In May 2004 the European Union underwent what may arguably be considered to be its most important round of enlargement to date, both in terms of numerical and symbolic significance to the ongoing project of European integration. The absorption of ten new Member States, largely drawn from the former Soviet bloc, represented a new Easternisation of the EU from its traditional emphasis upon long-standing Western European diplomatic powers, to the incorporation of a number of states with often tragic and turbulent Twentieth Century experiences. In many of these new Member States a short but hugely eventful transition from a totalitarian system to one addressing both indigenous and “EU” values emerged between the fall of the Iron Curtain and the 2004 enlargement. The story of the tectonic shifts in the legal, political, administrative, judicial and social landscapes within these individual jurisdictions in only now beginning to emerge in full. A valuable and significant addition to the corpus of transition literature is Anneli Albi’s EU Enlargement and the Constitutions of Central and Eastern Europe.

The evolution of the key domestic legislative framework to facilitate the formal acceptance of the EU acquis is a gargantuan, multi-faceted and multi-jurisdictional tale and one for which a comparative analysis is often elusive, given the broad range of national legal cultures and conditions experienced within the 2004 enlargement states. Nevertheless, perhaps the one common legal root for all the various accession countries in which a broad comparative appraisal may be attempted lies in the evolution of the constitution, which each of the nations in question – especially those of the newly independent Baltic States – held particularly dear. In this deft and engaging analysis, Anneli, an Estonian scholar and now senior lecturer in law at the University of Kent, presents a snapshot of the transition process as encapsulated in the necessary amendment of the various national constitutions of the states in question.
EU Enlargement and the Constitutions of Central and Eastern Europe comprises ten substantive chapters, complemented by an “epilogue” and a host of appended primary materials. The book opens with a concise chapter outlining the broad conditions of the accession process, which provides a brief backdrop to the motivations inherent within the Central and Eastern European (CEE) nations in joining the EU and an outline to the history of the accession process. Chapter 2 then moves on to examine constitutional adaptations within the earlier Member States, observing the broad models followed by previous entrants, with the honourable exception of the UK which lacked (and still does) a formal written constitution to amend and for which European Economic Communities Act has served primarily as the key accession document. In this respect, Albi argues that a series of broad models of constitutional adjustment may be observed in previous EU entrants – primarily dependent upon whether an explicit provision on the delegation of powers to the EU was incorporated into the national constitution, or whether the basic position regarding membership of international organisations was used instead. In other cases, modification of these clauses was required to address specific powers of the EU. In reviewing the historical membership issues experienced in earlier entrants, Albi nonetheless determines that there was no one common denominator that might be used as an indicative guide or template for newer entrants or aspiring entrants. This is perhaps not so surprising, giving the wide range of jurisdictions reviewed and the prevailing national conditions at the point at which the various Member States joined the EU. Nonetheless, Albi’s observation that there has been a steady and almost involuntary Europeanisation of constitutional provisions, reflected in periodic amendment to reflect shifting policies and competences inherent within an increasing degree of integration (page 17) is worthy of note and reflects something of a trend towards a stronger degree of national recognition of the integral role of EU membership within key legislation.

Having determined in Chapter 2 that previous practice has proved to be of limited guiding value to observers of the constitutional contortions of new and aspiring entrants, Albi moves on in Chapter 3 to note that the CEE nations were also subject to constitutional idiosyncrasies that are not generally present in older Member States – with the possible exception of Spain and Portugal. In this respect, Albi observes that many of the CEE states have experienced a traumatic and turbulent period of constitutional development within the Twentieth Century with the imposition of Com-
munism (and, in the case of the Baltic States, annexation by the Soviet structure) followed by a transition to democracy and a return to an emphasis upon national legal values. To this end, although a constitution remains a fundamental legal expression of national identity and values in any state, those of the CEE were viewed as being particularly cherished in the sense that they enshrined fundamental rights and the concept of nationhood in a manner that had been primarily illusory under the previous arrangements. In this respect, at the drafting stage such documents made specific mention of the vital importance of sovereignty and of independence. Allied to this, as Albi observes, few such instruments were well adapted to the demands of the European Union in transferring large swathes of sovereignty to a supranational organisation, which was rather reflective of the traditional – and well-earned – distrust of external conglomerates, given the experiences of the Twentieth Century. Accordingly, Albi observes that many of the CEE constitutions were inherently different to those of earlier EU entrants, requiring particularly demanding hurdles to be crossed in order to permit sweeping amendments of the type required under the accession process. One can only speculate on the individual motivation of the drafters, but this is a highly revealing insight into the prevailing viewpoint at the material time regarding the utility and trustworthiness of international and regional instruments to the new CEE governments following the fall of Communism.

Having established the broad conditions governing the constitutional background of the CEE countries, Albi considers the next important step in the accession process – the development of a programme of harmonised legislative activity within the jurisdictions in question and the growing adaptation of national laws to dovetail with those of the EU. This process, often rather patronisingly dubbed by some commentators as “Europeanisation”, an unfortunate term that invokes unpleasant comparisons with the “civilising” missions of European colonial powers, is one of the most fascinating areas of modern transition studies from a legal standpoint. It is also one of the most unexplored, by dint of the vast nature of its subject matter – it is simply not possible to address the entire harmonisation process across the sprawling areas of sectoral activity that constitutes the EU acquis. With these practical impossibilities in mind, Albi focuses on the broader aspects of the various Europe agreements signed with the candidate states in the early stages of the accession process, which provides the primary legal basis for the formalised relationship between the two entities in question.

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this respect, Albi begins with an outline of the legal effect of these instruments, namely its direct effect and direct applicability, an issue upon which there appears to have been surprisingly little case-law on a national level.

As Albi observes, the acquis for which the CEE countries were required to adopt was significantly broader than that which had characterised previous enlargements. On one level, this reflects the significant inroads that EU law has made in the fields of social affairs, justice, financial issues and external policies that were rather more embryonic at earlier points in the integration project. This was also a far from painless process, with nuclear safety concerns resulting in the closure of power plants in four different countries, while a series of novel requirements, such as effective implementation and the almost quaint, but practically onerous condition of good neighbourliness made the 2004 accession a more intensely pressurised process than perhaps its predecessors. In outlining this process, Albi notes a striking paradox in respect of the participation of the CEE states. In this respect, during the early part of the implementation of the acquis, the CEE states undertook a process of almost blind adherence to the EU standards, in the sense that national legislators were required to incorporate legal standards and policies in which they had had no previous participation. This created further concerns in respect of the traditional democratic deficit of the EU, in that the CEE states were treated as parties with regard to live obligations arising from the EU acquis, but had no formal input into the substance or range of these obligations. As Albi notes, this changed dramatically in 2002 when the candidate countries were granted access to participate in debates concerning EU internal affairs, a position that thereby permitted these states to finally exercise a degree of influence over the precise direction of the legislation that they were required to incorporate as such an integral part of the accession process.

Following this review of the harmonisation process, Albi proceeds to consider in Chapter 5 what she deems to be the “centre of gravity” of this work, namely the formal adaptations of the constitutions of the CEE states. In this respect, Albi adopts a useful approach in taking each individual state in turn, detailing the individual circumstances of national constitutional reform and shedding light on the challenges incumbent within the process. In this respect, Albi notes that the amendment process was far more protracted in certain states than in others, where the legal landscape – and,
on occasion, public opinion – was far less conducive to a swift and expedient adjustment of this key legislative provision. Albi observes that Slovakia, the Czech Republic and Slovenia were the first of the CEE states to take the requisite steps – although considerable difficulties of constitutional interpretation were encountered throughout the process – while the constitution of Poland, of all the states in question, was perhaps the most prepared for a swift incorporation of the necessary amendments. Albi observes that the sternest resistance and greatest legal difficulty was encountered primarily in the Baltic States, where the threat of post-Soviet annexation had been purportedly dispelled with a rigorous and highly demanding series of constitutional roadblocks to any attempted devolution of national sovereignty. These difficulties were heavily compounded in Estonia and Latvia by a strong undercurrent of Euroscepticism, for which a series of ingenious solution were required. As Albi observes, the Riigikogu largely by-passed these difficulties by introducing a supplementary Constitutional Act as opposed to formally introducing swingeing changes to the Constitution itself, thereby permitting Estonia to implement the necessary legislative conditions without crossing the psychological Rubicon of a full amendment to the original document.

In her assessment of the process as a whole, although noting that the diverse and sometimes Quixotic practices of the CEE countries rather undermines attempts to establish a series of overarching principles to the amendment process within these jurisdictions, some key unifying features are still nonetheless apparent. Most ostensibly, political realities within the CEE countries had a strong impact on the final scale of constitutional amendment, which was ultimately surprisingly minimal given that a number of the states in question exploited existing provisions regarding accession to international organisations, as opposed to engaging in an attritional and politically corrosive exercise in wheel reinvention. In this respect, Albi considers the constitutional revolution that constitutes the accession process to be one essentially characterised by minimalism and a latent commitment towards fuller legislative changes at a more expedient point in the post-accession landscape.

The remainder of the book encompasses a series of concise chapters advancing insights into the accession process. The Chapter on referendums is particularly illuminating. Given the considerable Euroscepticism that lingered throughout the region in the years immediately prior to accession,
this process was a necessary undertaking fraught with political risk – both to the political elites seeking to convince a population as to the merits of EU membership, as well as to the Eurocrats keen to preserve the smooth development of the integration project. The parallels with the tortuous passage of the Lisbon treaty in recent months are ironically clear in this regard. Additionally, Albi devotes a concise degree of attention to the role of accession to other key international organisations and units – outlining the importance to the CEE states of membership of NATO and the Council of Europe respectively – while noting that growing pains may be experienced within the various Constitutional Courts when faced with conflicting provisions of EU law. The volume closes with an appraisal of the (then) nascent Constitutional Treaty and a broad epilogue. In this respect, Albi concludes that the striking experience of the CEE countries in acceding to the EU has a number of key implications. In the first instance, she notes that the process has asked interesting questions regarding the popular conception of the role of a constitution, noting that in CEE countries at least, the concept of sovereignty remains an integral issue. Albi further concludes that the political factors have loomed exceptionally large in the accession process and that the constitutional journey undertaken by many of the states was deeply unpopular with considerable sections of national society. The preceding discussion leads Albi to conclude that the very concept of constitutionality may be considered to be in transition, with the demands placed on new constitutions in the unique crucible of the EU system demonstrating a clear set of lessons for those keen to pursue a particular constitution for the Union itself.

Overall, EU Enlargement and the Constitutions of Central and Eastern Europe is a fascinating review of the unique legal history that accompanied the transitional stage towards accession in a number of key jurisdictions. The challenges and historical backgrounds to this exceptionally pressurised task are vividly told and Albi has an engaging and very thorough style, as well as an impressive empathy for and understanding of the unique position within a variety of disparate jurisdictions. Those with an interest in constitutional theory and the accession process will find a veritable goldmine of information and analysis within this well-written, well-argued and concise review. In sum, this is a fine book indeed, and ought to be considered both a benchmark and a starting point for any serious future study on this emotive and important aspect of constitutional change and European integration.