

Contents

<i>List of Tables and Figures</i>	xvi
<i>Abbreviations</i>	xvii
<i>Table of Cases</i>	xx
<i>Table of Legislation</i>	xxii
<i>Table of Treaties and Conventions</i>	xxvi

I TOPOGRAPHY AND LAYERED SEDIMENTS

1. Geology of the European Union	3
1.1 The Unseen and Many Layers	3
1.2 The Evolving EU	5
1.3 The Metaphor of ‘Sedimentation’	8
1.4 The Living Constitution	10
1.5 Dark Matter	11
1.6 A ‘Big Bang’ Constitution?	13
1.7 The Phoenix Arises	16
1.8 Mapping the Existing Literature	18
1.9 Out of the Shadow	20
1.10 The Book’s Mission	22
1.11 Structure of this Book	25
2. Externalizing National Executive Power	28
2.1 Locating Executive Power	28
2.2 Executive Power External to the State	29
2.3 The European Union as an International Organization	32
2.4 Vertical Delegation of Powers	35
2.5 Complementarity of Politics and Administration	37
2.6 The EU as an Evolving ‘Political System’	40
2.7 Horizontal Delegation of Powers	44
2.8 Beyond the Visible	46
3. Balancing Executive Power	48
3.1 The Impetuous ‘Vortex’ of Power	48
3.2 The Separation of Powers	49
3.3 A Residual Approach to Executive Power	51

3.4	Checks and Balances	54
3.5	The Balancing of Executive Power	58
3.5.1	The Council of Ministers and the European Council	58
3.5.2	The Commission	61
3.6	Composite Executive Power	65

II TIDES OF EU REFORM

4.	Political Executive Power	69
4.1	The Political Top	69
4.2	The 'European Council': The 'Queen Bee' Directs and Controls	72
4.2.1	A hive of activity	72
4.2.2	President of the European Council	76
4.3	The 'Council of Ministers': An Institutional 'Chameleon'	81
4.3.1	Institutional 'chameleon'	81
4.3.2	The 'presidency': A composite carousel	83
4.3.3	Legislative and executive tasks: Blurring boundaries	85
4.3.4	COREPER, Council, high-level committees, and working parties	87
4.4	The European Commission: A 'normalized' executive	91
4.4.1	The core executive	91
4.4.2	The president (and the commissioners)	92
4.4.3	Number of commissioners	95
4.4.4	A normalized executive	98
4.5	Double-hatted 'Minister for Foreign Affairs'	100
4.6	EU Plate Tectonics	103
5.	Administrative Executive Power	105
5.1	Tides of 'Eurocrats'	105
5.2	The EU Administrative Executive	106
5.2.1	'Core' Eurocrats	106
5.2.2	Seconded national experts	107
5.2.3	National civil servants and (scientific) experts	109
5.3	Executive Rule-making and Autonomy	113
5.3.1	The Commission's evolution as an autonomous actor	113
5.3.2	The evolving role of the Commission Secretariat General	114
5.3.3	The Commission and rule-making with comitology committees	117
5.3.4	The Commission and 'delegated legislation' post-Lisbon	121

5.3.5	Executive tasks and the Council General Secretariat's internal structures	125
5.4	Integration by Stealth?	134
6.	Satellite Executive Power	135
6.1	The Unseen Hands	135
6.2	The 'Independent' European Bank	136
6.3	The Commission Sheds Layers	140
6.3.1	Delegation to private actors	140
6.3.2	Internal delegation to executive agencies	143
6.3.3	The Commission and the 'auxiliary' agencies	144
6.4	Institutionalization of (Quasi-)Independent 'Agencies'	146
6.4.1	The internal acceleration of agency construction	146
6.4.2	The European Parliament struggles for voice	150
6.4.3	EU agencies on a leash?	155
6.4.4	Internal agencies with external powers	158
6.4.5	What's in a name? 'European regulatory agencies'	160
6.4.6	Powers of European regulatory agencies	163
6.4.7	Full speed ahead	165
6.5	Satellite Networks of Actors	166
6.5.1	Shared administration with 'double-hatted' national partners	166
6.5.2	EU networks of actors	169
6.6	The Shadow of Hierarchy	172
III A LIVING EU CONSTITUTION		
7.	Unitary Executive Power	177
7.1	Framing the Living Executive	177
7.2	The Court of Justice Uncovers Normative Unity	179
7.2.1	Depillarization through judicial review	179
7.2.2	The evolving nature of EU legal instruments	184
7.3	The Court of Justice as Constitutional Geologist	187
7.3.1	Judicial tunnels	187
7.3.2	Defending internal constitutionalism from external challenges	194
7.4	Internal and External Autonomy	201
8.	Transparent Executive Power	204
8.1	Lifting the Veil of Secrecy	204

8.2	Conceptualizing the EU Principle of ‘Transparency’: Legal constitutionalism	205
8.2.1	The veil of secrecy	205
8.2.2	The general legal principle of reasoned administration	206
8.2.3	Proactive litigants and courts	209
8.2.4	Union legislation consolidates	210
8.2.5	The legal–constitutional approach	213
8.2.6	Comparing apples and oranges	215
8.3	Operationalizing the EU Principle of ‘Transparency’: Institutional politics	218
8.3.1	The role of the Internet	218
8.3.2	Digital registers and core executive institutions	220
8.3.3	Commission register(s) of documents disappoints	222
8.3.4	Council register evolves	228
8.4	The Inter-institutional Strategy	233
8.4.1	Inter-institutional dialogue	233
8.4.2	European Parliament and the European Central Bank	235
8.5	Shifting Fault Lines	237
8.5.1	Open meetings of the Council of Ministers	237
8.5.2	Closed ‘trialogue’ meetings with the European Parliament	239
8.5.3	Information in EU databases	241
8.6	Authoritarian Temptation	244
9.	Accountable Executive Power	246
9.1	Conceptualizing Accountability	246
9.2	Understanding ‘Public Accountability’ in the EU Political System	248
9.2.1	‘Control’ <i>ex ante</i>	248
9.2.2	‘Public accountability’ <i>ex post</i>	252
9.3	The Provision of Information	256
9.4	Debate and Deliberation	258
9.4.1	Public deliberation	258
9.4.2	The European Parliament deliberates	260
9.4.3	The role of the courts	265
9.4.4	The role of the Court of Auditors and the Ombudsman	270
9.5	Sanction and/or Consequences	271
9.6	An Organizing Principle, not a Meta-norm	274

10. Making Visible the Invisible	277
10.1 The 'Invisible' Constitution	277
10.2 Dark Matter: Invisible layers	279
10.3 Inter-institutional Engineering	281
10.4 Executive Power and Fostering 'Legitimacy'	283
10.4.1 Formal and social legitimacy	283
10.4.2 Input and output legitimacy	285
10.4.3 Throughput legitimacy	287
10.4.4 From participation to procedures	289
10.5 EU Executive Power and Alleviating the 'Democratic Deficit'	291
10.5.1 The 'democratic deficit'	291
10.5.2 Policy without politics?	292
10.5.3 Politics without policy?	294
10.6 From Active Responsibility to Active Accountability	298
10.7 The End of the Beginning	300
<i>Bibliography</i>	305
<i>Index</i>	339