

1. Record Nr.	UNINA9910451092303321
Autore	Claes Monica
Titolo	The national courts' mandate in the European Constitution // Monica Claes
Pubbl/distr/stampa	Oxford ; ; Portland, Oregon : , : Hart Publishing, , 2006
ISBN	1-4725-6361-1 1-280-80104-2 9786610801046 1-84731-218-7
Edizione	[1st ed.]
Descrizione fisica	1 online resource (818 p.)
Collana	Modern studies in European law
Disciplina	342.24
Soggetti	Constitutional courts - European Union countries Constitutional law - European Union countries Courts - European Union countries Jurisdiction - European Union countries Electronic books.
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references (pages [735]-771).
Nota di contenuto	PART 1: The National Courts as Common Courts of European Law -- 1 Introduction -- 2 Before the West was Won: A Touch of Legal Archaeology -- 3 The Creation of a Community Mandate for National Courts -- 4 The Duty to Review National Law: the 'Simmenthal Mandate' -- 5 Refining the Mandate: Second Generation Issues -- 6 The 'Simmenthal Mandate' Embraced -- 7 About Legal Orders -- 8 The Constitutional Limits of the Judicial Function -- 9 Explaining Acceptance -- 10 Excursion: The 'Costanzo Mandate' of Administrative Authorities -- 11 The 'Francovich Mandate': Jurisdiction to Hold the State Liable for Breach of Community Law -- PART 2: The Court of Justice and National Constitutional Jurisdictions: La Guerre des Juges? -- 12 Introduction -- 13 Introducing the Actors: 'Courts Having Constitutional Jurisdiction' -- 14 La Guerre des Juges? -- 15 Prior Review of the Constitutionality of Treaties -- 16 A Posteriori Constitutional Review of the Treaties -- 17 Preventive Constitutional Review of the Constitutionality of Secondary Law -- 18 Judicial Review

of Secondary European Union Law by National Courts? -- PART 3: The National Courts' Mandate and the Future of the European Union -- 19 Introduction -- 20 Towards a European Constitution -- 21 The Principle of Supremacy -- 22 Incorporation of the National Courts' Mandate? -- 23 Fundamental Rights -- 24 Kompetenz Kompetenz -- 25 Conclusion

Sommario/riassunto

The reform of the European Constitution continues to dominate news headlines and has provoked a massive debate, unprecedented in the history of EU law. Against this backdrop Monica Claes' book offers a "bottom up" view of how the Constitution might work, taking the viewpoint of the national courts as her starting point, and at the same time returning to fundamental principles in order to interrogate the myths of Community law. Adopting a broad, comparative approach, she analyses the basic doctrines of Community law from both national constitutional perspectives as well as the more usual European perspective. It is only by combining the perspectives of the EU and national constitutions, she argues, that a complete picture can be obtained, and a solid theoretical base (constitutional pluralism) developed. Her comparative analysis encompasses the law in France, Belgium, Denmark, the Netherlands, Germany, Ireland, Italy and the United Kingdom and in the course of her inquiry discusses a wide variety of prominent problems. The book is structured around three main themes, coinciding with three periods in the development of the judicial dialogue between the ECJ and the national courts. The first focuses on the ordinary non-constitutional national courts and how they have successfully adapted to the mandates developed by the ECJ in *Simmenthal* and *Francovich*. The second examines the constitutional and other review courts and discusses the gradual transformation of the ECJ into a constitutional court, and its relationship to the national constitutional courts. The contrast is marked; these courts are not specifically empowered by the case law of the ECJ and have reacted quite differently to the message from Luxembourg, leaving them apparently on collision course with the ECJ in the areas of judicial Kompetenz Kompetenz and fundamental rights. The third theme reprises the first two and places them in the context of the current debate on the Constitution for Europe and the Convention, taking the perspective of the national courts as the starting point for a wide-ranging examination of EU's constitutional fundamentals. In so doing it argues that the new Constitution must accommodate the national perspective if it is to prove effective
