

Subject Index

A

The Area of Freedom Security and Justice (AFSJ), 759–787

balancing mechanisms, 775–777

democracy, 780

ECtHR and implications, 780–781

integration areas and policy, 781

Lisbon Treaty and constitutional changes, 781

margin of appreciation and

implications, EU law, 777–786

applications, proportionality, 786

area, 777–778

consequences, 786–787

coordination with national courts, 782–786

ECHR, 778–780

policy, 786

and security, 780–782

principle of proportionality, 763–765

Charter of fundamental rights, 767–769

creation, mutual trust, 764

criminal law cooperation, 769–772

EAW framework, 764–765

EU LAW, 765–767

Lisbon Treaty, Art. 82 TFEU, 763

and migration law, 772–775

mutual recognition, 763–764

stages and setting, 761–762

structure, 781

TFEU, Art. 67, 781

Austrian state liability law, 51–59

Article 137 Federal Constitutional Law (B-VG), 54–55

Austrian system of legal protection, 52–53

EU state liability, 52–53

Supreme Court of Justice, 52

controversial issues, 55–59

legislative misconduct, 55–56

obligation to refer for preliminary ruling, 58–59

Supreme Courts, 57

ECJ case law, 51

jurisprudence of Austrian

Constitutional Court, 51

public liability, 53–54

Axa v. Lord Advocate, 61–71

Acts of the Scottish Parliament (ASPs), 67

In AXA General Insurance Ltd & Others v. The Lord Advocate & Others, 61

decision of the Supreme Court, 65–67

decisions in Scotland, 63–65

Acts of the Scottish Parliament (ASPs), 64–65

asbestos-related conditions

(Scotland) Act 2009, 63–64

GCHQ case, 65

Jackson v. Attorney General, 65

European Court of Human Rights
system, 70
Human Rights Act 1998 (HRA),
67–68
Lord Hope and Lord Reed's
comments, 68–70
parliamentary democracy, 70–71
pleural plaques, 62
*Rothwell v. Chemical & Insulating Co
Ltd*, 62–63
Scotland Act 2009, 61
UK Constitutional law, 62
*Wright v. Stoddard International Plc &
Anor*, 63

C

The Constitutional bases of EU
integration in France, 525–554
bloc de constitutionnalité, 527
constitutional developments, after
World War II., 526
divergent approaches, 527
individual legal provisions, 527–537
compensation, loss of competences,
Art. 88–4, 536
Conseil Constitutionnel to scrutinize
international undertakings, Art.
54, 529
control of subsidiarity, Lisbon
Treaty, Art. 88–6, 537
ECJ's ruling, 530–531
eventual accession, Art. 88–5,
536–537
international agreements, Art.
61(2), 529–530
municipal elections, Art. 88–3,
535–536
national sovereignty, Art. 3,
528–529
obligation, Art. 88–1, 532–535
preamble and declaration, 1789,
527–528
relationship, Art. 55, 531–532

review, Art. 61, 529
simplified revision procedure and
modification, civil matters, Art.
88–7, 537
transfers of powers, Art. 88–2, 535
judiciary's approach, 526–527
limitations, 538–545
barriers, 538–540
fundamental conditions exercising
of national sovereignty, 540–543
primacy of EU Law, 543–545
reciprocity, 543
transfer of competences through
treaty amendments, 537–538
yardstick, 538
national identity, 525
relationships, national and EU law,
551–554
barriers, 552
implementation of directive,
553–554
judicial re-orientation, 553, 554
legal order, 551
limits, 552
primacy of EU law, 551, 552
scrutiny of secondary law, 553
transfer of competences, 552
scrutiny of secondary legislation,
ultra-vires doctrine, 546–551
Conseil Constitutionnel, 546–549
Conseil d'Etat, 549–551
structural principles, 525
Constitutional Court of the Czech
Republic (CCCR), 271–280
Articles 3(1) and 10 of Regulation
1408/71, 273–274
Czech pensioners, 272
European Court of Justice (ECJ),
277–278
in case *C-399/09*, 278
explicitly states in *Landtová*,
277–278
insensitively, 278

- judgment, 271
 - Landtová* judgment, 277
- issue of payment, 273
- Landtová*, 272, 274, 279, 280
- personal reflections, 278–279
- Slovak pensions, 271
- Slovak pensions constitutes
 - discrimination, 271
- and the Slovak Republic, 272
- Supreme Administrative Court (SAC), 272–273
- ultra vires doctrine, 274–277
 - ECJ, 276–277
 - federal social security relationships and claims, 275
 - Flemish Welfare Aid* case, 274–275
 - internal Czechoslovak social security relationships and claims, 275–276
 - Regulation applies, 277
 - SAC, 276
- Constitutional dialogue between courts and legislatures in the EU, 369–396
- activism, 395
- Atlantic, 372–375
 - Canadian government, 373
 - judicial review in democratic polity, 372
 - Section 33 of the Charter, 373–374
 - United States, 374–375
 - US context, 372–373
- benefit, 375–384
 - Article 19 of the Treaty on European Union (TEU), 375
 - Article 263 of the Treaty on the Functioning of the European Union (TFEU), 375
 - judicial activism, 376
 - mediating different traditions of judicial review, 377–378
 - in the North American context, 376–377
 - political and functional diversity, 378–381
 - the role of the court under an expanded European project, 382–384
 - Union's political institutions, 376
 - 'constitutional' in nature, 370
 - descriptive and normative label, 369
 - developments in EU law, 370
 - the European Court of Human Rights (EctHR), 395–396
 - EU's governing Treaties and institutions, 371
 - feasibility, 384–394
 - the Canadian context, 385
 - competence to legislate and the jurisdiction, 386–388
 - Court, 385
 - institutional conditions, 384
 - political branch, 384
 - problem of inadequate reasoning, 388–390
 - the Sovereign court of justice, 390–394
- jurisdiction and competence, 371
- the Lisbon Treaty, 395
- Zambrano*, 395
- Cultural identity rights and bill of rights, UK, 689–714
- accommodation of diversity, 694–697
 - British identity and race relations, 695
 - ethnicity, 694
 - Human Rights Act 1998, 696
 - indigenous minorities, 696
 - language, 696
 - liberal national approach, 696–697
 - Mandla v. Dowell Lee*, 694–695
 - Northern Ireland, 697
 - pluralism, 695
- awareness, 714
- Canada, 707–709
- civil and political rights, 713–714

- Commission report, 691–694
- Convention for the Protection of
 - National Minorities, 713
- description, 689–690
- diversity and difference, 713
- ECHR, 714
- human rights, 698–702
 - economic and social rights, 699
 - guarantees, 702
 - HRC, 699–700
 - linguistic heritage, 699
 - post World War II era, 698
 - Rahiman v. Latvia*, 700–701
 - UNESCO Declaration, 701–702
- Human Rights Act 1998, 713
- individual rights, 705
- International Covenant on Civil and
 - Political Rights 1966 (ICCPR), 690
- judicial understandings, 690–691
- lack of cultural sensitivity, Court,
 - 703–705
- language, 714
- legal transplantation process, 714
- life and community, 706
- New Zealand, 706–707
- non-discrimination, 714
- protection, 705–706
- social cohesion, 714
- South Africa, 710–711
- Czech Republic 2009–2012, 435–448
 - activism of CCC, 447
 - constitutional amendments, 447
 - direct presidential elections, 445–447
 - CCC Act, 446
 - Constitutional amendment, 446
 - constitutional framework, 447
 - discrepancy, 445
 - exercise of powers, 445
 - review, President's activities, 447
 - secret ballot, 446
 - early elections and Czech
 - Constitutional Court (CCC),
 - 435–441
 - accepting ad hoc constitutional
 - acts, 440
 - constitutional complaint, 437, 441
 - dissolution of Assembly, 436
 - guarantee, Czech Charter of
 - Fundamental Rights and
 - Freedom, 437–438
 - 'hard' constitutional consequences
 - and procedural tools, 440
 - implementation of presidential
 - decision, 438
 - material core of constitutional
 - order, 435, 441
 - organization, 436–437
 - principle of separation of powers,
 - 439
 - ruling, 438–439
 - violation, 440, 441
 - vote of confidence, 437
 - impact of EU law, 447
 - 'Slovak pensions' case and EU law,
 - 441–445
 - CJEU judgment, 444–445
 - direct consequence,
 - constitutionality, 441
 - framework, constitutional review,
 - 442
 - impacts, split of Czechoslovakia,
 - 1993, 442–443
 - interpretation, 442
 - legality and supplementary, pension
 - scheme, 443–444
 - regulation, 444
 - termination, 443
 - violation, material core of the
 - constitution, 444

D

- Desirability of general law, 503–524
 - administrative procedure, Lisbon
 - Treaty, 505–514
 - and Art. 298 TFEU, 509–513
 - and Art. 2352 TFEU, 513–514

- Commission decision, 508
 - complainants, 508
 - Directive on integrated pollution
 - prevention and control, 507–508
 - interpretation, 509
 - national administrations, 508–509
 - national regulatory authorities,
 - 505–506
 - right to hearing, 508
 - rules on institutional autonomy,
 - 506
 - agreement, 523
 - assumptions, 523–524
 - development, 504
 - enactment, 523
 - EU law, 504
 - European Convention on Human Rights (ECHR), 505
 - function, 503–504
 - judicial and legislative competence,
 - 514–523
 - accepting general principles,
 - 515
 - and Constitutional constraint,
 - 517–518
 - democratic input, choice and
 - legitimation, 520–522
 - duty and power, 519–520
 - ECHR, 515–518
 - European Court of Justice (ECJ),
 - 514–515
 - hierarchy of norms, 518–519
 - law making, 515
 - legality review and enactment of
 - legislation, 522–523
 - principle of attribution, 519
 - pre-and post-Lisbon, 504
 - regulation, 503
 - relationship, 505, 524
- E**
- Environment protection, EU law,
 - 583–604
 - Charter of fundamental rights,
 - 583–584, 587–588
 - development of quality, Art. 37,
 - 587–588
 - general principles, 583–584
 - health, 588
 - jurisprudence, 588
 - Lisbon Treaty, 587, 588
 - competence, 601–602
 - Constitutional rights, Member States,
 - 588–592
 - duties, 588
 - Eastern Bloc countries, 588
 - impacts, 589–592
 - sustainability, 588
 - tradition, 592
 - Convention, right to environment,
 - 598–599
 - Court of Justice and Community legal
 - order, 602
 - description, 585, 595
 - early 1970s, 601
 - human status, 584
 - insufficient protection, 599–601
 - African Charter, 601
 - breach of right, 600
 - chemical factory, 601
 - damages, 599–600
 - life threatening, 600
 - place, 600
 - primary law, 600
 - right of people, 600
 - international agreements, 593–595
 - measures, 603–604
 - Member States, 602
 - movement of authority, 602
 - procedural rights, 584
 - right of environment, 584–585
 - right to environment, 585–586
 - right to life, Art. 2, 597–598
 - Budayeva and Others v. Russia*, 598
 - judicial system, 598
 - Oneryildiz v. Turkey*, 597–598

- right to respect for private and family life, Art. 8, 595–597
 - Giacomelli v. Italy*, 596–597
 - Guerra v. Italy*, 596
 - Kania v. Poland*, 597
 - Lopez Ostra v. Spain*, 595–596
- Stockholm Declaration, 585
- TEU and TFEU, 586–587
- EU free movement of persons from
 - Spanish, 397–424
- description, 397–399
- formal conditions, 408–412
 - access files and obtain copies, 408
 - Article 4(3) FMA 2007, 409
 - Article 15(2) FMA 2007, 411
 - Article 16 FMA 2007, 410
 - Article 18(2) FMA 2007, 409
 - Article 31(2) Free Movement Directive, 410–411
 - Article 33(2) Free Movement Directive, 411–412
- due process and procedural justice, 408
- expulsion order, 410
- Free Movement Directive, 412
- minimum period, 411
- procedural safeguards, 409
- three-tiered hierarchy of EU
 - citizens and family members, 410
- grounds for limitation, 403–406
 - public health, 404–405
 - public policy, 403
 - public security, 404
- Spanish national identity card
 - (Article 15(8) FMA 2007), 405–406
- material conditions, 406–408
 - Article 28(3) and Article 15(6), 407
 - citizens and family members, 406
 - Commission v. Spain* (C-503/03), 407
- legislation regulating public order and public security, 406–407
- Rights and Freedoms of Foreigners Framework Act, 407–408
- NGOs and the European Commission, 423
- principle of retroactive application, 423–424
- public policy, public security and public health, 424
- statutory legal framework, 399–403
 - the Amending Act, 402
 - Articles 15(2) and 18(2), 403
 - citizens and family members, 403
- ECJ decisions in *Royer* and in *MRAX*, 400–401
- European Convention on Human Rights (ECHR), 400
- European Court of Justice (ECJ), 400
- Free Movement Act 178/2003 (FMA 2003), 400
- Free Movement Act 240/2007 (FMA 2007), 401–402
- Free Movement Act 766/1992 (FMA 1992), 399
- Free Movement Act 1099/1986 (FMA 1986), 399
- Free Movement Directive in 2004, 401
- the Supreme Court case law, 412–423
 - figures and statistics, 413–415
 - grounds for limitation, 418–420
 - initial ‘hard line’ to equitable approach, 415–418
 - new and accession Member States, 420–421
 - scope of protection and preventing reverse discrimination, 421–423
- European Convention on Human Rights (ECHR), 241–246
 - Article 6(3)(d), 245
 - in *Bohler*, 242–243
 - cases from 2010, 243–244

- 'clear and unequivocal' reservation, 242
- Corrugated Cardboard*, 242
- Human Rights Act 1999 section 3, 242
- International Covenant on Civil and Political Rights (ICCPR), 244
- 26 January 2011, 245
- legislature and the judiciary, 243
- national and international sources in the jurisprudence, 245
- non bis in idem* principle, 243
- in Norwegian law, 241
- The Norwegian Supreme Court, 241–246
- principles of, 243
- Rt. 2008 p. 1764, 244–245
- type of approach, 246
- European Court of Human Rights, 643–672
 - administration of public protection sentences, Art. 5, 655–657
 - Council of Europe and United Nations guidelines, 656–657
 - indeterminate, 655–656
 - jurisprudence, 656
 - application of security council sanctions, Art. 8, 658–661
 - collective enforcement of fundamental rights, 660–661
 - Nada v. Switzerland*, 658–660
 - collaboration with the CIA'S, Art. 3, 649–655
 - allegations, 651–652
 - detention and interrogation, 652
 - earthquake, 650
 - ECHR Article 35, 651
 - EL-Masri v. The Former Yugoslav Republic of Macedonia*, 649–650
 - extrajudicial detention, 653–654
 - extraordinary rendition., 650
 - implications, 654–655
 - investigation, 653
 - institutional/procedural matters, 643–646
 - application, 643–645
 - complaints, 644–645
 - description, 643
 - draft accession agreement, 645, 646
 - feature, 644
 - guidance, 643
 - obstacles, 645–646
 - single-judge formations, 645
 - unilateral declaration/striking-out process, 645
 - liability of Russia breaches of the Convention in Transnistria, 646–649
 - religious belief, Art. 9, 662–666
 - employee's rights, 665–666
 - Eweida and others v. United Kingdom*, 662–664
 - jurisprudence, 665
 - legal perspective, 666
 - substantive convention rights, 666
 - safeguarding pluralism in television broadcasting, Art. 10, 667–671
 - Centro Europa 7 S.r.l. and Di Stefano v. Italy*, 667–670
 - Groppera Radio AG v. Switzerland*, 670–671
 - Manole and others v. Moldova*, 670
- European Court of Justice (ECJ) and Hungarian Constitution, C-286/12
 - Commission v. Hungary*, 489–500
 - application of expedited and accelerated procedure, 491–492
 - discrimination, 492, 495–497
 - age-based, 492
 - compulsory early retirement, 495
 - compulsory retirement of persons, 492
 - difference in treatment, 492
 - Fuchs and Köhler* case, 496
 - independence of judiciary, 495–496
 - political issue, Art. 7 TEU, 497

- Rules of Procedure, Art. 62, 496
- violation of judicial independence, 496–497
- justification of discrimination, 492–495
 - assessment, 493
 - ‘balanced age structure’, young and old officials, 494–495
 - measures, 492–493
 - objectives, 493
 - social-policy objectives, 492
 - standardization, 493–494
 - written submissions and hearing, 493
- legal status and remuneration of judges, 489–490
- multi-level constitutionalism, 497–498
- ruling, 490–491
- strategies, 498–500
- violation, Directive 78/2000, 492
- Europeanization, 715–738
 - differences, 737
 - European Court of Justice, 729–737
 - Dutch administrative law, 734
 - EU principle of legitimate expectations, 734
 - Hamble Fisheries*, 734
 - integration process, 735
 - jurisdiction, 734
 - legal, 735–736
 - legitimate expectations, 724–725, 736–737
 - Member States, 735
 - The Netherlands, 729–732
 - principle of proportionality, 728
 - United Kingdom, 732–734
 - good faith, 718
 - interpretation, 737–738
 - legal autonomy theory, 738
 - legal principles, 716–717
 - measures, 715, 716
 - Member States, 716
 - national and administrative law, 715–716
 - The Netherlands, legitimate expectations and CJEU, 718–721
 - actions, 719
 - codified principle, 720–721
 - contra legem* application, 720
 - differences, 726
 - General Administrative Law Act (GALA), 718
 - legitimate expectations, 718–719
 - public interest, 719–720
 - similarities, 725–276
 - violation, 719
 - United Kingdom, legitimate expectations and CJEU, 721–723, 727–728
 - differences, 727–728
 - duties, administrative authorities, 721
 - effects, German and Dutch administrative laws, 728
 - intra vires* representations, 721–723
 - protection, 721
 - similarities, 727
 - ultra vires* representations, 723
- EU’s multi-level polity, 161–188
 - the Committee of the Regions (CoR)
 - judicial review and institutional balance, 179–182
 - and subsidiarity monitoring, 167–171
 - Community method
 - ‘advisory capacity’, 169
 - CoR’s contribution, 163
 - democratic control, 182
 - description, 162
 - soft law, 182
 - competences
 - distribution, 165–167
 - and regional liability, 174–178
 - statist form of EU liability, 171–174

multi-level governance, 164–165
 open method of coordination (OMC)
 Community method, 182
 description, 163
 governance processes, 186–187
 ‘radicalisation of subsidiarity’, 183
 subsidiarity and soft law, 184–186
 regional actors and soft law, 182–187
 soft law and institutional balance,
 186–187
 status of soft law, 182–184
 subsidiarity and soft law, 184–186
 regional legislatures, 161–162
 soft law
 Articles 5 and 6 TFEU, 183–184
 Community method, 163,
 182–183
 and institutional balance,
 186–187
 OMC, 182, 184–187
 and subsidiarity, 184–186
 subsidiarity monitoring and CoR,
 167–171
 Article 6 of Protocol 2, 169
 Article 5 TEU, 167–168
 Early Warning Mechanism (EWM),
 167
 Impact Assessments (IA), 169–170
 multi-level governance, 167
 State-centric scrutiny process,
 168–169
 as ‘strong’ regional institutions,
 170–171
 WG I, 162

F

The French Parliament, 129–159
 Assemblée nationale
 the European External Action
 Service Decision, 149–154
 Services Directive, 136–143
 ‘Barroso Initiative’ complements,
 130–131

the Conference of European Affairs
 Committees of Parliaments of the
 European Union (COSAC), 133,
 134
 constitutional ‘aberration’, 135–136
 domestic legislatures, 132–133
 European External Action Service
 (EEAS)
 administrative autonomy, 152
 Affairs Committee, 150–151
 arrangements, 153
 description, 134–135
 with French MEPs and senators,
 149
 in plenary debates, 156
 the European External Action Service
 Decision, 149–157
 Assemblée nationale, 149–154
 Sénat, 154–157
 ‘European’ status of Parliament,
 132
 fledgling mechanisms, 131
 the High Representative, 135
 legal and political claims, 135
 the Maastricht Treaty, 129–130
parlementarisme rationalisé, 131
 parliamentary rapprochement, 133
Sénat
 the European External Action
 Service Decision, 154–157
 Services Directive, 143–149
 Services Directive, 136–149
 Assemblée nationale, 136–143
 Sénat, 143–149

G

German Constitutional Law Cases
 2010–2012, 13–47
 Court’s decision
 data retention, 14–17
 Euro rescue package, 37–39
 five per cent barrier clause, 31–33
 preventive detention, 24–27

- remuneration system for professors, 42–45
- same-sex partnerships between transsexuals, 20–22
- data retention, 13–19
 - Court's decision, 14–17
 - reactions, 17–19
 - Telecommunications Act, 13–14
- 2009 elections to European parliament in Germany, 29–30
- Euro rescue package, 35–41
 - Court's decision, 37–39
 - reactions, 39–41
 - stabilization, urgency and confidentiality, 36–37
- five per cent barrier clause, 29–35
 - constitutional requirements, 30–31
 - Court's decision, 31–33
 - 2009 elections to European parliament in Germany, 29–30
 - reactions, 33–35
- preventive detention, 23–29
 - Court's decision, 24–27
 - European Prelude, 24
 - reactions, 27–29
- reactions
 - data retention, 17–19
 - Euro rescue package, 39–41
 - five per cent barrier clause, 33–35
 - preventive detention, 27–29
 - remuneration system for professors, 45–47
 - same-sex partnerships between transsexuals, 22–23
- remuneration system for professors, 41–47
 - Court's decision, 42–45
 - reactions, 45–47
 - reforming remuneration, 41–42
- same-sex partnerships between transsexuals, 19–23
 - Court's decision, 20–22
 - reactions, 22–23

- Transsexuals Act, 19–20
- Telecommunications Act, 13–14
- Transsexuals Act, 19–20

H

- Hj (Iran)*, 263–270
 - country guidance for Zimbabwe, 264–265
 - decision, 269–270
 - decision and reasoning, 265–266
 - facts, 264
 - AM, 264
 - KM, 264
 - RT's, 264
 - SM's, 264
 - fact-specific analysis, 263
 - judgment, 267–269
 - imputed political opinion, 268–269
 - individuals, political beliefs, 267–268
 - neutral or apathetic, 263
 - the Secretary of State for the Home Department (SSHD) argument, 263, 266
- Human dignity in Europe, 319–339
 - CJEU, 339
 - constitutional duty to respect and protect, 336–339
 - Article 1 EU Charter, 337
 - decision-making, 338
 - ECtHR, 336–337
 - European constitutionalism, 338
 - German constitutional law, 336
 - horizontality and drittwirkung dimension, 338–339
 - liberal human rights theory, 337
 - protection, 337–338
 - Sweden, Article 2(1), 336
 - constitutional foundation of
 - democracy, 321–325
 - after 1945 and 1989, 323–324
 - Article 2, 324
 - characteristics, 323

communist dictatorships, 322
 the (West) German Basic Law, 322
 post-WWII period, 322
 principle of democratic
 constitutions, 323
 relatively empty shell, 324–325
 the South of Europe and the 1990s
 for Central Europe, 321
 the United Nations Universal
 Declaration of Human Rights,
 321
 utopian aspirations, 324
 description, 319
 enshrining dignity and protecting
 humanity, 325–332
 equality, 328–329
 EU Charter, 330
 European constitutionalism,
 330–331
 European Court of Justice (ECJ),
 331
 German constitutional case law,
 330
 heteronomous definitions, 332
 individualism, 326–328
 laserdrome entertainment, 331
 Lisbon Treaty and the EU Charter,
 331
 mindful of destruction and hurt,
 325–326
 notoriously difficult scholarly
 enterprise, 325
 pre-determination, 329–330
 social and economic rights, 330
 triumphant ideology in Europe,
 330
 European Union (EU) and European
 Convention on Human Rights
 (ECHR), 319–320
 first-order constitutional principle, 321
 normative definition, 332–336
 core and non-core definitions,
 334–336

the EU Charter, 332–333
 the European Court of Human
 Rights (ECtHR), 334
 traumatic experiences, 321

I

Infringement proceedings, 281–294
 after Lisbon, 282–284
 application of Article 260(3), 291–293
 Commission v. Poland, 292–293
 full transposition, 292
 non-communication or
 non-conformity proceedings, 293
 ‘partial transposition’, 291–292
 Article 260(3) TFEU, 281, 293–294
 ‘failure to notify’, 284–291
 at the birth of Article 260(3),
 284–286
 from the commission’s perspective,
 286–289
 national measures in case-law,
 289–291
 Member States, 294
 Italian Public Law, 221–239
 balanced budget, 221–223
 accounting laws, 222–223
 Article 81, 221–222
 Articles 97 and 119, 222
 definition, 221
 European economic-financial laws,
 221
 income and expenditure,
 222
 constitutional law of 20 April no. 20,
 no. 1, 221–223
 decree law 6 December 2011, no.
 201, 237–239
 administrative simplification,
 237
 Article 33, 238
 Articles 27 and 33-*bis*, 238–239
 Bel Paese, 237
 Justice Ministry, 239

- plan of alienation and valorisation
 - of assets, 239
 - SGRs, 238
 - uniform programmes for land
 - valorisation, 238
 - decree law 9 February 2012, no. 5, 225–228
 - administrative coordination, 227
 - Article 6, 227–228
 - Article 12, 226, 227
 - Articles 6-*bis* and 8, 228
 - collection of actions, 228
 - ex ante* and *ex post*, 225, 227
 - experimental strategies, 226
 - ‘Growth Decree’ decree laws, 225, 226
 - Information and Communication Technology (ICT), 227
 - principle of digital exclusivity, 228
 - ‘Save Italy’ decree laws, 225
 - telematic methods, 228
 - usage of data banks, 226
 - decree law 24 January 2012, no. 1, 231–237
 - administrative functions, 235
 - AGSM, 233–234
 - Article 4, 232–234
 - August Manoeuvre, 232–233
 - auxiliary functions, 235
 - contract of availability, 236
 - cross judicial functions, 235
 - independent authority, 236
 - local public service system, 231
 - private subject, 237
 - public-private contract, 236
 - the Transport Regulation Authority, 234–236
 - decree law 27 January 2012, no. 19, 229–231
 - ANVUR, 229–231
 - ex ante*, 229
 - internal evaluation system, 229
 - universities, 229
 - growth decree decree law, 231–237
 - legislative decree 24 February 2012, no. 20, 223–225
 - Article 16, 223
 - Article 101, 224
 - Article 533, 224
 - Article 1359, 224–225
 - Article 100 of the military code, 223
 - de-responsibilization of the managerial and political class, 224
 - 27 March 2012, 223
 - military administration, 225
 - Ministry of Defence, 223
 - military code reform, 223–225
 - save Italy decree law, 237–239
 - the university system, 229–231
- N**
- New constitutionalism in Hungary, 341–367
 - authoritarian democracy, 346
 - Costa v. ENEL*, 343
 - and erosion of democracy, 352–364
 - ethnification, 357–358
 - Flawed process of
 - constitution-making, 354–356
 - Fundamental Law, 352–353
 - international condemnation, 353
 - judicial independence, 360–362
 - Mark Mazower, 354
 - restrictions on the independence and freedom, 363–364
 - state president role, 358–360
 - Venice Commission, 353
 - ‘formal and informal rules and regimes’, 343
 - history, 342
 - István Bibó and meaning, 365–367
 - law-making in accordance, 345
 - ‘liberal’ and ‘illiberal’ democracy, 346
 - margin of appreciation, 345
 - national freedom, 342

- 'old' and 'new' Member States of the EU, 344
 - OSCE, 345
 - rule of law and CEE states, 346–352
 - in 1989–1990, 346–347
 - acceptance of 'western', liberal values, 350–351
 - centralization and separation of powers characteristics, 347
 - the 1949 'communist' constitution, 348
 - constitutional order, 351
 - Court, 348–349
 - credible system of checks and balances and of multi-party democracy, 349
 - ethos or spirit, 348
 - international human rights commitments, 351
 - Magyar Democratic Forum (MDF), 348
 - organization memberships, 350
 - political culture, 351
 - 'round table' talks, 347–348
 - success, 347
 - weakening economy, 351–352
 - series of 'cardinal laws', 345
 - sovereignty, 342–343
- O**
- Ombudsman, 739–758
 - accountability network, 757
 - administrative justice, UK, 746–748
 - complaints, public interest, 746
 - creation, welfare state, 746
 - dispute resolution, 747, 748
 - establishment, 746
 - explosion, 747
 - framework, Parliamentary Ombudsman, 746–747
 - police, 747
 - private and public sector, 747–748
 - proliferation, 748
 - scope, 748
 - constitutional priority, EU and UK, 748–750
 - complaints, 749
 - democratic deficit, 749–750
 - guarantee, EU citizenship, 748
 - human rights-based justification, 749
 - office, 750
 - reduction, democratic deficit, 748
 - tracing, 749
 - constitutional values, 754
 - control, 754
 - creation, 739–740, 754
 - democracy strengthening, EU, 741–746
 - citizenship, 741
 - civic identity, 745
 - 'Code of Rights', 742–743
 - Community's, 432, 744
 - deficiencies, 741
 - documents examination, 742
 - function, 745–746
 - guarantee, 741–742
 - 'institutional isomorphism' theory, 742
 - integration, 744
 - Maastricht Treaty, 741
 - relationship, 745
 - rules of procedure and petitions, political affairs Committee, 743–744
 - transparency, 745
 - family, 740
 - hypothesis guides, 740
 - interpretation, 755, 756
 - limitation, 757
 - mandates, 751–754
 - administrative behaviour, 753–754
 - complaint, 752–753
 - judicial control, 753
 - maladministration, 751–752

- ‘redress’ and ‘control’ model, 750–751
- plethora, 756
- ‘redress *v.* control’ scheme, 755–756

P

- Pending constitutional revision,
 - Luxembourg, 449–459
 - ‘bill of rights’, 459
 - continuity of original document’s spirit, 459
 - current revision, 453–455
 - advisory opinions, documents, 453, 454
 - final enactment, 455
 - initiatives, 453
 - optional referendum, 454–455
 - parliamentary proceedings, 454–455
 - proposal, 453
 - description, 449–450
 - formal requirements, 450–455
 - amendment, 451
 - amendment, Art. 114, 451–452
 - declarations of revision, 451
 - modification, 2003, 450
 - monarchy to parliamentary democracy, 451
 - referendum, 452–453
 - rigid, 450
 - steps, 450–451
 - voting, 453
 - innovations, substantial amendments, 455–459
 - guarantee of fundamental rights, 456–457
 - membership in European Union, 459
 - place and function, 457–458
 - re-organizing judicial system, 458–459
 - strengthening, parliamentary principle, 458
 - technical modifications, 455–456

R

- Religious symbols in schools, 555–582
 - academic speculation, 577–578
 - conflicts, diverse societies, 556
 - crucifix, 581–582
 - differences, 556
 - diverse societies, 556
 - effects, Warsaw Pact, 555
 - Human Rights Act 1998, 556
 - impacts, *Lautsi I* and *Lautsi II*, 578–580
 - internal migration and immigration, Second World War, 555
 - Italy, 561–564, 568–570
 - crucifixes, 562–563
 - freedom, 564
 - parental rights, 564
 - personal symbols, 568–570
 - place, 564
 - principles of equality, liberty and tolerance, 561–562
 - lack of consensus and social cohesion in Europe, 557–561
 - diversity, 559
 - ECHR, 557–558
 - jurisdictions, 559
 - limitations, ECtHR, 560–561
 - principal mechanisms, 558–559
 - Nadia Eweida* case, 580–581
 - passive, 580
 - principle of subsidiarity, 578, 579
 - public establishments, 581
 - secularism, 555–556
 - Spain, 564–566, 571–572
 - freedom of conscience and religion, 565
 - historical and artistic value, 565–566
 - legitimacy of crucifixes, 564–565
 - personal symbols, 571–572
 - public places, 566
 - regional authorities, 565
 - tolerance, 556

- United Kingdom, 566–568, 572–576
 - faith schools, 566–567
 - higher education, 567
 - multi-cultural and multi-faith still, 567
 - public sphere, 568
 - racial discrimination, 576–577
 - religious dress and school employees, 577
 - school uniform, 572–576
 - secular schools, 567
- Right to good administration and
 - Charter of Fundamental Rights of European Union, Art. 41, 481–488
 - enforcement, 482–483
 - EU Code of good administrative behaviour, 484
 - European Code, 481
 - European Convention on Human Rights (ECHR), 483–484
 - formal and restrictive approach, 487
 - functions, 484
 - guarantees, 487–488
 - legal provisions, 481
 - legal qualification, 488
 - legal status, 482
 - notion of ‘subjective right’, 485–487
 - performance, 484
 - principle of diligence, 481–482
 - reinforcing, 487
 - soft law instruments, good administration, 481
 - Spanish Constitution, 484–485
 - subjective rights, 484
 - substantive conception, 487
 - vagueness and flexibility, 488
- Role of the common law, 75–96
 - act of legal Europeanization, 95
 - Article 6 ECHR and civil rights, 78–82
 - broader interpretive approach, 78
 - case law of ECtHR, 78
 - component elements, 78–79
 - ‘full jurisdiction’, 80
 - limitations, 79
 - Public Interest Immunity (PII)
 - certificates, 79
 - Special Advocates, 79
 - State’s procedural obligations, 81
 - Strasbourg case law, 80
 - territory of *Wednesbury*, 81–82
 - A v. UK*, 79–80
 - ‘common law constitutionalism’, 92–93, 96
 - ‘constructive dialogue’, 76, 93, 96
 - disclosure, ‘sufficient information’, 82–87
 - AF and Tariq*, 85–87
 - Al-Rawi v. Security Services*, 85–87
 - control order system, 83–84
 - House of Lords, 82–83
 - Tariq v. Home Office*, 84–85
 - ECtHR’s jurisprudence, 77
 - European Convention on Human Rights (ECHR), 75–76
 - ‘full jurisdiction’ and judicial review, 87–92
 - Alconbury*, 87–88
 - Ali v. Birmingham City Council*, 90–92
 - compliance prompted debate, 87
 - dicta*, 89
 - ‘independent and impartial court or tribunal’, 87
 - Manchester City Council v. Pinnock*, 92
 - ‘over-judicialisation’, 87
 - in *Runa Begum*, 88–89
 - Tsfayo v. UK*, 89–90
 - HRA, 94–95
 - Human Rights Act 1998 (HRA), 75
 - ‘over-judicialisation’ of administrative decision-making, 94
 - Pinnock*, 94
 - robustness and activism, 95

S

- Self-government and Constitution,
 - Greenland within Danish State, 619–642
 - changing framework, Home Rule Commission's, 629–633
 - constitutional significance, 633
 - foreign affairs, 632–633
 - legal system, 631–632
 - minerals, 629–630
 - Commission, 620
 - competences, 619–620
 - Danish Constitutional Act 1953, 640
 - designation of competences not transferred, self-government authority, 634–636
 - entities, 619
 - independent, Art. 19(1), 641
 - population and languages, 619
 - realm, 619
 - recommendations, framework, 622–628
 - designation of competences transferred, 622–623
 - literature, 628
 - minerals, 624–626
 - non transferred competences, 623–624
 - political-moral condition, 626–628
 - rules, 620, 621
 - Self-Government Act, 620–621
 - transferred competences, executive and legislator, 621
 - unchanged Constitutional framework, 636–640
 - criterion and political discretion, 636–638
 - right to independence, 638–640
- Separation of powers approach to
 - non-efficiency goals, EU competition law, 189–208
 - Commission's 2010 Horizontal Cooperation Guidelines, 193–194
 - competition law adjudicators, 199–207
 - anti-competitive agreement, 206–207
 - distributive justice and free competition, 199–200
 - institutional inferiorities of judiciary vis-à-vis agencies, 202–205
 - representational advantages of distributive justice, 201–202
 - State regulations/levies, 197
 - tax incentives/research initiatives, 205
 - technical and productive efficiencies, 205–206
 - Van Eycke* doctrine, 207
- competition law and non-efficiency goals, 191–193
 - in CECED, 192
 - description, 191
 - Dutch legislature, 192–193
 - private parties, 191–192
 - Wouters* and *Meca-Medina* decisions, 192–193
- corporate conduct, 189–190
- corporate social responsibility initiatives, 195–196
- 'Government encouraged standardisation', 194
- Ordre National de Pharmaciens* (ONP) decision, 195
- TFEU competition adjudication and state regulation, 196–199
 - Article 7 TFEU, 196
 - Article 11 TFEU, 196
 - Article 168(1) TFEU, 196
 - consumer welfare, 198–199
 - integration clauses, 197, 198
 - proportionality assessment, 197–198
- The Solvency II Reform project, 295–316
 - application of, 300–302
 - gold-plating, 302

- principle-based approach, 300–301
- principle of proportionality, 301
- and Basel II, 315
- description, 295–296
- genesis, 296–300
 - ‘European codification’, 299–300
 - status quo, 297–299
 - third generation insurance
 - directives to Solvency I, 296–297
- implementation, 316
- qualitative requirements, 306–311
 - definition, 306
 - governance requirements, 308–311
 - supervisory powers, 307–308
- quantitative requirements, 302–306
 - International Accounting Standards Board (IASB), 302
 - investment requirements, 305–306
 - Solvency and minimum capital requirements, 303–305
 - technical provisions, 302–303
- reformed supervision over insurance groups, 313–314
 - Adjusted Solvency Margin, 313
 - group-SCR, 314
 - group-SFCR, 314
 - group supervisor, 313–314
 - insurance groups directive, 313
 - mutatis mutandis*, 314
 - solo-plus supervision, 313
- risk-oriented capital backing requirements, 315–316
- transparency requirements, 311–313
 - public disclosure, 312–313
 - supervisory reporting, 311–312
- Sovereignty of Parliament under the *Grundgesetz*, 249–262
- Court’s jurisprudence, 250
- critical appraisal, 260–262
 - Article 8(5), 261
 - Article 23.1., 260
 - Article 23.2, 261
 - constitutional framework, 260

- EU-related matters, 260
- Fiscal Compact*, 261
- German Constitutional Court, 262
- international law, 261–262
- judgments, 260
- European Union (EU)-related matters, 249
- parliamentary participation, 250–258
 - Article 23, 254
 - the European Stability Mechanism, 255
 - the Euro Plus Pact, 255
 - Euro Plus* Pact judgment, 255
 - general ratification requirement, 250–252
 - information rights, 256–257
 - interpretation, 255–256
 - principle of democracy pursuant, 254
 - right to submit statements, 257–258
 - transfer of sovereign powers, 252–254
- permanent budgetary autonomy, 250, 258–260
 - Bundestag*, 258
 - or overall budgetary responsibility, 258
 - Parliament approves and monitors decisions, 259
 - Treaty on the Establishment of a European Stability Mechanism (TESM), 259–260
 - Vienna Convention on the Law of Treaties (VCLT), 260
- Treaty Establishing the European Stability Mechanism (ESM Treaty/TESM), 250

T

- Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), 463–479

- agreement, 464
- amending, 478–479
- CJEU, Art. 8, 465
- description, 463–464
- economies, EU Member States, 479
- enhanced cooperation, 471–477
 - analysis, hybrid nature of Treaty, 477
 - co-protagonist functions, 476
 - establishment procedures, 475
 - EU Treaties, 475
 - guarantees, unity of the system, 472–475
 - openness of agreement, 476
 - reveals, 476
 - rules, 471
 - TEU and TFEU, Art. 10, 476–477
- entry into force, 464
- excessive deficit procedure, Art. 5, 465
- impact, 463
- imperfection and ambiguity, 479
- limits, 479
- new Treaty with EU Law, 468–471
 - compatibility, 469
 - constitutional integration, 468
 - enhanced cooperation, 468–470
 - federal/quasi-federal, 468
 - Preferential Trade Agreements (PTAs), 470
 - principle of loyal cooperation, 470
- political institutions, 466–467
- purpose and scope, Art. 1, 464
- relationship with EU law, Art. 2, 464
- requirements, Art. 3.2, 464–465
- scholars, 464, 478
- TFEU, 465–466

U

- United Kingdom counter-terrorism laws
 - since 9/11, 97–128
- Anti-terrorism, Crime and Security Act 2001 (ATCSA), 109–110, 112

- arrest and extended detention without charge, 123–124
- control orders, 111–114
 - derogating control orders (DCO), 112
 - non-derogating control orders (NDCOs), 112–113
 - Prevention of Terrorism Act 2005 (PTA 2005), 111–112
 - Special Immigration Appeals Commission (SIAC), 113–114
- culture, 98–99
- derogating control orders (DCO), 112
- detention without trial, 109–111
 - Anti-terrorism, Crime and Security Act 2001 (ATCSA), 109–110
 - Special Immigration Appeals Commission (SIAC), 110–111
- Equality and Human Rights Commission (EquHRC), 99, 105
- extradition to high security prison facilities in the united states, 125–126
- Human Rights Act 1998 (HRA), 97, 99–100
- Joint Select Committee on Human Rights (JCHR), 99, 102
- national security deportations, 118–123
 - Article 3, ECHR jurisprudence, 119
 - Chamber drawing on extensive case law, 120–121
 - Chamber's approach, 121–122
 - Court's role and approach, 123
 - 'flagrant denial of justice', 122
 - Special Immigration Appeals Commission's (SIAC's) criteria, 120
 - States Memoranda of Understanding (MOU), 120
- non-derogating control orders (NDCOs), 112–113, 116

12 November 2012, SIAC, 128
 Prevention of Terrorism Act 2005
 (PTA 2005), 111–112
 proscription, associated criminal
 offences and reverse onuses of
 proof, 124–125
 Special Immigration Appeals
 Commission (SIAC), 110–111,
 113–114
 States Memoranda of Understanding
 (MOU), 120, 121
 stop and search powers, 100–108
 Article 8 ECHR, 102–103
 Articles 10, 11 or 5 ECHR,
 103
 Austin v. United Kingdom, 103–104
 day-to-day basis, 100–101
 description, 100
 Government's Counter-terrorism
 Review, 104–105
 independent reviewer of terrorism
 legislation, 108
 Joint Select Committee on Human
 Rights (JCHR), 102, 105–108
 judgment of the Court or Article 8
 ECHR, 108
 judicial review of authorization and
 confirmation decisions, 108
 London, 101
 PACE Code A, 100
 sections 44–47 TA 2000, 104
 September 2003 and deprivation of
 liberty, 102
 TA 2000, 103
 vehicles and people, 100
 Terrorism Act 2000 (TA 2000),
 97–98, 103
 terrorism prevention and investigation
 measures (TPIMs), 98, 114–118
 Article 6 ECHR, 117–118
 ‘control orders lite’, 115–116
 government and JCHR, 118
 the Home Secretary, 117

non-derogating control orders
 (NDCOs), 116
Programme for Government, 114–115
 ‘protective measures’, 117
 Terrorism Prevention and
 Investigation Measures Act 2011
 (TPIMA 2011), 107, 115
 UKSC, 127

V

Verfassungsgerichtshof (VfGH), 1–11
 Austrian Constitutional Court, 1–11
 decision of 14 March 2012, 3–7
 Article 47 CFR, 4
 Article 6(1) TEU, 4
 Article 267 TFEU, 5–6
 Austrian Constitutional Court, 5
 CFR, 6–7
 ECJ's case law, 4, 5
 facts of cases and pleadings, 4
 description, 1
 European Union (EU) law, 3
 as applicable law, 3
 as standard of review, 3
 impacts on European Union (EU)
 law, 8–11
 jurisdiction of ECJ, 10–11
 principle of equivalence, 8–9
 union law role, 1–3
 Article 144 B-VG, 2
 description, 1
 European Union (EU) law, 3
 treaties, statutes and regulations, 2
 Verwaltungsgerichtshof (VwGH), 2

W

Water Framework Directive, Spain,
 675–686
 developments, 685–686
 institutional framework, 684
 inter-basin management, 681–684
 aspirations, 682–684
 regional participation, 681–682

- river basin management plans,
 - 675–676
- state water plans, 679
- technical complexity, 675
- territorial powers, 676–678
- transposition, 679–680
- Water Act, 678, 685
- watershed approach, 684