# Table of Contents

**Chapter 1**  
Introduction: The European Constitution and National Constitutions in the Context of ‘Post-national Constitutionalism’  
_Anneli Albi_  

1. Introduction: Constitution, State and Post-National Constitutionalism  
2. Outline of the Book  
3. A Treaty or a Constitution?  
4. Referendums  
5. The Supremacy Clause  
6. Amendment of National Constitutions in the Light of ‘Multilevel’ or ‘Intertwined Constitutionalism’  

**Part I**  
Ratification of the Constitutional Treaty and the Impact on National Constitutions  

**Chapter 2**  
Ratification of the European Constitution in Lithuania and its Impact on the National Constitutional System  
_Irmantas Jarukaitis_  

1. Introduction  
2. The Constitutional Act on the Membership of Lithuania in the EU
Table of Contents

3. Ratification of the TCE in Lithuania 22
4. The TCE and the National Constitution 24

Chapter 3
Ratification of the European Constitution in Hungary:
Problems and Challenges 29

Jenő Czuczai

1. Introduction 29
3. The 'Reservation' on Minority Rights in the Ratification Act 33
4. Challenges Concerning the Impact of the TCE in Hungary 35
5. Conclusions 37

Chapter 4
The Ratification of the European Constitutional Treaty in Italy 39

Marta Cartabia

1. Ratification as a Matter of Speed in Italy 39
2. Article 11 of the Italian Constitution and the Procedure for the Ratification of European Treaties 40
4. The Main Issues in the Parliamentary Debate 43

Chapter 5
Spain's Ratification of the Treaty Establishing a Constitution for Europe: Prior Constitutional Review, Referendum and Parliamentary Approval 45

Pablo Perez Tremps and Alejandro Saiz Arnaiz

1. Introduction 45
2. The Political and Constitutional Framework 46
3. The Ratification Process 49
   3.1 Constitutional Court Declaration No. 1/2004 of 13 December 2004 49
   3.2 The Referendum of 20 February 2005 52
4. The Pending Questions 54
Table of Contents

Chapter 6
Germany and the EU Constitutional Treaty
Rainer Arnold
1. Parliamentary Consent to the Treaty Establishing a Constitution for Europe 57
2. Constitutional Review of the Act on Approval of the TCE 58
3. The Main Political Debates in Germany Regarding the European Constitution 59
4. Academic Debates on European Constitutional Law in Germany 60
5. Supremacy of Community Law and the Federal Constitutional Court 64

Chapter 7
Belgium: The Lock-through System
Francis Delpérée
1. The Making and Incorporation of the Treaty Establishing a Constitution for Europe 67
2. Review of Constitutionality 71
3. The Nature of the Treaty Establishing a Constitution for Europe 75

Chapter 8
Ratification of the European Constitution in Estonia: A New Constitution for Estonia?
Julia Laffranque
1. Overview of Relevant Constitutional Provisions and Debates in Estonia 79
3. Deliberations at Parliament and the Issue of Referendum 84
4. The Role of the Supreme Court 85

Chapter 9
The European Constitution in the Far North, in a Country Called Suomi
Tuomas Ojanen
1. Introduction 89
2. The Constitutional and Political Context Concerning the European Constitution 90
Table of Contents

2.1 Constitutional Law Background 90
2.2 The Political and Social Context Concerning the Discussion on the European Constitution and EU Membership in Finland 93
3 The European Constitution and its Relation to the Constitution of Finland 95
3.1 The Nature and Content of the European Constitution 95
3.2 The Relationship Between the European Constitution and the Constitution of Finland 97
4 Referendum 97
5 The Relationship Between European Constitutionalism and Finnish Constitutional Law 98

Part II Obstacles to the Ratification of the Constitutional Treaty and Issues for National Constitutions 101

Chapter 10 French Reactions to the Treaty Establishing a Constitution for Europe: from Constitutional Welcome to Popular Rejection 103
Jacques Ziller

1. Introduction 103
2. French Participation in the European Convention and in the IGC: a Strong but Unfocused Presence 104
3. The Decision of the Conseil Constitutionnel on the Ratification of the Treaty Establishing a Constitution for Europe 106
5. Preparation for Ratification of the TCE: Amendments to the Constitution 109
6. French Rejection of the TCE: the Referendum of 29 May 2005 110
7. The Next Steps 112

Chapter 11 The Dutch Constitution, the European Constitution and the Referendum in the Netherlands 113
Leonard Besselink

1 Two Types of Constitution 113
2 The Constitution of the Netherlands 114
3 The Present Constitution and Europe 115
4 Politics and Europe 116
Table of Contents

5. The Referendum 117
6. After the Referendum: The Popular Response 118
7. The Constitutional Explanation 120
8. The Response in Politics 121
9. The Future of the European Constitution 122


Chapter 12
The United Kingdom: A Tragi-Comedy in Three Acts 127
Clive Church

1. Introduction 127
2. The Constitutional Scenery 128
3. Act I: Prior to March 2004 130
4. A referendum entr 'acte 132
5. Act II: April 2004 – May 2005 133
6. Act III: Since June 2005 134
7. Continental Comparisons 135

Chapter 13
Ratification of the European Constitution – Implications for Ireland 137
Gerard Hogan

1. Introduction 137
2. The Irish Constitution 138
3. The Crotty case (1987) 140
4. The Treaty of Amsterdam 141
5. The likely political issues in the Irish referendum 142
6. The supremacy of the European Constitution 144
7. Conclusions 147

Chapter 14
Denmark’s Waning Constitutionalism and Article 20 of the Constitution on Transfer of Sovereignty 149
Hjalte Rasmussen

1. Article 20 and Constitutional Amorphousness 149
2. Referendum Prophesies 153
Chapter 15
Ratification Without Debate and Debate Without Ratification: the European Constitution in Slovakia and the Czech Republic
Zdenek Kühn

1. The Legal and Constitutional Framework
2. Doctrinal Discussions on the Nature of the Treaty
3. Political Debates in the Czech Republic and Slovakia
4. Czech Referendum Debate and the Parliamentary Ratification in Slovakia
5. Constitutional Courts
   5.1. The Czech Constitutional Court
   5.2. The Slovak Constitutional Court
6. The Situation in Early 2006

Chapter 16
The Polish Constitution, the European Constitutional Treaty and the Principle of Supremacy
Adam Lazowski

1. State of Play in Ratification of the European Constitution in Poland
2. The Principle of Supremacy and Surrender Procedures in the Jurisprudence of the Polish Constitutional Tribunal
3. Conclusions

Chapter 17
Sweden’s Possible Ratification of the EU Constitution: A Case-study of ‘Wait and See’
Joakim Nergelius

1. General Constitutional Background
2. The Swedish Handling of the Proposed EU Constitution
3. Theoretical Issues Regarding the European Constitution
# Table of Contents

## Chapter 18
A View from a Candidate Country: Implications for Croatia of (Non) Ratification of the Treaty Establishing a Constitution for Europe 189

*Siniša Rodin and Tamara Čapeta*

1. Introduction 189
2. The Nature of the Union’s Constitutional Order 190
   2.1 The Fragmentary Substance of the European Constitution 191
   2.2 and the Relevance of the Form 192
3. Constitutional Issues of Croatia’s EU Membership in the Shadow of the Treaty Establishing a Constitution for Europe 193
   3.1 Is There a Need for Constitutional Amendment Before Accession? 194
   3.2 The Croatian Constitution and the Problem of Referendum 197
4. Conclusions 199

## Part IV Ratification in Light of the Nature and Content of the Constitutional Treaty and the Instrument of Referendum 201

## Chapter 19
The Treaty Establishing a Constitution for Europe: Some General Reflections on its Character and Prospects for Ratification 203

*Jürgen Schwarze*

1. Introduction 203
3. The Content of the Constitutional Treaty 205
4. Difficulties in the Ratification Process 206
5. Prospects for the Treaty 210
6. Conclusion 212

## Chapter 20

*Peter-Christian Müller-Gräff*

1. Developments Regarding the Overall Institutional Setting 215
   1.1 Overall Institutional Setting 216
   1.2 New Institutional Elements 217
2 Modifications in the Functions of the Institutions 217
  2.1 Basic Continuity in Specific Functions 218
  2.2 Gradual Developments in Abstract Functions 218
3 Novelties in the Composition of the Institutions 220
4 Concluding Remarks 221

Chapter 21
The European Constitution and the Role of National Parliaments: Hard Law Language, Soft Content 223

Philipp Kiiver

1. Introduction 223
2. National Parliaments in the European Union 224
3. The Constitutional Treaty and the National Parliaments 226
  3.1 Article I-46: an Honourable Mention 226
  3.2 Information and Notification Facilities 227
  3.3 A Time Delay for Scrutiny 229
  3.4 The Early Warning System for Subsidiarity 230
  3.5 Simplified Treaty Revision: The Passerelle Veto 232
  3.6 Ordinary Treaty Revision: The Convention Method 233
4. Conclusion 234

Chapter 22
The European Constitution and the Role of National Constitutional Courts 235

Monica Claes

1 Introduction 235
2 The Persisting Areas of Contention 236
3 What Solutions Would the Constitutional Treaty Have Brought? 241
  3.1 A Treaty or a Constitution? 241
  3.2 The Principle of Primacy in Article I-6 242
  3.3 The Charter of Fundamental Rights 243
  3.4 Kompetenz-Kompetenz Remains Unresolved 245
  3.5 The Disappearance of the Pillars 246
4. Non-ratification and the Judicial Constitutionalization of Europe 246
Table of Contents

Chapter 23
Reconciling Widening and Deepening: Enlargement as a Vehicle to Break the Union’s Constitutional Deadlock

Steven Blockmans

1. Introduction 249
2. Absorption Capacity of the EU 250
3. Enlargement as a Casualty of the Constitutional Crisis? 251
4. ‘Privileged Partnerships’ 253
5. Reconciling Widening and Deepening: Can Widening Save Deepening? 255
6. *Obiter*: Revised Procedure for Accession Negotiations 257

Chapter 24
National Referendums in the Process of European Integration: Time for Change

Andreas Auer

1. Introduction 261
2. National Referendums on European Issues 262
   2.1 Legal Nature 262
   2.2 Statistics 263
3. The Three Categories of EU-Related National Referendums 264
   3.1 Accession Referendums 264
   3.2 Integration Referendums 266
   3.3 Enlargement Referendums 268
4. Three Steps Forward 269

Chapter 25
Electorates v. Politicians: The 2005 French and Dutch Referendums on the EU Constitutional Treaty

George Tridimas and Takis Tridimas

1. Introduction 273
2. Progress Towards Ratification of the EU Constitution 274
3. The Merits of a Referendum as a Method of Ratification of the Constitution 277
4. Explaining Why the Referendum and the Parliamentary Outcomes Differ 279
   4.1 Incomplete Information 280
   4.2 Aggregation of Voter Preferences 280
4.3 Differences in the Interests of Voters and Politicians
  4.3.1 Power Against Non-members  282
  4.3.2 Power Against Domestic Opposition  283
  4.3.3 Patronage and Personal Gains  283
  4.3.4 Shifting Blame  284
  4.3.5 Spreading the Costs of Targeted Policies  284
5. Conclusions  285

Chapter 26
Conclusions  287

Jacques Ziller

1 A Pause for Reflection  287
2 Referendums and Ratification  288
3 Other Impediments to Ratification  290
4 No Pause in the Ratification Process  292
5 Intertwined Constitutionalism and Supremacy  293

Appendix: Table of Countries  297

Table of Statutes  301

Table of Cases  305