

Index

- accession negotiations, EU autonomy concerning, 99–102
- access justice
 complementary vs conflicting concepts of, 265–8
 social policy and, 231
- administrative law, European constitution and, 3–4, 347–9
- Advocates General
 European constitutional discourse and, 116–17
 legal scholarship and, 117–18
- age discrimination, ECJ case law on, 261n.67
- Agreement on the European Economic Area, 53–9
- Åkerberg Fransson* case, 93–4, 95–6
- Albany* case, 237–43
- Alexy, Robert, 114, 303–4
- allocative justice, 265–8
- Amsterdam Treaty
 AFSJ and, 315–16
 freedom and justice in security provisions of, 296–301
 Schengen Convention and, 275–6
 security constitutionalization and, 278–84
- anti-discrimination law
 internal market law and welfare services and, 237–43
 mobile workers and citizens and, 243–8
 primacy of national welfare state and, 232–4
 regulatory private law and, 257–65
- anti-trust law, competition law and, 161–4
- Anwendungsvorrang*. *See* disapplication area concept, security constitutionalization and, 296n.58
- Area of Freedom, Security and Justice (AFSJ), 49–50, 108–12
 Amsterdam Treaty and powers of, 278–84
 citizenship issues and, 316–18
 Community method and, 333–40
 emergency situations in, 291n.44
 European constitutional discourse and, 118–20
 internal security issues and, 269–73, 296–301
 Lisbon Treaty provisions concerning, 284–8
 Stockholm Programme response to, 296–301
 transnationalization and, 312–18
- asylum policies
 AFSJ provisions concerning, 278–84
 European Asylum Support Office, 282
 freedom and justice and, 296–301
 fundamental rights vs security in, 304–12
 Schengen Agreement and, 275–6
- asymmetric internal and external shocks, fiscal policy and, 183–7
- Australia, federalism in, 164–9
- autonomy
 direct effect of European law and, 60–8
 in European law, 53–9, 321–3
 institutional autonomy, 53–9
 legal diversity and principle, 83–6
 normative autonomy, 53–9
 positioning function and, 28–37
 strengthening of European economic governance impact on, 192–5
 autopoietical systems theory
 perspectivism and, 78–81
 radical pluralism and, 102–7
 transnational law and, 351, 353–5

- balance of payments, Member States' policies and, 174–8
- balancing doctrine, security constitutionalization and, 301–12
- banking union proposals, 195–9
 international agreements and, 202n.50
- Baquero Cruz, Julio, 164n.90
- Basic Law (Germany), 90–6
- Baubast and R v Secretary of State for the Home Department*, 245–6
- Belgian Constitutional Court, EAW Framework Decision and, 306
- Bellamy, Richard, 24
- Benjamin, Walter, 290
- black box model
 international law and, 342–3, 349–58
 legal diversity and, 81–6
 legal pluralism and, 86–8
 radical pluralism and, 102–7
 transnational law and, 349–58
- Bloch, Ernst, 108
- Böhm, Franz, 128–31, 132–4, 135–6, 161–4, 167–8, 213–14
- border controls. *See also* cross-border transactions
 Amsterdam Treaty on free movement of persons and, 278–84
 freedom and justice and, 296–301
 Frontex border system, 282
 security constitutions and, 275–6
- Bosman* case, free movement law and, 143–4
- Bosphorus* doctrine, 349–58
 European Court of Human Rights and, 99–102
- Bourdieu, Pierre, 356
- Brentjens* case, 241n.25
- Bretton Woods system, 176
- Brigade Rosse*, 274–5
- Brown v Board of Education*, 121
- BRT v Sabam*, 140–1
- budgetary planning
 democratic input legitimacy and, 217–26
 independent budget office proposals and, 220n.78
 strengthening of European economic governance concerning, 192–5
- budget deficits, strengthening of European economic governance and, 192–5
- capital movement, right to, security constitutionalization and, 274n.5
- cartels
 competition law and, 157–64
 economic constitutionalization and regulation of, 138–40
- Cassis de Dijon* formula, 33–4, 83–6
- free movement law and, 141–50, 234–7
 microeconomic constitutionalization and, 209–17
 mutual recognition principle and, 153–5
- central bank independence
 European monetary policy and, 178–83
 prohibition of financing and, 181
- centralized socialist planning, competition law and, 150–2
- centralized theory
 microeconomic constitution and, 172
 public interventionism and, 155–7
- Charter of the Fundamental Rights of the European Union (CFREU), 92, 93–5, 118–20
 asylum seekers and, 306–8
- ECJ rulings on fundamental rights and, 324–5
 economic vs fundamental rights in, 168n.94
- Equality Title in, 257–65
- European Convention on Human Rights and, 99–102
- freedom and justice in security policies and, 296–301
- labour law and, 257–65
- law on universal services and, 264–5
- rule of law in, 211–14
- security of the person in, 304–12
- social constitutionalization and, 227–32
- social rights and, 251–6
- states of exception and, 291–2
- Chicago School, competition law and, 161–4
- child pornography, security provisions in Amsterdam Treaty and, 282
- citizenship. *See also* European citizenship
 constitutional functions and, 28–37
 direct input legitimacy and, 217–26
 economic rights and, 167–8
 European constitutionalism and, 108–12
 free movement law and, 143–4
 security vs fundamental rights and, 304–12, 316–18
 transnational constitutionalism and, 37–44
 transnationalism and
 intergovernmentalism and, 333–40
- codificatory constitutions, 28–37
- coherence
 in European legal system, 45–53
 in security constitutionalization, 289–96
 security constitutionalization and, 312–18
- Cohn-Bendit* case, 63n.38

- collective good, security as, 301–12
 colonial legal regimes
 black box model and, 85n.7
 legal pluralism and, 86–8
Commercial Solvents case, 140
 Commissioner for Economic and Monetary Affairs, 209–17
Commission v Council, 177–8, 210
 Committee on Operational Cooperation on Internal Security (COSI), 277n.11
 common currency, macroeconomic constitutionalization and introduction of, 178–83
 Common European Asylum System, 306–8
 Common Foreign and Security Policy (CFSP), 282–4
 Community method and, 333–40
 internal security issues and, 269–73
 common good, principle of, security constitutionalization and, 269–73
 common market
 competition law and, 157–64
 economic constitutionalization and establishment of, 136–8, 152, 164–9
 exchange-rate stability and, 174–8
 free movement law and, 141–50
 social constitutionalization and, 227–32
 social security issues and, 243–8
Common Market Law Review, 117–18
 Community Charter of Fundamental Social Rights of Workers, 251–6, 321–3
 regulatory private law and, 257–65
 Community law. *See* European Community law
 Community method, 333–40
 community of law, European Union and concept of, 211–14
 competences in policy
 coordination of social security services and, 243–8
 economic constitutionalization and, 148–50
 economic policy and division of, 183–7
 EU legislative harmonization and, 172–3
 European economic constitutionalization and division of, 164–9
 in European legal system, 45–53
 European monetary policy, 178–83
 of European Union, 58–9
 implied powers doctrine and enlargement of, 327–8
 macroeconomic policies and transfer of, 178
 pre-emption doctrine and, 202–6
 primacy principle and, 65–8
 security provisions in Lisbon Treaty and, 284–8
 ultra vires review of, 90, 92–6
 Competition Authority
 economic constitutions and, 209–17
 macroeconomic constitutionalization and, 217–26
 ordoliberal economic constitutionalism and, 131–6
 political dimensions of economic constitutions and, 169–73
 competition economics, economic constitutionalism and, 128–31, 134–6
 competition law
 economic activities included in, 148–50
 economic constitutionalization and, 138–40, 146–8, 164–9
 economic freedom vs individual rights in, 164–9
 internal market law and welfare services and, 237–43
 legitimacy and, 169–73
 publication of, 145–6
 on public undertakings, universal services and, 263–4
 social constitutionalization, 234–7
 transnational constitutionalism and, 166
 underlying controversies in, 150–64
 welfare services for mobile workers and citizens and, 243–8
 competition model, public interventionism and, 155–7
 competition theory
 democratic input legitimacy and, 221–6
 exchange-rate stability and, 174–8
 political dimensions of economic constitutionalization and, 169–73
 complementarity, transnational constitutionalism and, 38–41
 comprehensive powers, principle of, pre-emption doctrine and, 202–6
 conditionality of financial assistance
 Eurozone crisis and, 187–92
 pre-emption doctrine and, 202–6
 Conference of European Community Affairs Committees (COSAC), 37–44
 conferral, principle of
 constitutional relationality and, 21–8
 EU institutional competence and, 92–6
 European economic constitutionalization and, 164–9
 European legal system and, 45–53
 EU transnational polity, 320–1

- conferral, principle of (*cont.*)
 - rule of law and, 214–16
 - Solange* doctrine and, 90–6
 - transnationalism and
 - intergovernmentalism and, 333–40
- conflict
 - constitutional relationality and, 21–8
 - economic vs fundamental rights and, 168–9
 - legal pluralism and, 102–7
- consistent interpretation, principle of, 63–5
- Consten and Grundig* case, 140
- competition law and, 146–8
- constituent power, 108–12
- constitutional conflicts
 - legal pluralism and, 326–7
 - radical pluralism and, 102–7
 - transnational constitutionalism and, 37–44
- constitutional culture, constitutional theory and, 15–17
- constitutional identity, autonomy and assertion of, 333–40
- constitutionalism
 - anti-constitutional elements in security constitutionalization and, 312–18
 - constitutional culture and, 15–17
 - defined, 1–9
 - doctrinal research vs, 5–9
- constitutionalization
 - European constitution in context of, 108–12
 - relationality and, 21–8
 - speech act theory and, 122–4
- constitutional law
 - as higher law, 10–14
 - ordoliberal constitutional theory and, 132–4
- constitutional moment
 - concept of, 32n.6
 - for constituent power, 108–12
- ‘constitutional mutation’, Eurozone crisis and, 108–12
- constitutional object
 - constitutional functions and, 28–37
 - relationality and, 21–8
 - speech acts and, 120–4
- Constitutional Treaty
 - constitutional theory following failure of, 108–12
 - failure of, 4–5
 - Founding Treaties and, 21–8
 - freedom and justice provisions in, 296–301
 - legal scholarship and, 117–18
 - national courts’ positioning and, 88–9
 - parasitic legitimacy and failure of, 35–7
 - primacy principle and, 65–8
- constitutive function, 28–37
 - constitutional object and, 28–37
 - security constitutionalization and, 269–73
- constitutive primacy, 320–1
- constructivist approach, security constitutionalization and, 289–96
- consumer law, regulatory private law and, 257–65
- content-based legitimacy, constitutional functions and, 28–37
- Continental Can* case, competition law and, 146–8
- contractual freedom, economic freedom and, 167–8
- Convention on the Implementation of the Schengen Agreement, 275–6
- convergence criteria
 - EMU eligibility and, 183–7
 - Eurozone crisis and, 187–92
 - Eurozone regime and, 199–209
 - Member State fiscal and monetary policy and, 178–83
 - rule of law and, 209–17
- cooperation procedures
 - in Amsterdam Treaty security provisions, 278–84
 - Fiscal Compact and, 206–9
 - security constitutionalization and, 276–8, 315–16
 - transnationalization and, 312–18
- Copenhagen School of security studies, 289–96
- core welfare services
 - internal market law and, 237–43
 - national welfare state and, 227–32
- corporatist ideology, economic constitutionalism and, 128–31
- Costa v Enel*, 53–9
 - constitutional identity and, 333–40
 - direct effect of European law and, 60–8, 321–3
 - Eurozone regime and, 199–209
 - fundamental rights protections and, 96–9, 316–18, 324–5
 - international law and, 344
 - national law and, 88–9
 - primacy principle and, 65–8, 70
- Council of Europe, social rights and, 251–6
- Council of Foreign Ministers, Common Foreign and Security Policy and, 272–3
- Council of Ministers, 108–12
 - intergovernmentalism and, 331–3
 - qualitative majority voting, 331–3
- Counter-Terrorism Group, 282–4
- Courage* case, 140–1

- Court of Justice of the European Union (CJEU), 94n.26, 94n.27. *See also* European Court of Justice (ECJ)
- court systems, European constitutional discourse and, 112–20
- criminal law
 fundamental rights vs security and, 306
 security provisions in Amsterdam Treaty and harmonization of, 280–2
 security provisions in Lisbon Treaty and, 287–8
- crisis prevention/crisis management transition, macroeconomic constitutionalization and, 187–92
- cross-border transactions. *See also* border controls
 competition law and, 157–64
 denationalization and
 deterritorialization of welfare services and, 248–51
 economic constitutionalization and, 141–50, 152
 healthcare and, 237–43
 open markets and free competition and, 153
 security constitutionalization and, 273–8
 social justice and, 265–8
- cultural diversity
 primacy of national welfare state and, 232–4
- Dassonville* formula, 33–4
 free movement law and, 141–50, 234–7
 microeconomic constitutionalization and, 209–17
- Data Retention Directive, 49–50
- Davies, Gareth, 172–3, 248–51
- decentralized theory, public interventionism and, 155–7
- Decker* case, 243–8
- 'de-constitutionalization', Lisbon Treaty and, 5–9
- defendants' rights, security vs fundamental rights and, 304–12
- Defrenne* cases, 260
- delegation, administrative law concept of, 345–8
- Delors Committee, 177, 186
- democratic input legitimacy, 34–5
 European polity and, 329–31
 European Union and, 217–26
 neutrality in economic policy and, 183–7
 political dimensions of economic constitutionalization and, 169–73
 primacy of national welfare state and, 232–4
 security constitutionalization and, 316–18
 strengthening of European economic governance and, 192–5
 technocratic policy and, 41–4
 transnationalism and
 intergovernmentalism and, 333–40
- democratic procedures, origin-based legitimacy and, 28–37
- demos
 constituent power and, 108–12
 direct input legitimacy and, 217–26
 European citizenry as, 28–37
 European constitutionalism and, 108–12
 transnationalism and
 intergovernmentalism and, 333–40
 as transnational network, 38–41
- denationalization of welfare services, 248–51
- de-politicization, democratic input legitimacy and, 217–26
- derogation
 Eurozone regime and, 199–209
 from fundamental rights, security constitutionalization and, 269–73
 internal market law and welfare services and, 237–43
 limitation and, 270n.2
- Derrida, Jacques, 290
- de Sousa Santos, Boaventura, 80
- deterritorialization of welfare services, 248–51
- de Witte, Bruno, 61, 63n.38, 206–9, 344–5
- dialogical pluralism, 102–7
 transnational law and, 353–5
- Dickson, J., 67n.46
- Digital Rights Ireland* case, 49–50, 311, 324–5
- dimension-specific constitutional theory, 5–9
- direct applicability
 competition law and, 157–64
 direct effect of European law and, 62–3
 economic constitutionalization and, 136–8, 140–1
 macroeconomic policies and, 178
- direct effect. *See also* horizontal direct effect; indirect horizontal effect
 competition law and, 157–64
 denial of, for WTO law, 59
 ECJ jurisprudence on economic rights and, 164–9, 327–8
 economic constitutionalization and, 136–40
 European law and, 60–8, 321–3

- direct effect (*cont.*)
 extension in European law of, 65–7
 free movement law and, 148–50
 integrated model and, 65–8
 juridical constitution, 28–37
 legal certainty and, 70
 narrow vs broad concepts of, 68
 perspectivism and, 340–58
 primacy and, 65–8, 70
 regulatory private law and, 257–65
 social constitutionalization and absence of, 227–32
 state liability and, 68–9n.49
 supremacy principle and, 325–6
- Directive 2011/85, 192–5
- directives
 direct effect of European law and, 62–3
 horizontal direct effect and, 63
 indirect horizontal effect and, 63–5
 integrated model and, 65–8
 strengthening of European economic governance and, 192–5
 transposition of, 70–1
- Directorate-General, 209–17
- dirigiste* economic theory
 French embrace of, 174–8
 in Nazi Germany, 135–6
 ordoliberalism and, 150–2
- disapplication, primacy principle and, 69–71
- discursiveness
 European constitutionalism and, 17–18
 speech acts and, 120–4
- doctrinal scholar perspective, European constitutional discourse and, 112–20
- dominance, abuse of
 competition law and, 146–8, 157–64
 ECJ jurisprudence concerning, 140
- double hermeneutics, European constitutionalism and, 5
- Dougan, Michael, 68, 325–6
- Dred Scott* decision, 121
- Drexler, Josef, 159–60, 163–4
- drug trafficking
 security provisions in Amsterdam Treaty and, 282
 Trevi framework for security and, 275–6
- dualist model, primacy principle and, 65–8
- Dublin II Regulation on the Common European Asylum System, 306–8
- Dworkin, Ronald, 15–16, 46
 economic vs fundamental rights and, 168–9
 European constitutionalism and theories of, 114
 on European legal order, 324–5
 on security vs fundamental rights, 302–3
- Economic and Monetary Union (EMU)
 Community method and, 333–40
 establishment of, 174–8
 Eurozone crisis and, 187–92
 Eurozone regime and, 199–209
 microeconomic constitutionalization and, 321–3
 rule of law and, 209–17
 social policy and, 227–32, 251–6
 transnationalism and intergovernmentalism and, 333–40
 underlying economic assumptions in, 183–7
- economic constitutionalization. *See also* macroeconomic constitutionalization; microeconomic constitutionalization
 democratic input legitimacy and, 221–6
 European economic constitution and national constitutions, 164–9
 Eurozone regime and, 199–209
 framing of, 9–10
 free movement law and, 141–50
 functional primacy, 320–1
 historical evolution of, 108–12, 127–36
 individual rights and, 316–18
 internal market law and welfare services and, 237–43
 market citizenship and, 108–12
 mutual recognition and, 83–6
 neutrality of, 164–9
 political dimensions of, 169–73
 process of constitutionalization, 136–50
 relationality and, 21–8
 sectoral dimensions, 319–20
 security constitutionalization and, 273–8
 social constitutionalization and, 227–32
 underlying controversies, 150–64
 in Weimar Republic, 128–31
- economic freedom
 competition law and, 157–64
 democratic input legitimacy and, 221–6
 direct effect and, 148–50
 economic constitutionalism and, 132–4
 security constitutionalization and, 273–8
 social policy of Member States and, 234–7
- economic integration
 constitutional relationality and, 21–8
 democratic legitimacy and, 169–73
 European integration as, 321–3
 microeconomic constitution and, 127–36
 monetary policy and, 183–7
 pacemaker constitution and, 108–12
 social constitutionalization and, 227–32

- welfare services for mobile workers and citizens and, 243–8
- economic law, ordoliberal theory of, 131–6
- economic policy, macroeconomic constitutionalization and, 183–7
- economic rights, ECJ jurisprudence concerning, 164–9
- economic service principle, internal market law and welfare services and, 237–43
- Economist approach
 - microeconomic constitutionalization and, 321–3
 - monetary union and, 183–7
- EEC Treaty, European legal autonomy and, 53–9
- effective competition structure concept, competition law and, 146–8
- efficacy, principle of
 - community law and, 57–8
 - economic constitutionalization and, 136–8
- elections
 - democratic input legitimacy and, 217–26
 - direct input legitimacy and, 217–26
- embedded openness, of constitutional orders, 102–7, 326–7
- empty-chairs crisis, 331–3
 - economic constitutionalization and, 136–8
- energy supply crises, states of exception and, 291n.44
- enhanced cooperation procedures, Fiscal Compact and, 206–9
- erga omnes* doctrine, 99–102
- Erhard, Ludwig, 135–6
- ESMA ruling, 195–9
- Esping-Andersen, Gosta, 233, 248
- ETA movement, 274–5
- Eucken, Walter, 128–31, 135–6, 174–5
- EU Counter-Terrorism Coordinator, 282–4
- EU law. *See* European law; European Union
- Euro Group, 194–5, 200
- Eurojust, 287, 315–16
 - establishment of, 282
- Europarechtsfreundlichkeit* principle, 94, 104
- European Anti-Fraud Office (OLAF), 282
- European Arrest Warrant (EAW), 88–9, 280–4
 - fundamental rights vs security and, 304–12
 - transnationalization and, 280–4, 304–18
- European Asylum Support Office (EASO), 282
- European Central Bank (ECB), 178–83
 - changing role of, 195–9
 - democratic input legitimacy and, 221–6
 - Eurozone crisis and, 187–92
 - macroeconomic constitutionalization and, 209–26
 - rule of law and, 216–17
 - transnationalism of, 331–3
- European citizenship
 - introduction of, 243–8
 - transnationalism and intergovernmentalism and, 333–40
- European Coal and Steel Community (ECSC), 41–4, 331–3
 - competition law and, 146–8, 150–2
 - pacemaker constitution and, 108–12
- European Commission
 - AFSJ and role of, 278–84
 - Community method and, 333–40
 - competition law and, 118–20, 146–8, 157–64
 - competition policy, free movement law and, 146–8
 - core welfare services and policies of, 237–43
 - denationalization and deterritorialization of welfare services and, 248–51
 - economic constitutionalization and, 138–41
 - European Council and, 192–5
 - Eurozone crisis and, 187–92, 221–6
 - excessive deficit procedures and, 181–2
 - implementation of microeconomic constitution and, 169–73
 - macroeconomic constitutionalization and, 217–26
 - rule of law and, 216–17
 - Schengen Convention and, 276–8
 - security constitutionalization and, 284–8
 - transnationalization and, 312–18, 331–3
- European Committee of Social Rights, 256n.57
- European Community law
 - autonomy of European law and, 57
 - core welfare services and, 237–43
 - economic constitutionalization and, 136–40, 148–50, 164–9
 - European legal system and, 49–50
 - exclusion of fundamental rights in, 90
 - fundamental rights and, 92
 - international law and, 53–9
 - positioning of international law and, 59–60
 - rule of law and, 211–14
 - social constitutionalization and, 227–32
 - Solange* doctrine and, 90–6
 - state liability for breaches under, 64n.41

- European constitutionalism
 constituent power and, 108–12
 direct effect vs primacy in, 65–8
 Eurozone crisis and mutation of, 187–92
 Eurozone regime and, 199–209
 general theory of, 319–40
 juridical and political dimensions of, 9–10
 legal theory concerning, 108–12
 national constitutions and economic constitution of, 164–9
 primacy of national welfare state and, 232–4
 as social constitution, 227–32
 theoretical bases of, 1–9
 transnational law and, 349–58
- European Convention on Human Rights (ECHR), 48–9, 99–102, 296–301
 asylum seekers and, 306–8
 security constitutionalization and, 269–73
 states of exception and, 291–2
 transnational law and, 349–58
- European Council, 91–2
 AFSJ and role of, 278–84, 296–301
 Common Foreign and Security Policy and, 272–3
 Community method and, 333–40
 Decision 2011/99, 190–2
 European Commission and, 192–5
 European constitutional discourse and, 118–20
 security constitutionalization and, 280–2, 284–8, 296–301
 Stability and Growth Pact and, 182–3
 strengthening of European economic governance and, 192–5
 Tampere Conclusions and, 304–12
 terrorism policies of, 282–4
 transnational polity of, 91–2, 108–12
- European Court of Human Rights (ECtHR), 99–102
 fundamental rights vs security in, 309–11
 security constitutionalization and, 296–301
 transnational law and, 349–58
- European Court of Justice (ECJ)
 asylum procedures, 308n.79
 autonomy of European law and rulings of, 53–9, 321–3
 Community method and, 333–40
 competition law and jurisprudence of, 146–8, 157–69
 conferral principle and, 214–16
 denationalization and
 deterritorialization of welfare services and, 248–51
 derogation in free movement of workers and, 274–5
 direct effect of European law and, 60–8, 138–40, 164–9
 economic constitutionalism and jurisprudence of, 127–8, 136–8, 140–1, 148–50, 209–17
 enhanced cooperation in jurisprudence of, 206–9
 on EU institutional competence, 92–6
 EU institutional organization and, 91–2, 108–12
 European constitutional discourse and, 1–9, 34–5, 112–20
 European Court of Human Rights and, 99–102
 European legal system and, 108–12, 327–8
 excessive deficit sanctions regime, 177–8
 financial stability in jurisprudence of, 195–9
 Founding Treaties and, 10–14
 free movement law jurisprudence and, 141–50, 152–3, 164–9, 210–11
 fundamental rights cases and, 90–6, 251–6, 304–12, 324–5
 German Constitutional Court and, 88–9
 host country and home country models of public interventionism and, 155–7
 implementation of microeconomic constitution and, 169–73
 intergovernmentalism and, 331–3
 internal market law and welfare services and, 237–43
 on international agreements, 59
 international law vs European law in jurisprudence of, 340–58
 juridical constitutionalization and, 34–5
 jurisdiction and competence conflicts, 50–3
Kadi and *Kadi II* cases and, 310n.83
 law-making powers, 45–53
 legal discourse on landmark cases of, 120–4
 legal diversity in jurisprudence of, 83–6
 legal scholarship and, 117–18
 legislative harmonization and, 172–3
 Lisbon Treaty security provisions and, 284–8
 microeconomic constitution and, 21–8, 217–26
 multidimensionality of, 320–1
 national courts and, 102–7, 118–20, 326–7
 positioning of international law in European law hierarchy by, 59–60
 pre-emption doctrine and, 72–4, 202–6

- primacy principle and, 65–8, 138–40
- principle of conferral and, 92–6
- on regulations, 62–3
- regulatory private law and, 257–65
- rule of law and, 216–17
- Schengen Convention and, 276–8
- security provisions in Amsterdam Treaty and, 280–2
- social policy of Member States and, 234–7
- state liability cases and, 69–71
- transnationalization and, 312–18
- transnational law and, 349–58
- trigger model and, 65–8
- welfare services for mobile workers and citizens and, 243–8
- European courts, fiscal and economic policy and, 209–17
- European Currency Unit (ECU), 177n.8
- European economic governance
 - Commission White Paper on, 333–4n.9
 - conferral principle and, 214–16
 - democratic input legitimacy and, 221–6
 - Eurozone crisis and, 187–92
 - Eurozone regime and, 199–209
 - strengthening of, 192–5
- European Financial Stability Mechanism (EFSM), 187–92
- Eurozone regime and, 199–209
- pre-emption doctrine and, 202–6
- principle of conferral and, 214–16
- European law
 - autonomy of, 53–9, 321–3
 - constitutional discourse and, 112–20
 - definitions, 1n.1
 - direct effect in, 65–7
 - economic and juridical
 - constitutionalization and, 321–3
 - European constitution in context of, 1–9
 - European legal system and, 45–53
 - Eurozone crisis management and, 187–92
 - general principles, 74–7
 - German Constitutional Court review of
 - primacy of, 90–6
 - international law and positioning of, 59–60
 - legal diversity and, 102–7
 - legal pluralism and, 86–8
 - national law and, 50–3, 88–9
 - OMT programme and, 195–9
 - openness principle concerning, 92–6
 - perspectivism in, 78–81
 - positioning of, 59–71
 - pre-emption in supremacy in, 72–4
 - primacy of, 65–8
 - transnational law and, 349–58
- European legal system
 - juridical and political constitutions and, 45
 - structure and characteristics of, 45–53
- European majoritarianism, public
 - interventionism and, 155–7
- European Monetary System (EMS), 174–8
- European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 282
- European Parliament, 91–2, 108–12
 - AFSJ and role of, 278–84
 - direct input legitimacy and, 217–26
 - European Commission powers, 221–6
 - fundamental rights joint declaration and, 91–2
 - intergovernmentalism of, 206–9, 331–3
 - normative constitutionalism and, 41–4
 - perspectivism and, 78–81
 - polity building and, 329–31
 - Schengen Convention and, 276–8
 - transnational constitutionalism and, 37–44
 - transnationalization and, 312–18
- European Police College (CEPOL), 282
- European polity, juridical and political
 - constitutions and, 45
- European regulatory private law, 231
- European Resolution Fund, 195–9
- European Security Strategy, 282–4
- European Social Charter of the Council of Europe, 251–6
- European Stability Mechanism (ESM)
 - democratic input legitimacy and, 221–6
 - establishment of, 187–92
 - Eurozone regime and, 202–3
 - pre-emption doctrine and, 202–6
 - principle of conferral and, 214–16
 - strengthening of European economic governance and, 192–5
- European System of Central Banks (ESCB), 178–83
- European Union (EU)
 - competence of institutions in, 92–6
 - complementarity and, 38–41
 - constitutional functions and, 28–37
 - constitutional relationality and, 21–8
 - economic constitutionalization and, 164–9
 - European constitution in context of, 1–9
 - European legal system and, 50–3
 - Eurozone crisis management and, 187–92
 - formal and material constitutions and, 10–14
 - fundamental rights and, 17n.26

- European Union (EU) (*cont.*)
 institutional organization, 108–12
 internal security issues and, 269–73
 legal diversity in legislation of, 83–6
 perspectivism in law and, 78–81
 polity and constitutional functions in,
 28–37
 pre-emption doctrine and, 72–4, 202–6
 primacy of national welfare state and,
 232–4
 rule of law and, 209–17
 transnational constitutionalism and,
 38–41
- European Union Agency for Fundamental
 Rights, 296–301
- European Union Counter-Terrorism
 Strategy, 282–4
- European University Institute, 127–8
- Europol, 278n.16, 287, 315–16
- Eurozone crisis
 crisis prevention/crisis management
 transition and, 187–92
 democratic input legitimacy and, 217–26
 economic constitution and, 108–12
 European Central Bank and, 195–9
 international law and agreements
 concerning, 108–12
 limitations of European and national
 constitutionalization and, 321–3
 macroeconomic constitutionalization
 and, 174–8
 national welfare state and, 232–4
 polycentricity of legal sources and, 81–6
 principle of legality and, 216–17
 reverse majority voting and, 331–3
 social policy in wake of, 251–6
 states of exception and, 291n.44
- Eurozone regime
 constitutional basis for, 199–209
 transnationalism and
 intergovernmentalism and, 333–40
- excessive deficit procedures
 Eurozone regime and, 199–209
 Maastricht Treaty provisions for, 181–2,
 186
 pre-emption doctrine and, 202–6
 rule of law and, 209–17
 strengthening of European economic
 governance and, 192–5
- excessive imbalances procedure, 192–5
- Exchange Rate Mechanism (ERM), 177n.8
- exchange-rate stability
 EMU eligibility and, 183–7
 European monetary policy and, 178–83
 Member States and, 174–8
- exclusion, primacy of European law and,
 69–70
- exclusive perspectivism
 interlegality and, 85–6
 legal pluralism and, 86–8, 102–7
 principles of, 78–81
- existential threat, security
 constitutionalization and concept of,
 289–96
- expert bodies
 democratic input legitimacy and,
 221–6
 legitimacy of, 333–40
 macroeconomic constitutionalization
 legitimacy and, 217–26
 rule of law and role of, 209–17
- federalism
 EU polity and, 345–8
 European economic constitutions and,
 164–9
 pre-emption doctrine and, 72–4
 primacy of national welfare state and,
 232–4
- FIDE association of European law scholars,
 117–18
- field pre-emption, 72–4
- financial markets
 banking union proposals and, 195–9
 discipline imposed on Member States by,
 186
 Eurozone crisis and, 187–92
- financial stability mechanisms
 democratic input legitimacy and,
 221–6
 European Central Bank and, 195–9
 Eurozone crisis and, 187–92
 Member State coordination and, 206–9
- Finland, financial liability issues for, 192–5
- Finnish Constitution, 31, 218–19n.76
 security vs liberty in, 302–3
- Fiscal Compact, 192–5
 national constitutions and, 206–9
 pre-emption doctrine and, 202–6
- fiscal policy
 democratic input legitimacy and
 sovereignty in, 217–26
 ECB and, 195–9
 Eurozone crisis and, 187–92
 Eurozone regime and, 199–209
 monetary stability and, 183–7
 primacy of national welfare state and,
 232–4
 social policy and, 227–32
 strengthening of European economic
 governance concerning, 192–5
- Fischer-Lescano, Andreas, 80, 354–5
- flexibility clause (Treaty of Rome)
 ECJ jurisprudence and, 327–8

- economic constitutionalization and, 148–50
- European legal system and, 45–53
- football hooliganism, Trevi framework for security and, 275–6
- formal constitution
 - concept of, 10–14
 - European law and, 108–12
- formal sanctions
 - democratic input legitimacy and, 221–6
 - Eurozone crisis management and, 192–5
- Foto-Frost* ruling, 58–9
- Foucault, Michel, 295, 317
- Founding Treaties. *See also* treaty law; specific treaties
 - as constitutional charter, 108–12
 - constitutional dimensions, 21–8
 - constitutional functions and, 28–37
 - EC (EU) constitutional charter and, 10–14
 - EU institutional competence and, 92–6
 - European constitutional discourse and, 112–20
 - European legal system and, 50–3
 - European monetary policy and, 178–83
 - internal security issues and, 269–73
 - international law autonomy and, 53–9
 - national constitutions and, 206–9
 - perspectivism and, 340–58
 - strengthening of European economic governance and, 192–5
 - transnational law and, 349–58
- fragmentation, security
 - constitutionalization and, 312–18
- Framework Agreement on the European Financial Stability Facility (EFSF), 187–92
- Framework Decision on Combating Terrorism, 282–4, 294–6, 304–12
- Framework Decision on the European Arrest Warrant, 88–9, 280–4, 304–18
- framework decisions, security provisions in
 - Amsterdam Treaty and, 278–84
- framing constitutions
 - constitutional functions and, 28–37
 - juridical and political constitutions as, 319–20
 - multidimensionality, 320–1
 - relationality and, 21–8
- France
 - constitutionalism in, 108–12
 - Constitutional Treaty failure in, 4–5
 - European monetary policy and, 178–83
 - Monetarist approach embraced by, 183–7
- Frankovich* case, 64–5
- freedom, security constitutionalization and, 296–301
- free movement law
 - Amsterdam Treaty on free movement of persons, 278–84
 - ECJ jurisprudence and, 141–50, 210–11
 - economic activities included in, 148–50
 - economic constitutionalization and, 138–40
 - economic freedom vs individual rights in, 152, 164–9
 - home country model of, 172
 - internal market law and welfare services and, 237–43
 - ratione personae* and, 145–6
 - security constitutionalization and, 273–8
 - social constitutionalization and, 234–7
 - transnational constitutionalism and, 166
 - underlying controversy in, 157–64
 - welfare services for mobile workers and citizens and, 243–8
- free movement of goods, economic constitutionalization and, 141–50
- Freiburg group, economic constitutionalism and, 130–1
- Frontex border system, 282
- functional primacy, sectoral constitutions, 21–8, 320–1
- fundamental rights law
 - access justice and, 265–8
 - constitutional identity and, 333–40
 - constitutional theory and, 15–17, 28–37
 - economic rights and, 164–9
 - European legal system and, 45–53, 324–5
 - freedom and justice in security constitutions and, 296–301
 - German Constitutional Court review of, 90–6
 - legal pluralism and, 88–94, 102–7
 - primacy principle and, 96–9
 - security constitutionalization and, 269–73, 301–12, 321–3
 - social constitutionalization and, 227–32
 - Solange* doctrine and, 90–6
 - state of exception and, 289–96
 - transnational law and, 349–58
 - '*funktionaler Zweckverband*', transnationalism and intergovernmentalism and, 333–40
- GB-Inno-BM* case, 146
- Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, 235n.13
- Geltungsvorrang*. *See* invalidation
- general constitutional theory
 - constitutional pluralism and, 5–9
 - EU constitutional law and, 10–14

- Geneva Convention, asylum seekers and, 306–8
- German Constitutional Court, 48–9
 direct input legitimacy and rulings of, 217–26
 ECB Outright Monetary Transactions programme, 116–17, 118–20
 European Central Bank and, 195–9
 European constitutional discourse and, 117–18
 on fiscal and social policy, 227–32
 fiscal and social policy and rulings by, 232–4
 identity review by, 96–9
 legal pluralism and, 102–7
 national law and, 88–9
 primacy of EU law and rulings of, 90–6
 security vs fundamental rights in, 303–4
 transnational law and, 349–58
ultra vires jurisdiction of, 92–6
- Germany
 European monetary policy and, 178–83
 financial liability issues for, 192–5
 monetary union and, 183–7
 reunification of, 108–12
- Gesamtscheidung* (comprehensive decision), 132–4, 135–6
 competition law and, 150–2, 161–4
 economic constitutionalization and, 136–8, 164–73
 fundamental rights and, 166–7
 implementation of microeconomic constitution and, 169–73
- Gewerbeordnung* liberalization, 166–7
- GlaxoSmithKline* case, 159n.76
- Görgülü* case, European Convention on Human Rights and, 101–2
- gouvernement des juges (des experts)*, 172
- government debt
 Eurozone crisis and, 187–92
 Maastricht Treaty provisions concerning, 181, 185
 strengthening of European economic governance and, 192–5
- Greek debt crisis, 187–92
 strengthening of European economic governance and, 192–5
- Grundnorms*
 constitutional law and, 10–14
 legal diversity and, 82–3
 normative autonomy and, 53–9
 perspectivism and, 78–81
 radical pluralism and, 353–5
- Grundsätze der Wirtschaftspolitik* (Eucken), 174–5
- Grzelczyk* case, 249
- Günther, Klaus, 113
- Habermas, Jürgen, 42
- Hague Programme (2004), 281, 297, 305n.70
- Halberstam, Daniel, 106
- Hallstein, Walter, 170, 213
- harmonized model
 microeconomic constitution and, 172
 regulatory framework and, 153–5
- Hart, H. L. A., 82
- Hauer v Land Rheinland-Pfalz*, 168–9, 324
- Hayek, Friedrich, 130, 134–5, 266
- healthcare
 access justice and, 265–8
 denationalization and
 deterritorialization of, 248–51
 internal market law and, 237–43
 for mobile workers and citizens, 243–8
 heterarchical model, radical and dialogical pluralism and, 102–7
 hierarchy of legal norms, European legal system and, 45–53
 higher law, constitutional law as, 10–14
- High Representative of the Union for Foreign Affairs and Security Policy, 285, 333
- Hoffmann-La Roche v Commission*, 148n.54
- Holmes, Oliver Wendell, 136n.25
- home country model
 free movement law and, 172
 regulatory framework and, 153–5
- Honeywell* case, 94–5
- horizontal direct effect. *See also* indirect horizontal effect
 European law and, 63
 security constitutionalization and, 302–3, 308–9
- 'horizontal *Solange*', security vs fundamental rights and, 308–9
- host country model
 microeconomic constitution and, 172
 regulatory framework and, 153–5
- Hurri, Samuli, 274, 317
- hybrid space
 of legal pluralism, 86–8
 political dimensions of economic constitutionalization and, 169–73
 radical pluralism and, 102–7
 transnational law and, 349–58
- identity review
 in German Constitutional Court, 90–6
 legal pluralism and, 96–9, 102–7
- illocution
 European constitutional discourse and, 112–20
 legal discourse and, 120–4
 perspectivism and, 78–81
 speech acts, 120

- immigration
 - Amsterdam Treaty on free movement of persons, 278–84
 - freedom and justice and issues of, 296–301
 - state of emergency provisions and, 291n.44
- impediment-based competition, economic constitutionalism and, 132–4
- imperative reasons principle, social policy of Member States and, 234–7
- implicit social theory of law, 35–7
- implied powers doctrine, ECJ jurisprudence and, 327–8
- independence, primacy principle and, 65–8
- indirect horizontal effect, 63–5
- individual rights
 - derogation of free movement and, 273–8
 - direct effect of European law and, 60–8
 - European constitutional law and, 50–3
 - evolution of individualization and, 108–12
 - security constitutionalization and, 272–3, 301–12, 316–18
 - transnational constitutionalism and, 37–44
- inflation rate, EMU eligibility and, 183–7
- information sharing, security constitutionalization and, 294–6
- infrastructure services, internal market law and, 237–43
- institutional autonomy, 53–9
 - European transnationalization and intergovernmentalism and, 331–3
- institutional balance principle, European polity and, 329–31
- institutional interlocking, transnational constitutionalism and, 37–44
- instrumentality, economic vs fundamental rights and, 168–9
- insurance-based healthcare and social security systems, denationalization and deterritorialization of, 248–51
- integrated model
 - Community method and, 333–40
 - European legal diversity and, 83–6
 - primacy principle and, 65–8
 - rule of law and, 213–14
- integration by stealth, transnationalism and intergovernmentalism and, 333–40
- Interacting Legal Systems model, 67n.46
- Intercreeper Agreement, 187–92
- inter-dimensional relationality, European constitution and, 9–10
- intergovernmental institutions
 - European constitutional discourse and, 112–20
 - European constitutionalism and, 108–12
 - European polity and, 331–3
 - Eurozone crisis and, 187–92
 - financial assistance and, 206–9
 - institutional interlocking and, 37–44
 - security constitutionalization and, 312–18
 - security provisions in Amsterdam Treaty and, 278–84
 - security provisions in Lisbon Treaty and, 287–8
- interlegality
 - legal diversity and, 85–6
 - legal pluralism and, 102–7
 - perspectivism and, 78–81
 - transnational constitutionalism and, 37–44
- interlocutory speech acts, European constitutional discourse and, 120–4
- internal markets
 - competition law and, 157–64
 - national welfare policy and, 234–7
 - security constitutionalization and, 275–6
 - welfare services and, 237–43
- internal security
 - Amsterdam Treaty and development of, 278–84
 - as EU objective, 278
- Internal Security Strategy for the European Union, 292–4, 304–12
- international agreements
 - ECJ jurisprudence concerning, 59, 140
 - principle of conferral and, 214–16
 - stability mechanisms and, 202–3
- International Court of Justice, transnational law and, 349–58
- Internationale Handelsgesellschaft* case, 57–8, 66n.44
 - Solange* doctrine and, 90–6
- international institutions of power
 - perspectivism concerning, 343
 - Solange* doctrine and, 90–6
- international law
 - European constitutionalism and, 108–12
 - federalism and, 345–8
 - internal effects of, 60–8
 - legal autonomy of Member States and, 53–9
 - legal diversity and, 82–3
 - perspectivism and, 340–58
 - perspectivism on, 340–58
 - primacy principle and, 65–8

- international law (*cont.*)
 security constitutionalization and, 272–3, 275–6
 transnational law and, 349–58
- International Monetary Fund (IMF), Eurozone crisis and, 189
- interpretive autonomy, 53–9
 legal pluralism and, 102–7
ultra vires review and, 92–6
- inter-state commerce, constitutional principles and, 164–9
- invalidation, primacy principle and, 69–71
- invocabilité*, French legal principle of, 68
- Irish Republican Army (IRA), 274–5
- Italian constitutional court, national law and, 88–9
- Jellinek, Georg, 314
- judicial system
 Amsterdam Treaty on cooperation of, 278–84
 European constitutional discourse and, 112–20
 juridical constitution and, 108–12
 security provisions in Lisbon Treaty on cooperation of, 287
- juridical constitutionalization
 autonomy and, 60–8
 constitutional functions and, 28–37
 content-based legitimacy of, 34–5
 direct applicability and direct effect and, 141n.36
 ECJ jurisdiction and, 50–3, 327–8
 economic constitutionalization and, 136–8, 148–50
 European constitutional theory and, 321–3
 European legal system and, 45–53
 Eurozone regime and, 199–209
 framing of, 9–10, 45–77, 319–20
 fundamental rights and, 92
 judicial citizenship and, 108–12
 legal diversity and, 83–6
 Member State law and, 88–9
 multidimensionality of, 320–1
 perspectivism and, 340–58
 political constitution and, 45
 qualified monism and, 59
 relationality and, 21–8
 theoretical divergence concerning, 65–8
 Treaties' provisions on, 50–3
 welfare services for mobile workers and citizens and, 243–8
- justice
 complementary vs conflicting concepts of, 265–8
 security constitutionalization and, 296–301
 justification for restriction, free movement law and, 141–50
- K.4 Committee, 277n.11
- Kadi* case, 49–50
 constitutional identity in, 338–40
 Eurozone regime and, 202
 legal autonomy of European law and, 57
 positioning of international law in European law hierarchy and, 59–60
 security vs fundamental rights in, 309–11
 transnational law in, 352
- Kadi II* case, 310n.83
- Kantian philosophy, perspectivism and, 78–81
- Keck* formula, 33–4
 free movement law and, 141–50
- Kelsen, Hans
 cultural levels of law and theory of, 85–6
 European constitutionalism and theories of, 114
 legal diversity and theory of, 81–6
 legal order in theory of, 324–6
 normative autonomy and, 53–9
 perspectivism and theory of, 78–81
 pure theory of law of, 10–14, 45–53
 radical pluralism and, 102–7, 353–5
 supremacy vs primacy and, 69–71
- Keynesian economics, competition law and, 160–1
- Kohll* case, 247–8
- Kokott AG, 191, 202–3n.51
- Kompetenz-Kompetenz* ruling, 58–9
 European constitutional discourse and, 118–20
 legal pluralism and, 326–7
 primacy principle and, 342
 radical pluralism and, 102–7, 353–5
ultra vires review and, 90, 92–6
- Koskenniemi, Martti, 79–80
 radical pluralism and, 102–7, 353–5
- Küçükdeveci* case, 94n.26
- Kumm, Mattias, 106n.44
- Laband, Paul, 314
- labour law
 free movement of workers and, 273–8
 primacy of national welfare state and, 232–4, 237
 regulatory private law and, 257–65
- labour mobility, macroeconomic constitutionalization and, 251–6
- Laval* case, 27–8, 146n.50
 economic vs fundamental rights and, 168–9

- social justice and, 265–8
- social policy of Member States and, 234–7, 251–6
- legal actors
 - constitutional speech acts and, 120–4
 - European constitutional discourse and, 112–20
 - in Kelsenian theory, 83–6
 - perspectivism of, 78–81
- legal certainty, primacy vs direct effect and, 70
- legal culture
 - European constitutional discourse and, 112–20
 - European law and, 326
 - interlegality and, 85–6
 - perspectivism and, 78–81
- legal disciplines, perspectivism and, 78–81, 355–8
- legal diversity
 - perspectivism and, 81–6
 - radical and dialogical pluralism and, 102–7
- legality, principle of, principle of conferral and, 214–16
- legal order
 - in European law, 324–5
 - legal diversity and, 81–6
 - perspectivism and, 78–81
 - pluralism of, 86–8
- legal perspectivism. *See* perspectivism
- legal pluralism
 - basic principles of, 86–8
 - conflict vs dialogue and, 102–7
 - European constitution and, 3–4, 5–9
 - European Convention on Human Rights and, 99–102
 - European fundamental rights and, 88–102
 - European law and, 326–7
 - exclusive perspectivism and, 102–7
 - identity and, 96–9
 - legal diversity and, 81–6
 - radical pluralism and, 102–7
 - security vs fundamental rights and, 304–12
 - ultra vires* review of EU institutional competence and, 93–4
- legal positivism, polycentricity and doctrine of, 81–6
- legal practices
 - constitutional theory and, 15–17
 - European constitutional discourse and, 112–20
- legal roles, perspectivism and, 78–81
- legal scholarship
 - doctrinal research vs, 5–9
 - European constitutional discourse and, 112–20
 - perspectivism in, 78–81
- legal sources, polycentricity and doctrine of, 81–6
- legal theory, economic constitutionalism and, 134–6
- legislative acts
 - pre-emption doctrine and, 202–6
 - regulatory private law and, 261n.67
- legislative competences, economic constitutionalization and, 136–40, 148–50
- legisprudence (*Gesetzgebungslehre*), 114
- legitimacy principles
 - constitutional functions and, 28–37
 - of macroeconomic constitutionalization, 217–26
 - political dimensions of economic constitutionalization and, 169–73
 - security constitutionalization and, 316–18
 - transnationalism and intergovernmentalism and, 333–40
- Leitbild* social security coordination, 243–8
- Lepsius, Oliver, 303–4
- Les Verts v Parliament* ruling, 11–12, 55
 - rule of law and, 211
- lex digitalis*, 351
- lex loci laboris*, welfare services and, 248–51
- lex mercatoria*, 351
- lex posteriori* principle
 - positioning of European law and, 70–1
 - primacy principle and, 65–8
- lex specialis*, positioning of European law and, 70–1
- lex sportiva*, 351
- Limburg principles, 255
- limitation
 - constitutional relationality and, 21–8
 - derogation and, 270n.2
 - security constitutionalization and, 269–73
- Lindseth, Peter, 3–4, 43, 348–9
- Lisbon* case, 93–4, 117–18
 - constitutional identity and, 339n.17
 - democratic input legitimacy and, 218
 - fiscal vs social policy in, 230
- Lisbon Treaty
 - absence of primacy principle in, 65–8
 - competition law and, 157–64
 - core welfare services and sovereignty in provisions of, 237–43
 - ‘de-constitutionalization’ and, 5–9
 - democratic input legitimacy and, 217–26

- Lisbon Treaty (*cont.*)
 elimination of federalist connotations
 in, 5
 European Council establishment and,
 331-3
 European legal system and, 45-53
 Eurozone regime in, 199-209
 free movement provisions in, 297n.59
 fundamental rights law and, 92
 law on universal services in, 264-5
 Member State constitutionalism and,
 41-4
 Member State identity in, 96-9
 national courts' positioning and, 88-9
 parasitic legitimacy and, 35-7
 pre-emption doctrine and, 72-4, 202-6
 Protocol on shared competences, 72-4,
 202-6
 security constitutionalization and, 282,
 284-8, 315-16
 security vs fundamental rights and,
 304-12
 social constitutionalization and, 227-32
 terrorism provisions in, 294-6
 transnational constitutionalism and,
 37-44
- Loan Facility Agreement, 187-92
- Lochner v New York*, 121, 136n.25
- locus standi* proceedings, European Union
 courts, 50-3
- locutionary speech, 120
- lois fondamentales*, EU constitutional law
 and, 10-14
- long-term interest rate, EMU eligibility and,
 183-7
- Luftverkehrsgesetz* ruling, 304n.67
- Luhmann, Niklas, 9, 351
 constitutional relationality, 21-8
 European constitutionalism and
 theories of, 114
 perspectivism and theory of, 78-81
 radical pluralism and, 102-7
 on state constitutions, 45
 transnational law and, 353-5
- Luisi and Carbone* case, 247
- 'lump concepts', constitutional theory and,
 11
- Luxembourg Compromise, 136-8, 331-3
- Maastricht* case (German Constitutional
 Court), 38
 direct input legitimacy and, 217-26
 European constitutional discourse and,
 117-18
- Maastricht* Treaty
 Community Charter of Fundamental
 Social Rights of Workers and, 251-6
- Community method and, 333-40
 competences in, 48-9
 competition law and, 161-4
 Economic and Monetary Union
 provisions, 21-8
 EMU and, 174-8
 European Central Bank role and, 195-9
 European Council establishment and,
 331-3
 Eurozone crisis and, 187-92
 Eurozone regime and, 199-209
 free movement law and, 143-4
 fundamental rights and, 92
 fundamental rights law and, 15-17
 macroeconomic constitutionalization
 and, 174-83
 Member State identity and, 96-9
 open markets and free competition in,
 153
 political constitutionalization and, 34-5,
 108-12
 regulatory private law and, 257-65
 rule of law in, 211-14
 Schengen Convention and, 276-8
 security constitutionalization and,
 275-6
 security vs fundamental rights and,
 304-12
 shared liability for government debt
 and, 181
 Social Policy Protocol and Agreement,
 21-8, 321-3
 strengthening of European economic
 governance and, 192-5
 transnationalism and
 intergovernmentalism and, 333-40
- MacCormick, Neil, 22, 38, 102
- macroeconomic constitutionalization
 banking union proposals and, 195-9
 crisis prevention/crisis management
 transition and, 187-92
 Eurozone regime and, 199-209
 framing of, 9-10
 historical evolution of, 108-12, 174-8
 legitimacy concerns for, 217-26
 Maastricht principles and, 178-83
 mutation of, 174-226
 primacy of national welfare state and,
 232-4
 rule of law and, 209-17
 social policy and, 227-32, 234-7,
 251-6
 Stability and Growth Pact and, 182-3
 underlying economic assumptions in,
 183-7
- Majone, Giandomenico, 330-1
- mandatory requirements doctrine, 235n.12

- Mangold* case, 65, 94–5
 market access, free movement law and, 144–5
 market economies
 competition law and, 150–2, 153
 economic constitutionalism and, 128–31, 134–6, 164–9
 juridical constitutionalization and, 34–5
 microeconomic constitutionalization and, 321–3
 public interventionism and, 152
 social policy and, 227–32, 251–6
 substantive legitimacy and, 169–73
 market justice, 265–8
Marleasing case, 64
materia constitutionis, European constitutionalization and, 21–2, 164–9
 material constitution
 concept of, 10–14
 relationality and, 21–8
 Maus, Ingeborg, 304
Melloni case, 99, 306–8
 constitutional identity and, 340
 Member State Ministers of Justice and Home Affairs, 275–8, 282–4
 Community method and, 333–40
 security vs fundamental rights and, 304–12
 Member States, law and constitutions of.
 See also national constitutions and legislation
 Amsterdam Treaty on free movement of persons and, 278–84
 citizenship and, 37–44
 Community method and, 333–40
 competition law and, 146–8
 complementarity and, 38–41
 constitutional discourse and, 28–37, 112–20
 convergence criteria and, 199–209
 democratic input legitimacy and, 41–4, 217–26
 demos and, 108–12
 denationalization and
 deterritorialization of welfare services and, 248–51
 derogations on security-related issues by, 273–8
 direct applicability principle and, 62–3
 ECB Outright Monetary Transactions programme and, 116–17
 ECJ jurisdiction over legislation and, 50–3, 327–8
 economic and juridical constitutionalization and, 321–3
 economic constitutionalization and, 136–8, 164–9
 European Commission and, 118–20
 European Convention on Human Rights and, 99–102
 European law primacy over, 60–8, 325–6
 Eurozone crisis and, 187–92
 federalism and, 345–8
 financial markets' impact on, 186
 fiscal and economic policy sovereignty and, 178–83
 Fiscal Compact and cooperation of, 206–9
 Founding Treaties and, 10–14
 framing of, 9–10
 free movement law and, 141–50
 fundamental rights law and, 92, 304–12
 horizontal direct effect and, 63, 308–9
 identity and, 96–9
 intergovernmental agreements and, 206–9
 intergovernmentalism and, 333–40
 interlegality and, 85–6
 internal market law and welfare services and, 237–43
 juridical and political constitutions and, 45
 labour law and, 257–65
 law on universal services and, 263–4
 legal autonomy and, 53–9
 legal diversity and, 83–6, 102–7, 174–8
 legal practices and, 15–17
 macroeconomic constitutionalization and, 209–17, 251–6
 monetary and economic policy and, 174–8
 monetary policy and, 178–83
 perspectivism and, 78–81, 340–58
 political dimensions of economic constitutionalization and, 169–73
 positioning of, 88–9
 pre-emption doctrine and, 72–4, 202–6
 primacy of national welfare state and, 232–4
 primacy principle and, 65–8
 public interventionism and, 155–7
 regulatory private law and, 257–65
 rule of law and Union relations with, 214–16
 security constitutionalization and, 272–3, 284–8, 304–12
 social policy and, 171–2, 227–32, 251–6
 state liability for breaches, European law obligations, 63–5
 strengthening of European economic governance and, 192–5
 supremacy principle and, 70–1, 72–4
 TEEC legal system and, 140n.34
 transfer of sovereign rights by, 92–6

- Member States (*cont.*)
 transnationalism and, 37–44, 312–18,
 333–40, 349–58
 transnationalization and, 312–18
 Trevi framework for security and, 275–6
- Memoranda of Understanding (MoU)
 Eurozone crisis and, 187–92
 strengthening of European economic
 governance and, 192–5
 strict conditionality conditions in, 251–6
- merger control, competition law and,
 146–8, 157–64
- Merger Regulation, economic
 constitutionalization and, 148–50
- Mestmäcker, Ernst-Joachim, 151, 159–60
- meta-language
 European constitutionalism and, 5
 second-order discourse and, 5–9
- Micklitz, Hans-W., 231, 265
 access justice theory of, 265–8
- microeconomic constitutionalization
 banking union proposals and, 195–9
 competition law and, 157–64
 European Commission and, 118–20
 framing of, 9–10
 free movement law and, 141–50
 historical evolution of, 108–12, 127–36
 Member State legal diversity and, 174–8
 origin-based legitimacy and, 28–37
 overview of, 127–73
 political dimensions of, 169–73
 relationality and, 21–8
 rule of law and, 209–17
 sectoral issues in, 321–3
 security constitutionalization and,
 273–8
 social policy and, 227–32, 234–7
 underlying controversies concerning,
 150–64
- mixed government model, European polity
 and, 329–31
- mobile workers
 denationalization and
 deterritorialization of welfare services
 and, 248–51
 derogations on security-related issues
 and, 273–8
 social justice for, 265–8
 welfare services for, 239
- Moldovan Constitution, 165–6
- Monar, Jörg, 304–5
- Monetarist approach
 economic policy and, 183–7
- monetary policy
 democratic input legitimacy and, 217–26
 ECB role in, 195–9
 economic policy and, 183–7
 Eurozone crisis and, 187–92
- Maastricht principles for common
 European policy, 178–83
- macroeconomic constitutionalization
 and, 174–8
 strengthening of European economic
 governance and, 192–5
- monist model
 direct effect of European law and, 61
 legal diversity and, 82–3
 primacy principle and, 65–8
- monitoring procedures, Eurozone crisis
 management and, 192–5
- Monnet, Jean, 41–2, 331–3
- Mont Pelerin Society, 130, 134–5
- moral hazard
 banking union proposals and, 198–9
 fiscal policy in Maastricht model and,
 183–7
 government spending and borrowing
 and, 181
- Müller-Armack, Alfred, 171
- multidimensionality
 constitutional dimensions and, 320–1
 in European constitutional discourse,
 118–20
- multilateral surveillance
 Eurozone crisis and, 187–92
 Eurozone regime and, 199–209
 Maastricht Treaty provisions for, 181–3
 pre-emption doctrine and, 202–6
 strengthening of European economic
 governance and, 192–5
- municipal law
 European Convention on Human Rights
 and, 99–102
 positioning of, 88–9
 transnational law and, 349–58
 transposition of directives and, 70–1
- Müssler, Werner, 161–2
- mutual positioning
 fundamental rights pluralism and,
 99–102
 transnational constitutionalism and,
 37–44
- mutual recognition principle
 freedom and justice in security
 constitutionalization and, 296–301
 free movement law and, 141–50,
 235n.12
 fundamental rights vs security and,
 304–12
 legal diversity and, 83–6
 market regulation and, 153–5
 security provisions in Amsterdam Treaty
 and, 280–2
 security provisions in Lisbon Treaty and,
 284–8
 transnationalization and, 312–18

- national central banks
 - European Central Bank and, 195–9
 - European monetary policy and, 178–83
 - Eurozone crisis and, 187–92
- national constitutions and legislation, 37–44. *See also* Member States, law and constitutions of
- democratic legitimacy and, 41–4, 217–26
- denationalization and
 - deterritorialization of welfare services and, 248–51
- direct effect and, 68–9n.49
- economic constitutionalization and, 136–8
- European constitutional discourse and, 118–20
- European economic constitution and, 164–9
- European legal system and, 45–53
- Eurozone crisis and, 321–3
- Fiscal Compact and, 206–9
- free movement law and, 141–50
- fundamental rights law and, 92
- German Constitutional Court review of primacy of, 90–6
- identity of, 96–9
- indirect horizontal effect and, 63–5
- individual rights and, 60–8
- interpretive autonomy of, 92–6
- legal diversity and, 83–6
- ordoliberal economic constitutionalism and, 131–6
- positioning function of, 88–9
- primacy of national welfare state and, 232–4
- primacy principle and, 65–8
- social constitutionalization and, 227–32
- strengthening of European economic governance and, 192–5
- supremacy principle and, 69–71
- transnationalization and, 312–18
- transposition of directives and, 70–1
- national courts
 - democratic input legitimacy and, 221–6
 - duty of application in, 69n.51
 - European constitutional discourse and, 112–20, 328–9
 - European Court of Justice and, 102–7
 - fiscal and economic policy and, 209–17
 - institutional interlocking and, 37–44
 - interpretive autonomy of, 92–6
 - security vs fundamental rights in, 304–12
- National Health Service (NHS) systems
 - denationalization and
 - deterritorialization of welfare services and, 248–51
 - internal market law and, 237–43
- nationalistic ideology, democratic input legitimacy and, 217–26
- national parliaments
 - intergovernmental financial agreements and, 206–9
 - transnational constitutionalism and, 37–44
- national private law systems, economic constitutionalization and, 167n.91
- national welfare policy
 - denationalization and
 - deterritorialization of, 248–51
 - internal market law and, 237–43
 - microeconomic constitutionalization and, 234–7
 - mobile workers and citizens, 243–8
 - regulatory private law and, 257–65
 - social justice and, 265–8
- national welfare state
 - European constitutionalism and, 227–32
 - primacy of, 232–4
- ne bis in idem* principle, 93–4, 95–6
 - Schengen Convention and, 275–6
 - security vs fundamental rights and, 304–12
- negative externalities, fiscal policy in
 - Maastricht model and, 183–7
- negative integration
 - social policy of Member States and, 234–7
 - welfare services for mobile workers and citizens and, 243–8
- neofunctionalism, European constitutionalization, 112n.7
- neoliberal movement
 - competition law and, 161–4
 - economic constitutionalism and, 130n.10
 - economic integration and, 151n.58
- Netherlands, Constitutional Treaty failure in, 4–5
- Neumann, Franz L., 129n.6
- neutrality principle, macroeconomic constitutionalization and, 183–7, 251–6
- New Austrian School, 135n.23
- no-bailout clause
 - European Central Bank and, 195–9
 - Eurozone crisis management and, 190–2
 - in Maastricht Treaty, 181, 185
- non-economic services of general interest, internal market law and, 242
- non-state actors, free movement law and, 145–6
- normative autonomy, 53–9
- normative legal principles
 - autonomy of European law and, 53–9
 - constitutional culture and, 15–17

- normative legal principles (*cont.*)
 European constitutional discourse and, 112–20
 first-order discourse and, 5–9
 legal diversity and, 83–6
 perspectivism and, 78–81
 pluralism of, 86–8
 state legal orders and, 45–53
 supremacy and, 65–8
- Nörr, Knut Wolfgang, 129–30
- Norwegian Constitution of 1814, 31–3
- Nozick, Robert, 266
- NS and Others* case, 307–9
- object language, European constitutionalism and, 5
- obligatory deposits, Eurozone crisis management and, 192–5
- obstacle pre-emption, 72–4
- Omega Spielhallen- und Automatenaufstellungs-GmbH* case, 27–8, 168–9
- ‘One Big Legal System’ model, 67n.46
- Ordnungspolitik*
 democratic input legitimacy and, 221–6
 implementation of microeconomic constitution and, 169–73
 monetary union and, 183–7
 ordoliberal economic constitutionalism and, 131–6
- ordoliberalism
 banking union proposals and, 199
 competition law and, 150–2, 157–69
 democratic input legitimacy and, 221–6
 economic constitutions and, 127–36
 European Central Bank activities and, 195–9
 European monetary policy and, 178–83
 free movement law and, 152, 164–9
 macroeconomic policy and, 174–8
 market economies and, 153
 monetary policy and, 183–7
 political dimensions of economic constitutions and, 169–73
 rule of law and, 213–14
- ordre public*, 317
 security constitutionalization and, 273–8
- organized crime, Trevi framework for security and, 275–6
- organizing function, constitutional object and, 28–37
- origin-based legitimacy, constitutional functions and, 28–37
- output legitimacy, democratic input legitimacy and, 221–6
- Outright Monetary Transactions (OMT) programme, 116–17, 118–20, 195–9
 democratic input legitimacy and, 221–6
- pacemaker constitution, evolution of, 108–12
- parasitic legitimacy, 35–7
- Paris Treaty on the European Coal and Steel Community, 41, 51, 109, 273
- Part of Member States’ Legal Systems Model, 67n.46
- Patient Rights Directive (2011) (European Commission), 243–51
- Pech, Laurent, 213–14
- performance-based competition, economic constitutionalism and, 132–4
- perlocutionary speech acts, 120
 discourse analysis and, 120–4
 perspectivism of legal disciplines and, 355–8
- perspectivism, 78–107
 European constitutionalism and, 17–18
 European law and, 326–7
 legal culture and, 102–7
 of legal disciplines, 355–8
 legal diversity and, 81–6
 in legal theory, 78–81
- Pescatore, Pierre, 68, 325
- Philip Morris* case, 148
- Poiaras Maduro, Miguel
 on economic constitutionalization, 152
 on legal autonomy, 57
 on legal pluralism, 102–7
 political dimensions of economic constitutionalization and, 169–73
 on public interventionism, 155–7
 on social policy and constitutional theory, 227–32
- police operations
 Amsterdam Treaty on cooperation of, 278–84
 security provisions in Lisbon Treaty on cooperation of, 287
 security vs fundamental rights in, 303–4
 Trevi framework for security and, 275–6
- Police Working Group on Terrorism, 282–4
- policy orientation
 constitutional law and legitimacy of, 34–5
 legal practices and, 15–17, 324–5
 macroeconomic constitutionalization and, 174–8
- political constitutionalization
 citizenship and, 108–12
 constitutional functions and, 28–37

- European constitutional theory and, 321–3
- framing of, 9–10, 319–20, 329
- fundamental rights and, 92
- intergovernmentalism and, 333–40
- juridical constitution and, 45
- relationality and, 21–8
- speech acts and, 120–4
- technocratic policy and, 41–4
- transnationalization and, 331–40
- welfare services for mobile workers and citizens and, 243–8
- political dimensions of economic constitutions, 169–73
- neutrality in economic policy and, 183–7
- polity building
 - constitutional functions and, 28–37
 - European institutional organization and, 329–31
 - speech acts and, 120–4
- polycentricity, legal diversity and, 81–6
- positioning function
 - constitutional object and, 28–37
 - European law and, 59–60, 70–1
 - international law and, 59–60
 - mutual positioning and, 37–44
 - national courts' role in, 88–9
- Poucet and Pistre* case, 239
- pouvoir constituant*, constitutional theory and, 13–14, 108–12
- power, security constitutionalization and role of, 294–6
- precedence, in European law, 69–71
- Prechel, Sacha, 68
- pre-emption doctrine
 - Eurozone regime and, 202–6
 - as supremacy sub-principle, 72–4
- prevention, security constitutionalization and, 294
- price stability
 - European Central Bank activities and, 195–9
 - European monetary policy and, 178–83
 - neutrality in economic policy and, 183–7
 - open market economy and, 174–8
- primacy, principle of
 - direct effect and, 65–8, 70
 - disapplication and invalidation and, 69–71
 - ECJ jurisprudence and, 327–8
 - economic constitutionalization and, 136–40
 - European law and, 65–8
 - exclusion and substitution aspects of, 70n.53
 - free movement law and, 141–50
 - identity and, 96–9
 - international law and, 340–58
 - juridical constitution, 28–37
 - legal certainty and, 70
 - national courts and, 113
 - supremacy principle vs, 69–71
- private law
 - Eurozone crisis and, 187–92
 - integration with public law, 132–4
 - national private law systems, 167n.91
 - regulatory private law, 231, 257–65
 - rule of law and, 213–14
- private parties, economic constitutionalization and, 136–8
- privatization, of free movement law, 145–6
- proportionality test
 - economic vs fundamental rights and, 168–9
 - European legal system and, 45–53
 - free movement law and, 141–50
 - fundamental rights vs security, 311
 - public interventionism and, 155–7
 - security provisions in Amsterdam Treaty and, 280–2
 - social policy of Member States and, 234–7
- protection, duty of, security constitutionalization and, 302–3
- Prüm Convention, 315
- public finances criteria
 - EMU eligibility and, 183–7
 - European Central Bank and, 195–9
 - financial markets and, 186
- public interventionism
 - banking union proposals and, 199
 - centralized/decentralized variants, 155–7
 - economic constitutionalism and, 152, 164–9
 - microeconomic constitutionalization and, 321–3
- public law
 - integration with private law, 132–4
 - publicization of competition law, 145–6
- public order, security constitutionalization and, 301–12
- public security, security constitutionalization and, 273–8
- Pupino* ruling, security provisions in Amsterdam Treaty and, 278–84
- qualitative majority voting (QMV), 331–3
- radical pluralism
 - conflictual approach and, 102–7
 - transnational law and, 353–5

- ratione personae*, free movement law and, 145–6
- Rechtsgemeinschaft* principle, rule of law and, 211–14, 321–3
- Rechtsstaat* state model
- competition law and, 161–4
 - constitutional identity and, 333–40
 - European legal system and, 45–53
 - European polity and, 329–31
 - in ordoliberal theory, 131–6
 - political dimensions of economic constitutions and, 169–73
 - polity and constitutional functions in, 28–37
 - restrictive function in, 269–73
 - rule of law and, 211–14
 - security constitutionalization and, 301–12
- redistribution
- democratic input legitimacy and, 217–26
 - Maastricht Treaty fiscal policy and, 183–7
 - primacy of national welfare state and, 232–4
 - social constitutionalization and, 227–32
- referential legal order
- legal diversity and, 83–6
 - legal pluralism and, 102–7
- regime change, economic constitutions and, 164–9
- Regulation 17/62, 139–41, 159–60
- Regulation 407/2010, 205
- Regulation 1175/2011, 194–5
- Regulation 1408/71, 244–50
- regulations
- direct effect of European law and, 62–3
 - ECJ jurisprudence concerning, 140–1
 - Eurozone regime and, 199–209
 - integrated model and, 65–8
 - market forces and, 152–3
 - strengthening of European economic governance and, 192–5
- regulatory competition, free movement law and, 141–50
- regulatory private law, social justice and, 265–8
- relationality, 21–44
- constitutional dimensions, 9–10, 21–8
 - European constitutionalism and, 17–18
- rent-seeking behaviour
- competition law and, 150–2
 - economic constitutionalism and, 131–6
- rescue packages
- ECB role in, 195–9
 - Eurozone crisis and, 187–92
 - Eurozone regime and, 199–209
 - principle of conferral and, 214–16
 - strengthening of European economic governance and, 192–5
- residence-based social security services, 248–51
- restrictive function
- constitutional object and, 28–37
 - economic constitutionalization and, 164–9
 - European legal system and, 45–53, 324–5
 - free movement law and, 141–50, 234–7
 - state constitutions, 269–73
- result-based legitimacy, 34–5
- reversed majority voting, 192–5, 331–3
- revolutionary constitutionalism, constituent power and, 108–12
- right to establishment, security constitutionalization and, 274n.5
- risk assessment, security constitutionalization and, 292–4
- Rödl, Florian, 227, 229
- Röpke, Wilhelm, 130
- Rote Armee*, 274–5
- rule of law
- European Union and, 209–17
 - security constitutionalization and, 316–18
 - state of exception and, 289–96
- rule pre-emption, 72–4
- safety, security constitutionalization and, 301–12
- Säger* ruling, 144n.44, 144n.45, 236n.15
- Sarmiento, Daniel, 307
- Savigny, Carl Friedrich, 21–2
- Scharpf, Fritz, 34–5, 219
- Schengen Agreement, 275–6, 312–18
- Schengen Information System, 282
- Schilling, Theodor, 54
- Schmidberger* case, 27–8, 168–9
- Schmitt, Carl, 13–14, 122–4, 289–91
- ordoliberal economic constitutionalism and, 131–6
- Schuman, Robert, 331
- Schütze, Robert, 346
- Schweitzer, Heike, 159–60
- secondary legislation
- economic constitutionalization and, 136–8
 - Eurozone regime and, 199–209
 - integrated model and, 65–8
 - intergovernmental financial agreements and, 206–9
 - international law and, 59–60
 - primacy principle and, 65–8
 - social constitutionalization and, 227–32
 - welfare services for mobile workers and citizens and, 243–8

- second-order discourse
 - economic constitutionalization and, 136–8
 - European constitutionalism and, 5–9, 112–20
- sectoral constitutions
 - complementarity and, 38–41
 - constitutional functions and, 28–37
 - ECJ jurisdiction and, 50–3, 327–8
 - economic, social, and security dimensions, 18, 319–20
 - in European constitutional discourse, 118–20
 - framing of, 9–10
 - multidimensionality, 320–1
 - relationality and, 21–8
- Securities Market Programme (ECB), 195–9
- security constitutionalization
 - Amsterdam Treaty and evolution of, 278–84
 - anti-constitutional elements in, 312–18
 - framing of, 9–10
 - freedom, security and justice and, 296–301
 - functional primacy, 320–1
 - fundamental rights and, 301–12, 321–3
 - historical evolution of, 108–12, 273–8
 - insecurity of, 269–318
 - Lisbon Treaty and, 284–8
 - paradoxes within, 269–73
 - relationality and, 21–8
 - restrictive functions of, 269–73
 - risk assessment and, 292–4
 - sectoral dimensions, 319–20
 - states of emergency and, 269–73, 289–96
 - security of the person concept, 304–12
 - self-executing treaty rules, 62–3
 - economic constitutionalization and, 136–8
 - self-regulation, market forces and, 152–3
 - separation of powers, state of exception and, 289–96
 - September 11, 2001 attacks
 - anti-terrorist legislation following, 291–2
 - security constitution and, 108–12, 282–4
 - Services Directive (2006) (European Commission), 243–8
 - services of general economic interest principle
 - core welfare services and, 237–43
 - law on universal services and, 264–5
 - sex trafficking, security provisions in Amsterdam Treaty and, 282
 - shared competence
 - democratic legitimacy and, 217–26
 - Lisbon Protocol on, 72–4, 202–6
 - shared liability for government debt, no-bailout clause in Maastricht Treaty and, 181
 - Signatory States, 99–102
 - Simmenthal* case, 69n.51
 - sincere cooperation, duty of, 63–5
 - pre-emption doctrine and, 202–6
 - single currency, economic convergence criteria and, 183–7
 - Single European Act (SEA)
 - competition law and, 161–4
 - ECJ jurisprudence and, 327–8
 - economic and monetary union and, 174–8
 - economic constitutionalization and, 136–8
 - European legal system and, 45–53
 - law on universal services and, 264–5
 - social policy of Member States and, 234–7
 - ultra vires* jurisdiction and, 92–6
 - single resolution mechanism (SRM), banking union proposals and, 195–9
 - single supervisory mechanism (SSM), banking union proposals and, 195–9
 - Sinzheimer, Hugo, 128–31
 - six-pack regulations, 192–5
 - Eurozone regime and, 199–209
 - pre-emption doctrine and, 202–6
 - Skinner, Quentin, 122
 - Snell, Jukka, 154–5, 172
 - social constitutionalization
 - complementary vs conflicting concepts of justice and, 265–8
 - consequences of macroeconomic constitutionalization and, 251–6
 - denationalization and deterritorialization of welfare services and, 248–51
 - economic constitutionalization and, 321–3
 - European constitution as, 227–32
 - framing of, 9–10, 227–68
 - free movement law and, 234–7
 - functional primacy, 320–1
 - primacy of national welfare state and, 232–4
 - regulatory private law and, 257–65
 - relationality and, 21–8
 - sectoral dimensions, 319–20
 - social citizenship and, 108–12
 - welfare services for mobile workers and citizens and, 243–8
 - socialist states, economic constitutions and, 164–9
 - social justice, 265–8

- social market economy
 - political dimensions of economic constitutionalization and, 169–73
 - social constitutionalization and, 227–32
- social policy
 - constitutional functions and, 21–8
 - economic constitutionalization and, 167–8
 - integration of public and private law and, 132–4
 - Maastricht Treaty fiscal policy and, 183–7
 - Member State sovereignty and, 171–2
 - for mobile workers and citizens, 243–8
 - security constitutionalization and, 301–12
 - social constitutionalization and, 227–32
 - social justice and, 265–8
- Social Protocol, regulatory private law and, 257–65
- social security services
 - denationalization and deterritorialization of, 248–51
 - internal market law and, 237–43
 - for mobile workers and European citizens, 243–8
- soft law
 - fiscal and economic policy and, 209–17
 - healthcare for mobile workers and citizens and, 243–8
 - macroeconomic policy and, 174–8
 - strengthening of European economic governance and, 192–5
- Solange* doctrine
 - European Court of Human Rights and, 99–102
 - fundamental rights law and, 90–6
 - security vs fundamental rights and, 308–9
 - transnational law and, 349–58
 - ultra vires* review of EU institutional competence, 92–6
- solidaristic social justice, 265–8
- Solidarity Clause
 - EU anti-terrorism strategies and, 282–4
 - state of exception and, 291–2
- solidarity principle
 - denationalization and deterritorialization of welfare services and, 248–51
 - internal market law and welfare services and, 237–43
 - primacy of national welfare state and, 232–4
 - social rights and, 251–6
- Sonderweg* doctrine, economic constitutionalization and, 140–1
- sovereignty
 - AFSJ provisions and issues of, 278–84
 - black box model and, 81–6
 - democratic input legitimacy and, 217–26
 - denationalization and deterritorialization of welfare services and, 248–51
 - direct effect of European law and, 60–8
 - European Central Bank and national fiscal sovereignty, 195–9
 - Eurozone crisis and, 187–92
 - Eurozone regime and issues of, 199–209
 - fiscal policy responsibility and, 183–7
 - internal market law and welfare services and, 237–43
 - of Member State fiscal and economic policy, 178–83
 - Member State social policy and, 171–2
 - pre-emption doctrine and, 202–6
 - security constitutionalization and, 272–3, 276–8, 284–8
 - security provisions in Lisbon Treaty and, 287–8
 - social constitutionalization and, 227–32
 - Solange* doctrine and, 90–6
 - Solidarity Clause provisions concerning, 284–8
 - state of exception and, 289–96
 - strengthening of European economic governance and, 192–5
 - transnational constitutionalism and, 37–44
 - transnationalization and, 312–18
- Spaak Report, 153n.64, 159, 161, 174–5
- speech act theory
 - ECJ jurisprudence and, 327–8
 - elements of, 120
 - European constitutional discourse and, 112–20
 - legal discourse and, 120–4
 - macroeconomic constitutionalization and, 174–8
 - national courts and, 328–9
 - perspectives on constitutional discourse and, 120–4
 - social policy and, 243–8
 - state of exception and, 289–96
- Stability and Growth Pact (SGP)
 - development of, 179–81
 - Eurozone crisis and, 187–92
 - Eurozone regime and, 199–209
 - excessive deficit sanctions and, 177–8
 - fiscal policy and, 183–7
 - macroeconomic constitutionalization and, 182–3
 - pre-emption doctrine and, 202–6
 - strengthening of European economic governance and, 192–5

- state constitutions
 - European economic constitutions and, 164–9
 - federalism and, 345–8
 - free movement law and, 141–50
 - fundamental rights and, 165–6
 - German legal scholarship concerning, 108n.1
 - legal orders, substantive coherence and, 45–53
 - legal pluralism and, 86–8
 - legal practices and, 15–17
 - legitimacy of, 34–5
 - Lisbon Treaty security provisions and, 284–8
 - macroeconomic policies and, 178
 - market justice and, 265–8
 - neutrality in economic policy and, 183–7
 - as normative entity, 108–12
 - in ordoliberal theory, 131–6
 - political dimensions of economic constitutions and, 169–73
 - primacy of national welfare state and, 232–4
 - relationality and, 21–8
 - restrictive functions of, 269–73
 - security provisions in Amsterdam Treaty and, 280–2
 - security vs fundamental rights in, 302–3
 - strengthening of European economic governance and, 192–5
- state liability
 - Eurozone crisis and, 192–5
 - supremacy principle and, 69–71
- state of exception, security constitutionalization and, 289–96
- states of emergency
 - risk assessment and, 292–4
 - security constitutionalization and, 269–73, 289–96
- Stauder v Stadt Uhm*, 91
- Stockholm Programme (2010), 280–2, 296–301, 316–18
- Strasbourg jurisprudence
 - European Convention on Human Rights and, 99–102
 - transnational law and, 349–58
- Streit, Manfred E., 161–2
- strict conditionality of financial assistance
 - Eurozone crisis management and, 190
 - social services cuts and, 251–6
 - strengthening of European economic governance and, 192–5
- Stufenbau* (legal norms)
 - constitutional law and, 10–14
 - European legal systems and, 45–53
 - legal diversity and, 82–6
 - supremacy vs primacy and, 70–1
- subsidiarity, principle of
 - European legal system and, 45–53
 - pre-emption doctrine and, 72–4
 - rule of law and, 214–16
- substantive coherence, European legal system, 45–53
- substantive constitutionalization, doctrine vs theory, 108–12
- substantive legitimacy
 - constitutional functions and, 28–37
 - political dimensions of economic constitutionalization and, 169–73
 - principle-oriented constitutionalism and, 34–5
- substitution, primacy of European law and, 69–70
- sui generis* approach, international law and, 344–5
- summarizing constitutions, European constitutional theory and, 321–3
- supplementary pension schemes, internal market law and, 237–43
- supremacy principle
 - competition law and, 157–64
 - direct effect and, 325–6
 - economic constitutionalization and, 136–8
 - European law and, 10–14, 50–3, 69–71, 321–3
 - integration and, 65–8
 - pre-emption as sub-principle of, 72–4
 - pre-emption doctrine and, 202–6
- surface-level doctrine
 - European economic constitutions and national constitutions and, 164–9
 - legal diversity and, 326
 - security constitutions and, 269–73
 - social constitutionalization and, 227–32
- Swedish Constitution, 31
- symbolic legitimacy, constitutional functions and, 28–37
- systemic pluralism, 86–8
- system legitimacy, constitutional law, 34–5
- Tampere Conclusions, 280–2, 296–301
 - security vs fundamental rights and, 304–12
- taxation
 - European economic governance and, 192–5
 - Eurozone crisis and, 187–92
 - internal market law and welfare services and, 237–43
 - macroeconomic constitutionalization and, 183–7

- taxation (*cont.*)
 national welfare state and, 232–4
 primacy of national welfare state and
 right of, 232–4
 welfare services financing through,
 248–51
- technocratic policy, transnational
 constitutionalism and, 41–4
- TeliaSonera*, 158n.72
- territorial criteria, in black box model, 86–8
- terrorism
 derogation in free movement of workers
 and, 274–5
 security constitutionalization and,
 294–6
 security provisions in Amsterdam Treaty
 and, 282–4
 Trevi framework for security and, 275–6
- Tesauro, AG, 152
- Teubner, Gunther, 23–4, 80, 354–5
- TFEU
 AFSJ provisions in, 284–8
 anti-discrimination law and, 257–65
 conferral principle and, 214–16
 constitutional discourse and, 118–20
 direct effect of European law and, 60–8
 directives provisions, 62–3
 economic constitutionalization and,
 136–40, 148–50
 enhanced cooperation in, 206–9
 European Central Bank activities and,
 195–9
 European legal system and, 50–3
 Eurozone crisis and modifications to,
 187–92
 on Eurozone regime, 199–209
 excessive deficit procedures and, 181–2
 free movement law and, 141–50
 indirect horizontal effect and, 63–5
 internal market law and welfare services
 and, 237–43
 internal security issues and, 269–73
 legislative harmonization in, 172–3
 Member States' monetary policy and,
 174–8
 monetary policy in, 178–83
 positioning of European law and, 59–60
 pre-emption doctrine and, 72–4, 202–6
 primacy principle and, 65–8
 security vs fundamental rights and,
 304–12
 social policy and, 227–32, 243–8
 Solidarity Clause in, 282–8
 strengthening of European economic
 governance and, 192–5
- Thomas Pringle v Government of Ireland*,
 187–95, 202–3, 206–9
- social rights and, 251–6
 speech act theory and, 209–17
- three-pillar EU structure, security
 constitutionalization and, 276–8
- T-Mobile Netherlands* case, 157n.70
- Tobacco Advertising* case, 48–9, 150n.57,
 172–3
- trade unionism, social policy of Member
 States and, 237
- transcendentalism, perspectivism and,
 78–81
- transnational law and constitutions,
 37–44
 competition law and, 150–2, 157–64
 complementarity and, 38–41
 constitutional functions and, 28–37
 economic constitutionalization and,
 164–9
 European constitutional discourse and,
 118–20, 349–58
 European Convention on Human Rights
 and, 99–102
 European institutional organization
 and, 331–3
 evolution of, 108–12
 framing of, 9–10
 free movement law and competition law
 and, 166
 fundamental rights pluralism and,
 99–102
 legal diversity and, 85–6
 legal pluralism and, 86–8
 market justice and, 265–8
 open markets and free competition and,
 153
 perspectivism and, 78–81, 355–8
 primacy of national welfare state and,
 232–4
 public interventionism and, 155–7
 security constitutionalization and,
 269–73, 276–8, 312–18
 security provisions in Amsterdam Treaty
 and, 278–84
 social policy and, 227–32
- transparency, security
 constitutionalization and, 316–18
- treaty law. *See also* Founding Treaties;
 specific treaties
 democratic input legitimacy and, 221–6
 direct applicability and, 325–6
 direct effect of European law and, 65–7
 ECJ jurisprudence and, 327–8
 economic constitutionalization and,
 148–50, 164–9
 EU anti-terrorism strategies and, 282–4
 European Central Bank and, 197n.41
 fiscal and economic policy and, 209–17

- free movement law and, 141–50
- legal cultures and, 102–7
- national welfare regimes and, 237–43
- social constitutionalization and, 227–32
- social rights component in, 251–6
- transnational constitutionalism and, 37–44
- Treaty of Amsterdam
 - Area of Freedom, Security and Justice and, 49–50
 - core welfare services and sovereignty in provisions of, 241–2
 - intergovernmental agreements and, 206–9
 - law on universal services in, 264–5
 - regulatory private law and, 257–65
 - security constitution and, 108–12
 - social policy agreements in, 321–3
- Treaty of Paris, pacemaker constitution and, 108–12
- Treaty of Rome
 - Community method and, 333–40
 - competition law and, 150–2, 157–64
 - consumer law in, 262–3
 - economic constitutionalization and, 136–40, 152, 164–9
 - economic integration and, 127–8
 - establishment of EMU and, 174–8
 - European legal system and, 45–53
 - Eurozone crisis and, 187–92
 - evolution of security constitution and, 273–8
 - fundamental rights and, 90
 - juridical constitutionalization and, 34–5
 - legal autonomy and, 53–9
 - macroeconomic constitutionalization and, 174–8
 - microeconomic constitutionalization and, 21–8
 - pacemaker constitution and, 108–12
 - regulatory private law and, 257–65
 - social constitutionalization and, 227–32
 - social security issues and, 243–8
 - technocratic policy and, 41–4
 - transnationalism and, 331–3
 - welfare services for mobile workers and citizens and, 243–8
- Treaty on Stability, Coordination and Governance (TSCG), 187–95
- Eurozone regime and, 199–209
- pre-emption doctrine and, 202–6
- Treaty on the ESM, 187–92
- Treaty on the European Economic Community (TEEC), 1n.1
 - competition law and, 146–8, 150–2, 157–64
 - direct effect of European law and, 60–8
 - directives, provisions in, 63n.37
 - economic constitutionalization and, 136–40, 148–50
 - free movement law and, 141–50
 - legal autonomy of, 53–9, 140–1
 - legislative harmonization in, 172–3
 - macroeconomic policies and, 174–8
 - regulatory private law and, 257–65
 - social policies and, 243–8
- Treaty on the European Union (TEU), 16–17n.25
 - AFSJ provisions and, 278–84
 - citizenship issues and, 316–18
 - complementarity and transnational constitutionalism and, 38–41
 - constitutional identities and, 102–7
 - enhanced cooperation in, 206–9
 - European Commission powers, 221–6
 - European Convention on Human Rights and, 99–102
 - internal security issues and, 269–73
 - legal autonomy of European law and, 53–9
 - legal tradition and culture in, 85–6
 - list of objectives in, 109n.3
 - Member State constitutionalism and, 41–4
 - Member State identity in, 96–9
 - pre-emption doctrine and, 72–4
 - principle of conferral and, 214–16
 - rule of law in, 211–14
 - security provisions in, 284–8
 - security vs fundamental rights and, 304–12
 - social constitutionalization and, 227–32
 - social rights in, 251–6
 - transnationalism and intergovernmentalism and, 333–40
- Trevi framework, security constitutionalization and, 275–6
- trigger model
 - direct effect and primacy, 65–8
 - exclusion and substitution aspects of, 70n.53
- Tsakouridis* case, 49–50, 311
- Twining, William, 82, 87
- two-pack regulations, 192–5, 255n.54, 256n.56
 - Eurozone regime and, 199–209
 - pre-emption doctrine and, 202–6
- ultima ratio* review
 - of EU institutional competence, 92–6
 - Eurozone crisis and, 321–3
- ultra vires* review
 - conferral principle and, 214–16
 - democratic input legitimacy and, 221–6

- ultima ratio* review (*cont.*)
 economic constitutionalism and, 148–50
 European legal system and, 45–53
 German Constitutional Court and, 90, 92–6
 primacy principle and, 65–8
 rule of law and, 216–17
- unanimity requirement
 ECJ jurisprudence and, 327–8
 security provisions in Amsterdam Treaty and, 280n.17
- uniformity, principle of
 community law and, 57–8
 economic constitutionalization and, 136–8
- Union Courts, competences and procedures, 50–3
- Union Fundamental Rights Agency, 49–50
- Union of Member States, 333–40
- United Kingdom
 derogation policy of, 199–209
 labour law and, 257–65
 material constitution in, 10–14
- United Kingdom v Parliament and Council*, 197–8
- United States
 constitutionalism in, 108–12
 EU anti-terrorism cooperation with, 282–4
 federalism in, 164–9, 345–8
 legal discourse in, 120–4
 national security concepts in, 291–2
 pre-emption doctrine in, 72–4, 202–6
- universality, legal pluralism and, 86–8
- universal services, law on, regulatory private law and, 257–65
- UN Security Council, Resolutions 1373 and 1390, 282–4
- US Constitution, 269
- validation
 speech acts and, 120–4
 supremacy vs primacy and, 70–1
- Van Duyn* case, 62–3
- Van Gend en Loos* case, 52n.15, 53–9
 constitutional identity and, 333–40
 direct effect of European law and, 60–8, 70, 321–3
 Eurozone regime and, 199–209
 fundamental rights protections and, 96–9, 316–18, 324–5
 international law and, 344
 juridical constitutionalization and, 136–8
 national law and, 88–9
- Van Rompuy Working Group, 198
- variable geometry principle
 security constitutions and, 275–6
 transnationalism and
 intergovernmentalism and, 333–40
- Verfassungslehre* (Schmitt), 13–14, 132–4
 competition law and, 128–31, 132–4, 135–6, 161–4
- Vienna Convention on the Law of Treaties, 341
- Viking* case, 27–8, 146n.50
 economic vs fundamental rights and, 168–9
 social justice and, 265–8
 social policy of Member States and, 234–7, 251–6
- Von Colson* case, 63–5
- von der Groeben, Hans, 138–40, 169–73
- von Gerber, Carl Friedrich, 314
- Vorverständnis* of legal actors
 European constitutional discourse and, 112–20
 judicial roles and, 113
 legal diversity and, 81–6
 national courts and, 328–9
 perspectivism and, 78–81, 102–7, 355–8
 state of exception and, 289–96
- wage flexibility, macroeconomic constitutionalization and, 251–6
- Waldron, Jeremy, 302
- Walker, Neil, 4–5
- Walrave and Koch* case, 145–6
- Walter Lippmann Colloquium, 130n.10
- Watts v Bedford Primary Care Trust and Secretary of State for Health*, 237–8n.18
- Weber, Max, 272–3
- Wegmann, Milene, 130n.10
- Weiler, Joseph, 3
- Weimar Republic, 122–4
 economic constitutionalism and, 128–31
 Schmitt's constitutional theory and, 13–14, 122–4
- Weinberger, Ota, 22
- welfare policy
 denationalization and
 deterritorialization of, 248–51
 European constitutionalism and, 227–32
 internal market law and, 237–43
 Maastricht Treaty fiscal policy and, 183–7
 macroeconomic constitutionalization and, 251–6
 mobile workers and citizens, 243–8
 'welfare tourism', welfare services for mobile workers and citizens and, 243–8

- Werner Group, 177–8, 182
Wettbewerb und Monopolkampf (Böhm),
132–4, 167–8
Wirtschaftsverfassung (postwar German
economic policy), 135–6
- workers' rights, welfare services for mobile
workers and citizens, 243–8
World Trade Organization (WTO)
ECJ denial of law by, 59
transnational law and, 349–58