

1996 INDEX

- Access to Community information, 563–569
 - Kingdom of the Netherlands v. Council of the European Union*, 563–569
 - decision of Court of Justice, 565–566
 - legal arguments, 564–565
 - minimalist approach of court, 566–567
 - opinion of Advocate General, 567–568
- Access to justice, 271–292
 - Anglo-German comparison, 271–292
 - case load, 273–278
 - cost of going to law, 280–285
 - cost of litigation in Germany, 282
 - courts, 273–280
 - criminal proceedings, 287–288
 - fee scales, 281–284
 - Green Form Scheme, 286
 - judiciary, 278–279
 - legal advice, 285
 - legal aid, 285
 - legal aid for litigation, 288–290
 - legal expenses insurance, 285
 - plaints before lower courts, 275
 - plaints plus written summary proceedings, 276
 - time factor, 279–280
- Advertising
 - constitutional rights, and, 668–669
- Article 173 EC, 127–156
 - general Community measures, and, 127–156
 - general test of ‘individual concern’, 132–152
 - absence of economic analysis in determining individual concern, 141–142
 - abstract terminology test for regulations, 136–140
 - anti-dumping law, 143–146
 - Codorniu* case, 148–152
 - competition law, 146–147
 - complaints, 133–135
 - European Parliament, 147–148
 - exceptions to orthodox approach, 142
 - participation cases, 136
 - problems encountered by European Court, 133–152
 - retroactivity, 133–135
 - traditional instances, 133
 - legal position post-*Codorniu* regarding individual concern, 152–155
 - legal position prior to *Codorniu* case, 129–132
 - locus standi*, and, 127–156
- Article 177, 375–391
 - limits to right to refer, and, 375–391
 - preliminary ruling, 375–391
 - procedure, 376–377
 - reference by national court, 377–378
 - referrals manifestly inadmissible for lack of necessary information, 385–388
 - when national court may not refer, 379–390
 - Dias*, 383–385
 - early years, 379
 - Foglia v. Novello I*, 379–380
 - Foglia v. Novello II*, 380–382
 - implications of *Foglia* judgments, 382–383
 - Leclerc-Siplec*, 388–390
 - Meilicke*, 383–385
 - when national court must refer, 378–379
- Austria
 - environmental protection and the Constitution, 1–7
 - fundamental right, 2–3
 - impact on executive and judicial branch, 5–6
 - programmatic provision, 2–3
 - reasons for constitutionalization, 2
 - solution, 5
 - statement of public policy, 4

- Belgium
 - civil liability of Ministers, 10–14
 - criminal liability of Ministers, 10–14
 - political responsibility of Ministers, 8–10
- Citizens' Europe, 335–336
- Company investigations, 47–61
 - challenging, 52–54
 - competing criticisms, 50
 - Fayed v. UK*, 47–61
 - conduct of investigation, 55
 - contesting inspectors' findings, 56–57
 - evaluating judgment, 57–60
 - policing corporate misbehaviour, 49
 - UK, 47–61
- Comparative constitutional engineering, 329–331
- Constitutional policy, 477–479
- Denmark
 - impeachment case against former Minister of Justice, 167–172
 - legal ministerial responsibility, 167–172
 - existing rules, 167–168
 - future of, 171–172
 - Tamil* case, 168–171
- EC air transport, 453–476
 - air traffic distribution, 472–473
 - cabotage, 471–472
 - competence and legal base, 465–469
 - external relations, 453–476
 - case for Community policy, 459–464
 - coherent strategy, 462–463
 - Community policy, 458–464
 - developing Community asset, 463
 - legal certainty under Treaty, 460–462
 - purposes of Community policy, 458–459
 - regional development, 464
 - Treaty objective, 459
 - international air transport and Treaty of Rome, 456–457
 - international legal personality, 469–471
 - progress towards Community policy, 464–476
 - rationality, 474–476
 - subsidiarity, 473–474
 - self-executing provisions, 103–125
 - expertise, 104–109
 - Irish approach compared, 117–124
- England
 - Nolan Committee, 173–177
 - Scott Report, 177–181
- Environmental protection
 - international law, and, 161–163
- European citizenship, 517–529, 611–633
 - European Parliamentary Election voting rights, 617–619
 - First Annual Report of European Ombudsman, 517–529
 - idea of, 619–630
 - local municipal election voting rights, 615–617
 - political rights, 611–633
 - Treaty on European Union, 613–614
- European labour law, 663–665
- European Ombudsman, 517–529
 - access to information, 522
 - citizens' rights, 524–525
 - enforcement of findings, 527–528
 - First Annual Report, 517–529
 - good administration, 525–527
 - informality, 523–524
 - jurisdiction, 520–521
 - maladministration, 519–520
 - openness, 522–523
 - optional MEP filter, 521–522
 - remedies, 527–528
 - role of European Parliament, 527–528
 - speed, 523–524
 - transparency, 522–523
- European Union
 - coherent constitutional system, 81–101
 - Association of Member States, 84–86
 - balance of powers, 90–92
 - constitution, meaning, 81–82
 - constitutional principles laid down in TEU, 87–89
 - democracy, 90–92
 - efficiency, need for, 92–94
 - EU as 'Masters of the Treaty', 84–86
 - free competition, principle of, 94–96
 - full judicial protection of individual rights, 96–98
 - internal market, principle of, 94–96

European Union, *cont.*

- coherent constitutional system, *cont.*
 - methods of making legislative function
 - more efficient and transparent, 98–100
 - notion of ‘state-people’, 82–84
 - separation of powers, 90–92
 - subsidiarity, 90–92
 - transparency, need for, 92–94

Extradition law, 157–159

Finland

- constitutional rights, 186–192
 - administration, and, 188–192
 - background, 186–188
- public law, 182–193

France

- administrative liability, 337–343
 - degrees of fault, 340–341
 - fault, 338–340
 - no fault liability, 341–343
- constitutional reform, 344–347
- Ninth and Tenth Revisions of
 - Constitution, 531–542
 - larger legislative domain, 537–539
 - Parliamentary agenda, 536
 - Parliamentary immunities, 536–537
 - Parliamentary questions and motions
 - of censure, 536
 - Parliamentary sessions, 535
 - power of people’s representatives, 534
 - power to Parliament, 540–542
 - scrutiny of Government, 535–537
- revision of Constitution, 533–534

Freedom of information, 635–661

- Australia, 647–650
- Canada, 646–647
- courts, and, 659–660
- dispute resolution procedures, 635–661
- external review, 652
- France, 637–639
- Information Commissioner, 655–657
- internal review, 651–652
- Ireland, 643–644
- New Zealand, 650–651
- Ombudsman, 652–655
- Sweden, 636–637
- Tribunal, 657–659

UK, 639–643

USA, 644–646

Germany

- asylum cases, 493–498
 - constitutionality of Human Dignity
 - Clause, 494–495
 - judicial remedies, 495–496
 - major charges 1993, 493–494
 - safe countries of origin, 496–497
 - safe third countries, 495–496
 - transit areas at airports, 497–498
- constitutional jurisprudence, 237–269
 - beyond doctrine, 432–435
 - competence of EU, 259–260
 - decision on adhesion to European
 - Union, 253–255
 - doctrinal matrix, 239–242
 - doctrinal shifts of Federal
 - Constitutional Court’s
 - jurisprudence, 243–267
 - entry of monetary union, 262–267
 - European Court, 413–431
 - European integration, and, 237–269
 - interpreting Treaty of Maastricht to
 - avoid *Kompetenz-Kompetenz*, 259
 - interpretation of Article 24 para. 1,
 - 246–253
 - Kompetenz-Kompetenz*, 255–259
 - legal background, 239–241
 - Maastricht* decision, and, 241–242
 - nature of EC law, 243–246
 - protection of human rights, 246–253
 - ultra vires* acts, 255–257
 - withdrawal from Maastricht Treaty,
 - 260–262
- East German advocates, 491–492
- Federal Constitutional Court’s
 - ‘cooperative relationship’ with ECJ,
 - 413–415
- Federal Constitutional Court last
 - instance in disputes on foreign
 - relations politics, 416–417
- freedom of religion in Bavarian public
 - schools, 485–487
- impact of *Maastricht* decision, 434–435
- interplay of Community and national
 - law, 418–423

Germany, *cont.*

- Maastricht and aftermath, 433–435
- Maastricht decision, 428–431
- party prohibition procedure, 490
- public law jurisprudence, 485–499
- religious slaughtering of animals, 487–488
- respect of parental rights and adoption, 498
- Solange I*, 423–426
- Solange II*, 426–428
- Solange III*, 428–431
- 'soldiers are murderers', 488–490
- tax on assets, 492–493

Greece

- functions of Republic, 349–351
 - executive, 349
 - judicial function, 350–351
 - legislative, 349–350
- international law, 352
- public law, 348–352

Human rights, 327–328

- Eastern Europe, 666–667

Hungary

- Act on Arbitration, 17
- Constitution, 19–20
- new law, 17–18
- procedure for public administration, 23
- public administration, 19–24
 - decision of representative body, 23
 - decisions, 23–24
 - judicial remedy, 23
 - public prosecutors, 17–18
- rules of local government, 20–22

Indirect effect of EC Directive, 71–79

- national laws subject to, 72
- position where no relevant national legislature, 73
- words of national legislation distorted to reflect Community law, 73–77

Intergovernmental Conference 1996,

543–562

- UK approach, 543–562

Ireland

- aftermath of *McKenna* judgment, 31–33
- judicial review of executive decisions,

- review of power to commute fines and punishments, 26–27
- use of public monies to fund referendum campaigns, 27–31

Irish Constitution

- self-executory provisions, 103–125
- EC approach compared, 117–124
- experience, 110–117

Israel

- administrative law, 194–200
 - broadcasting scope of judicial review, 197
 - decline of prudential doctrines, 196
 - fora, increasing availability of, 199–200
 - foundations, 195–196
 - remedies, increasing availability of, 199–200
 - role, 195–196
 - scrutiny of administrative action, 197–199

Bank Hamizrahi v. Kfar Chitufi Migdal and Others, 225–235

- Justice Cheshin's negative view, 234–235

- Knesset considered as Constituent Assembly, 230–233

- President Shamgar's view, 233–234
- ruling in, 230–235

- sovereignty of Knesset, 233–234
- two hats theory, 230–233

basic laws, 225–235

- status before *Bank Hamizrahi* case, 228–229

constituent power, 225–235

- judicial review of statutes, 225–235
- protected laws

- subsequent amendments, 227–228

Italy

- administrative machinery, 356–360
- annual Community Act, 354–356
- European role of Parliament, 354–356
- policy coordination, 356–360
- public works procurement, 209–218
 - achieving greater control over, 214
 - Authority, 214
 - award procedures, 213–214
 - conference of services, 216–217
 - dispute settlement procedures, 217–218

- Italy, *cont.*
public works procurement, *cont.*
General Coordinator, 216
new regime of exclusions, 215
new subjects, 212–213
new types of contracts, 211–212
normative framework, 210
official responsible for procedure, 216
provisions which aim to simplify
procedure, 215–216
scope of application of new law, 211
'spirit' of the law, 210–211
- Minority rights, 160
- Netherlands
consistent interpretation of national law,
219–224
background, 219–220
Dutch courts on wrong track, whether,
222–224
interpreting national law in light of EC
Directives, 221–222
three judgments, 220–221
constitutional law, 34–39
direct effect, 34–39
European integration, and, 34–39
priority, 34–39
- Northern Ireland
constitution, 201–207
direct rule, 205–207
historical background, 201–202
Government of Ireland Act, 1920,
203–205
- Poland
local government after reforms of 1990,
393–400
communes, 395–396
local government assembly, 398–399
municipal councils, 399–400
municipalities, 395–396
political and constitutional
background, 393–394
public authority system, 396–398
- Portugal
prior hearing for interested parties,
500–507
Code of Administrative Procedures,
502–506
constitutional requirements, 500–502
contents, 503
improper omission, 505–506
persons who should participate, 504
secondary or second degree
procedures, 505
situations not requiring, 504–505
time for, 503
types of activity covered, 502–503
ways of proceeding, 503
- Proportionality, 401–411
decisions that fail to strike fair balance,
408
EC law, 402–403
English law, 406–409
margin of appreciation, 403–406
onerous or oppressive decisions, 407
requiring less restrictive alternative,
408–409
- Right of access to Community information,
363–374
administrative procedure, and, 371–372
Code of Conduct, 363–374
Community administrative system, and,
372–373
decision of Court of First Instance,
366–368
implications for administrative
development, 363–374
legal arguments, 364–366
transparency, and, 370–371
- Russia
appointment of judges, 511–512
citizens' appeals, 508–510
democracy, 69–70
Duma elections, 65–67
election time, 63–70
Federation Council, 63–65
gaps in constitution, 514–516
improvements in courts, 508–513
local elections, 67
presidential election, 68
President Yeltsin's health, 514–516
security of tenure of judges, 512–513
status of judges, 512–513

Schengen Agreements, 332–334

Scotland

local government reform, 40–45

Act of 1994, 42–43

background, 40–42

consultation process, 43–44

Sexual orientation

human rights, and, 482–484

Sustainable development

international law, and, 164–165

UK

approach to Intergovernmental

Conference 1996, 543–562

background, 544–548

bringing Union closer to citizens,
549–550

entry into EEC, 546

institutional reform, 551–553

key issues, 548–557

legislative reform, 553–554

making intergovernmental pillars more
effective, 555–557

next British General Election, 560–562

preparing for enlargement, 550–554

solutions in flexible Europe, 558–560

Treaty of Rome, 545

implementation of EC law, 480–481

Parliamentary scrutiny of UK

convergence programmes, 437–451

Community procedures, 445–447

debates under section 5, 442–445

European Communities (Amendment)

Act 1993, 440–442

post-Maastricht application of

Community procedure, 449–450

UK convergence programmes,

447–449

United States

ACUS's coordination function, 598–599

ACUS's legacy, 605–608

ACUS's statutory mandate, 582–583

Administrative Conference, 571

accomplishments, 584–593

civil money penalties, 587–589

design, 579–582

mega study, 586–587

negotiated rule-making, 589–592

path to creation, 578–579

philosophical roadblocks, 594–596

race to courthouse, and, 597–598

stemming litigation crisis, 592–593

taking politics out of process, 593–594

Administrative Procedure Act, 575–578

Contracts Dispute Act, 596–597

creation of administrative system,
572–575

demise of ACUS, 599–605

freedom of speech, 293–326

actual malice standard, 307

balancing protection, 302–304

campaign commercials, 300–301

campaign speech, 310–315

considerations justifying restrictions,
on campaign speech, 308–310

content-based restrictions, 296–299

content-neutral restrictions, 296–299

delimitation, 296–301

enforcement of restrictions, 299–300

honour, 301–307

manner restrictions, 315–320

negative campaigns, 320–326

official conduct, 304–306

opposing considerations justifying,
301–326

place restrictions, 315–320

political candidates as public officials,
304

privacy, 301–307

public law considerations, 308–326

public law provisions, 307

regulation of political campaigns,
293–326

state action problem, 296

time restrictions, 315–320

re-emergence of ACUS, 609–610