160
	3.2 Language as an Expression of National Identity	166
	3.3 Invoking the Invalidity of an EU Act Based on Article 4(2) TEU	168
	Conclusion	169
7.	undamental Rights Review	175
	Introduction	175
	The Common Perspective: The Beginning of Constitutional Conflict	177
	2.1 The Period until 1969	178
	2.2 The Start of the Conflict (the Period between 1969 and 1984)	179
	2.3 The Incremental Accommodation of Conflict	185
	Further Expansions of Fundamental Rights Review by the Court of	
	Justice	187
	3.1 National Measures	188
	3.2 The Scope of the Charter of Fundamental Rights	190
	3.3 External Actors	197

	CONTENTS	xiii		
	4 The Common Perspective after the Charter	200		
	4.1 The Area of Freedom, Security and Justice	201		
	4.1.1 The EAW Framework Decision	202		
	4.1.1.1 Poland	202		
	4.1.1.2 Germany	203		
	4.1.1.3 Cyprus	207		
	4.1.1.4 Czech Republic	207		
	4.1.1.5 Belgium and the Court of Justice's Response	209		
	4.1.1.6 Consequences in Judicial Power Relations	211		
	4.1.2 Balancing Fundamental Rights Protection and the Principle of			
	Mutual Trust Post-Lisbon	215		
	4.2 Data Retention	221		
	4.2.1 Data Retention before National Courts	223		
	4.2.2 Digital Rights Ireland	227		
	4.2.3 Data Retention after the Annulment of the Directive	232		
	5 Conclusion	235		
	PART III CONCLUSIONS			
8.	Judicial Triangles across Case Studies	241		
	1 Ultra Vires Review	245		
	2 Identity Review	250		
	3 Fundamental Rights Review	253		
9.	Three Lessons and a Warning	262		
Bi	bliography	265		
	ıdex			