

## INDEX

- accountability, towards citizens, 101–2
- Ackerman, Bruce, 27–9, 35, 116
- Adams, Abigail, 72
- Adams, John, 72
- Alter, Karen, 52
- Amsterdam Treaty, 3, 46
- Argentina
  - common criminal law in, 204
  - early federal period in, 49–50
  - rule of law in, 204
- Basic Law (Germany), 197–8
- Basic Law (EU), EU
  - constitutionalization under, 170
- Bilateral Investment Treaties (BITs), 136
- Brexit, 234–41
  - Cameron and, 120, 234–6
    - resignation of, 237
  - EU constitutionalization and, 2, 240
  - EU response to, 237–41
    - through courts, 239–40
  - European Referendum Act and, 236
  - European Union (Notification of Withdrawal) Act and, 237
  - foundations of, formal indications for, 234–6
  - government appeals to, 237
  - Johnson and, 238–9
  - Lisbon Treaty and, 235
  - May and, 237
    - resignation of, 238
  - national political effects of, 237
  - Treaty on European Union and, 235
  - Treaty on the Functioning of the European Union and, 240
- British North America Act, Canada (1867), 49–50
- Brussels Convention, failure of, 51
- Calhoon, Robert, 61
- Cameron, David, 120, 234–6
  - resignation of, 237
- Canada
  - British North America Act, 49–50
  - Charter of Fundamental Rights, 73–4, 75
  - collection of rights in
    - through development of political parties, 116
    - through unitary elections, 104–5
  - Constitution Act, 49–50, 73–4
  - demos* in, as dimension of
    - constitutionality
    - citizenship in, homogeneity of, 65
    - common public space for political debate, 92–3
    - linguistic homogeneity challenges in, 85
    - religion in, homogeneity of, 73–4
    - shared values in, homogeneity of, 79
    - social homogeneity challenges in, 85
  - early federal period in, 49–50
  - rule of law in, 161
    - foreign relations and security policies of, 214
    - selection of justices in, procedures for, 177
  - Senate in, Council of the European Union compared to, 143
  - unitary elections in, 104–5
- Canada – EU Trade Agreement (CETA), 49–50
- CFSP. *See* Common Foreign and Security Policy
- Charter of Fundamental Rights, Canada, 73–4, 75

- Charter of Fundamental Rights of the European Union, 147–8, 211
  - EU-wide political parties under, 119–20
  - unitary elections under, 106–7
- citizenship
  - European crises and, 278–82
  - homogeneity of. *See demos*
- civil law traditions, EU constitutional development under, 26
- civitas*. *See* collection of rights
- CJEU. *See* Court of Justice of the European Union
- collection of rights, as dimension of constitutionality, 7–8, 11, 40–1, 52–3
- in Canada
  - development of political parties in, 116
  - through unitary elections, 104–5
- Charter of Fundamental Rights of the European Union, 147–8
  - EU-wide political parties under, 119–20
  - unitary elections under, 106–7
- Constitutional Courts and, 40–1
  - international treaties, in German Constitutional Court, 150
- Council of the European Union. *See* Council of the European Union
- in Court of Justice of the European Union cases
  - international treaties and, 150
  - unitary elections, 107–9, 111–13
  - unitary head of state for EU in, 129–30
- European Council and
  - political parties and, 120
  - unitary elections for, 103–4
- in European Court of Justice cases
  - EU-wide political parties and, development of, 121–3
  - international treaties in, 150
  - unitary elections, 109–11, 114
- during European crises, 242, 243–4
- European Parliament and. *See also* European Parliament
  - EU-wide political parties and, elections for, 119–20
- European-wide political parties and, 115–24
  - under Charter of Fundamental Rights of the European Union, 119–20
  - constitutional development and, 115–18
  - democratic legitimacy influenced by, 115
  - European Council elections and, 120
  - in European Court of Justice cases, 121–3
  - for European Parliament elections, 119–20
  - geographic obstacles to, 115
  - inter-EU collaborations between parties, 119–20
  - nationality-based ideologies as barrier to, 115–18
  - under Treaty of Lisbon, 118, 119
- federalism and, 102–3
- in Germany
  - development of political parties in, 117–18
- Federal Presidential system in, 126–7
- German Federation of 1832 and, 148–9
  - through unitary elections, 105, 113
- through international treaties, 147–52. *See also specific treaties*
- Court of Justice of the European Union cases and, 150
- in Czech Constitutional Court cases, 150–1
- European Constitutional Treaty, 151
- in European Court of Justice cases, 150
- in German Constitutional Court cases, 150
- historical development of, 148–9

- Maastricht Treaty, 149
  - obstacles to, 151–2
- methodological approach to, 102–3
- as obstacle to
  - constitutionalization, 47–8
- overview of key factors for, 152–4
- in Switzerland
  - development of political parties in, 117
  - head of state in, rotational system for, 127
- Treaty of Lisbon and, 149–50
  - European-wide political parties under, 118, 119
- Treaty on European Union and, 104, 106–7, 109, 147–8, 152–3
- Treaty on the Functioning of the European Union and, 106–7, 147–8
- in U.K., through development of political parties in, 120
- unitary elections, 103–15
  - in Canada, 104–5
  - under Charter of Fundamental Rights of the European Union, 106–7
  - constitutional development and, 104–6
  - in Court of Justice of the European Union cases, 107–9, 111–13
  - under Election Act (EU), 107
  - in EU, 106–14. *See also specific countries*
  - for European Commission, 103–4
  - for European Council, 103–4
  - in European Court of Justice cases, 109–11, 114
  - for European Parliament, 103–4, 112–13
  - in France, 111–12
  - in Germany, 105, 113
  - obstacles to, 114–15
  - under Treaty of Rome, 103–4
  - under Treaty on European Union, 104, 106–7, 109
  - under Treaty on the Functioning of the European Union, 106–7
  - in U.S., 105–6
- unitary head of state, for EU, 124–31
  - conflicts between national Executive and EU president, 127–8
  - constitutional development and, 125–7
  - in Court of Justice of European Union cases, 129–30
  - foundational agreements for, 127–8
  - under Lisbon Treaty, 124–5, 130
  - Member state interests as influence on, conflicts between, 128–9
  - obstacles to, 124–5, 130–1
- in U.S.
  - constitutional development in, 148
  - development of political parties in, 116–17
  - presidential system in, 125
  - through unitary elections, 105–6
- common criminal law, federal control over
  - in Argentina, 204
  - in EU, lack of, 203–7
  - European Arrest Warrant and, 206
  - under Maastricht Treaty, 205–6
  - under Treaty on the Functioning of the European Union, 205–6
  - in U.S., 204–5
- Common Foreign and Security Policy (CFSP), 213
- common law. *See also Ius Commune Europaeum*
- EU constitutional development and, 25, 26
  - methodological approach to, 34
- common people. *See demos*
- common public space for political debate. *See demos*; European crises
- Constitution, U.S.
  - Articles of Confederation, 170–2
  - Constitutional Convention, 217
  - European Parliament and, distinctions between, 132
  - Supremacy Clause, 158–9, 162–3

- Constitution, U.S. (cont.)
  - Tenth Amendment, 189–90
- Constitution Act, Canada (1867), 49–50, 73–4
- Constitution of 1848 (Switzerland), 93
- Constitution of Law, 2
- Constitutional Convention, in EU, 14–23
  - administrative structure of, 18
  - European Council and, 20–1
  - European crises and, 264–6, 269
  - failure of, 15–19
- Constitutional Courts, 38–44. *See also specific courts*
  - collection of rights and, 40–1
    - international treaties, in German Constitutional Court, 150
  - collection of rights dimension for, 40–1
  - Czech Constitutional Court, 150–1
    - demos* dimension in, 39
    - rule of law and, 42–3
      - Czech Constitutional Court, 167–8
      - German Constitutional Court, 155–6, 190–1, 210, 215–16
    - rule of law dimension of, 42–3
  - constitutional development, in EU, 24–34
    - under civil law traditions, 26
    - under common law traditions, 25, 26
    - along constitutional continuum, 299
    - in Court of Justice of European Union case law, 30, 32–4
  - courts' role in, 26–7
  - definition, 24–5
  - democratic theory of, 24–5
    - dualism, in U.S., 28–9
  - diverse forms of, 25
  - EEC and, 30
  - during European crises. *See* European crises
  - federalism in context of, 299–305
  - in Germany, 25–6
  - historical dimension of, 25–6
  - judicial dimension of, 28
  - legal science and, intersection with, 296–305
    - for living constitutions, 27
    - new ideas of constitutionalization, 296–9
    - criticism of, 298
    - political science and, intersection with, 296–305
    - post-regional constitutional entities, 308–10
    - recommendations for, 306–7
- constitutional moment, 262
- constitutional order, 1–7
- constitutional review. *See* rule of law
- Constitutional Treaties, in EU, 3, 4
  - European Constitutional Treaty, 14–15
  - European Court of Justice, 6
  - failure of, 52
  - French rejection of, 14–15
  - Netherlands rejection of, 14–15
  - Treaty Establishing a Constitution for Europe, 15–16
  - Treaty of Lisbon, 15–17, 52
- constitutionalization, in EU, 1–11. *See also* collection of rights; constitutional development; *demos*; rule of law
  - under Amsterdam Treaty, 3
  - under Basic Law, 170
  - Brexit and, 2, 240
- Constitutional Convention, 14–23
  - administrative structure of, 18
  - European Council and, 20–1
  - failure of, 15–19
- through Constitutional Courts, 38–44
  - collection of rights
    - dimension, 40–1
  - demos* dimension in, 39
  - in Germany, 38, 39–41, 42, 170
  - rule of law dimension of, 42–3
- constitutional law as element of, 51–4
- through constitutional order, 1–7
- in Court of Justice of the European Union case law, 36, 42
- crisis of, 1–7, 23–4. *See also* European crises
  - under Constitution of Law, 2

- European economic integration
  - project, 3, 4–5
  - in U.K., 2
- early federalist experiences as
  - influence on, 42, 44–5
  - in Argentina, 49–50
  - in Canada, 49–50
  - in Germany, 49–50
  - in Switzerland, 49–50
  - in U.S., 49
- European Court of Justice case law, 6, 36
- foundations of, 11–14
  - federalist influences on, 13–14
  - inter-governmentalist approach in, 12–13
  - internationalist approach, 12
- framing of, 11–34
- through incrementalism, 3–4
- Laeken Declaration, 17–19, 21, 304–5
- methodological approach to, 10–11, 34–7
  - challenges in, 54–5
  - under common law traditions, 34
  - dimensional analysis in, 37–44.
    - See also* collection of rights; *demos*; rule of law
  - historical analysis in, 42
  - legal analysis in, 42
- process of, 3
- scepticism of, 4
- Council of Euro Finance Ministers, 226
- Council of the European Union, 141–7
  - Canadian Senate compared to, 143
  - composition and structure of, 144–7
  - constitutional development and, 141–4
  - in Court of Justice of the European Union cases, 146
  - criticism of, 141
  - democratic legitimacy of, 145
  - in European Court of Justice cases, 146
  - German Bundesrat compared to, 143
  - German Constitutional Court cases and, 146–7
  - under Lisbon Treaty, 147
  - U.S. Senate compared to, 141–3
- Court of Justice of the European Union (CJEU)
  - civitas* and
    - international treaties and, 150
    - unitary elections and, 107–9, 111–13
    - unitary head of state for EU and, 129–30
  - constitutional development and, 30
- Council of the European Union
  - and, 146
- demos* and
  - citizenship issues, 67, 69–70
  - shared values, 81–2
- EU constitutionalization and, 36, 42
- European crises and, 256–8, 270–4, 290–2
- rule of law and, 167–9
  - constitutional review by, 185–8
  - court jurisdiction and, 192–3, 195–6
  - foreign relations and security policies, 215
  - in Poland, 165–7
  - selection of justices, 179–81
  - supremacy of EU law, 164–9
  - unitary federal courts and, lack of,
    - appellate powers of constitutional courts, 174–6
- crisis of legitimacy, in EU, 232–4
  - foundational factors for, 232–3
  - incrementalism and, 233
  - terrorism and, 233–4
  - transnational crime and, 233–4
- Czech Constitutional Court, 150–1
- democratic legitimacy
  - of Council of the European Union, 145
  - of European-wide political parties and, 115
- democratic theory, constitutional
  - development and, 24–5
  - dualist democracy and, 28–9

- demos* (common people), as dimension  
 of constitutionality, 7–8, 10–11,  
 39, 52–3
- in Canada  
 citizenship in, homogeneity of, 65  
 common public space for political  
 debate, 92–3  
 linguistic homogeneity challenges  
 in, 85  
 religion in, homogeneity of, 73–4  
 shared values in, homogeneity  
 of, 79  
 social homogeneity challenges  
 in, 85
- characteristics of, 60–1
- citizenship and, homogeneity of,  
 63–70  
 in Canada, 65, 73  
 through constitutional  
 development, 63–6  
 in Court of Justice of European  
 Union cases, 67, 69–70  
 establishment of, 63  
 in EU, 66–70. *See also specific  
 countries*  
 in European Court of Justice  
 cases, 68–9  
 in Germany, 65  
 under Maastricht Treaty, 66  
 obstacles to  
 constitutionalization, 63  
 in U.S., 64–5  
 validity of objection to, 70  
 common public space for political  
 debate  
 in Canada, 92–3  
 constitutional development  
 and, 90–3  
 in EU, 93–7. *See also specific  
 countries*  
 European Citizens' Initiative  
 for, 91  
 in German Constitutional Court  
 cases, 94–5, 96  
 in Luxembourg, 96  
 obstacles to, 90–7  
 in Polish Constitutional Court  
 cases, 96  
 in Switzerland, 93  
 in U.S., 91–2
- in Court of Justice of European  
 Union cases  
 citizenship issues, 67, 69–70  
 shared values in, 81–2
- definition of, criteria for, 58–9
- in European Court of Justice cases  
 citizenship in, 68–9  
 linguistic homogeneity in, 86–8  
 religion in, 75–6  
 social homogeneity in, 86–8
- during European crises, 241–2,  
 243–5, 246–7
- in Germany  
 citizenship in, homogeneity of, 65  
 common public space for political  
 debate in, 94–5, 96  
 in Constitutional Court cases,  
 59–60, 88, 94–5, 96  
 linguistic homogeneity in, 88  
 social homogeneity in, 88
- linguistic homogeneity and, 84–90  
 in Canada, 85  
 constitutional development  
 and, 84–5  
 in EU, 85–9. *See also specific  
 countries*  
 in European Court of Justice  
 cases, 86–8  
 in German Constitutional Court  
 cases, 88  
 as obstacle, 84, 89–90  
 in Switzerland, 85
- methodological approach to, 61–2
- as obstacle to  
 constitutionalization, 47  
 citizenship and, 63  
 common public space for political  
 debate, 90–7  
 linguistic homogeneity, 84,  
 89–90  
 religion, 70–1, 77  
 shared values, 77, 83–4  
 social homogeneity, 84, 89–90
- overview of key factors for, 97–100
- religion and, homogeneity of, 70–7  
 in Canada, 73–4

- through constitutional development, 71–4
- in EU, 74–6. *See also specific countries*
- in European Court of Justice cases, 75–6
- obstacles to, 70–1, 77
- in Switzerland, 74
- in U.S., 71–2
- shared values, homogeneity of, 77–84
  - in Canada, 79
  - through constitutional development, 77–9
  - Copenhagen criteria for, 80
  - in Court of Justice for European Union cases, 81–2
  - in EU, 79–83. *See also specific countries*
  - European Economic Community and, 81–2
  - under Founding Treaties, 82
  - in German Constitutional Court, 79–80, 81–2
  - under International Law, 78
  - as obstacle, 77, 83–4
  - in Switzerland, 78–9
  - under Treaty of European Union, 80–1, 82–3
  - in U.S., 78
- social homogeneity and, 84–90
  - in Canada, 85
  - constitutional development and, 84–5
  - in EU, 85–9. *See also specific countries*
  - in European Court of Justice cases, 86–8
  - in German Constitutional Court cases, 88
  - as obstacle, 84, 89–90
  - in Switzerland, 85
- in Switzerland
  - common public space for political debate in, 93
  - linguistic homogeneity challenges in, 85
  - religion in, homogeneity of, 74
  - shared values in, homogeneity of, 78–9
  - social homogeneity challenges in, 85
- in U.S.
  - citizenship in, 64–5
  - common public space for political debate in, 91–2
  - religion in, homogeneity of, 71–2
  - shared values in, homogeneity of, 78
- d'Estaing, Valéry Giscard, 5–6
- dualist democracy, 28–9
- ECB. *See* European Central Bank
- ECHR. *See* European Convention of Human and Fundamental Rights
- ECJ. *See* European Court of Justice
- economic crises. *See* European crises
- ECSC. *See* European Coal and Steel Community
- ECSC Treaty. *See* European Coal and Steel Community
- ECTHR. *See* European Court of Human Rights
- EEC. *See* European Economic Community
- Elazar, Dan, 301–2
- Election Act, EU (1976), 107
- elections. *See* unitary elections
- electoral homogeneity, European crises and, 249–50
- EP. *See* European Parliament
- ESM. *See* European Stability Mechanism
- EU. *See* European Union
- EU law, supremacy of, 164–9
- Euro crisis. *See* European crises
- European Arrest Warrant, 206
- European Central Bank (ECB), 251, 256–7
- European Citizens' Initiative, 91
- European Coal and Steel Community (ECSC), 46
  - ECSC Treaty, 141
- European Commission, elections for, 103–4

- European common law. *See Ius Commune Europaeum*
- European Constitutional Treaty,  
 14–15, 151  
 rejection of, 254–5  
 rule of law under, 163
- European Convention of Human and  
 Fundamental Rights (ECHR),  
 195–6
- European Council, 20–1. *See also*  
 Council of the European Union  
 collection of rights and  
 political parties and, 120  
 unitary elections for, 103–4  
 elections for, 103–4
- European Court of Human Rights  
 (ECtHR), 195–6
- European Court of Justice (ECJ)  
 collection of rights and  
 EU-wide political parties and,  
 development of, 121–3  
 international treaties in, 150  
 unitary elections, 109–11, 114  
 constitutional review by, 187  
 Constitutional Treaties and, 6  
 Council of the European Union  
 and, 146
- demos* and  
 citizenship issues, 68–9  
 linguistic homogeneity  
 issues, 86–8  
 religion and, 75–6  
 social homogeneity issues, 86–8
- EU constitutionalization and, 6, 36
- European crises and, 290–2
- European Parliament as law-making  
 body and, 136–9
- European crises, 206  
 common public spaces and spheres,  
 lack of, 246, 247–59  
 common citizenship and, 278–82  
 construction of, 277–90  
 electoral homogeneity and,  
 249–50  
 through EU-wide elections, 284–6  
 EU-wide political parties and,  
 249–50, 286–7  
 federal competence and, 287–90
- German Constitutional Court  
 on, 248
- institutional mechanisms for  
 creation of, 280–1  
 through Internet, 281–2
- linguistic homogeneity and, 248,  
 252–3, 282–4
- pan-European sense of  
 community and, 252
- public discourse in, challenges to,  
 251–2
- subsidiarity principle and, 280
- constitutionalization in EU  
 adaptive mechanisms for, 259–75  
 centre-periphery dialogue of  
 European courts and, 274–5  
 collection of rights dimension of,  
 242, 243–4
- Constitutional Convention and,  
 264–6, 269
- constitutional moment, 262
- in Court of Justice of the European  
 Union cases, 270–4, 290–2
- demos* dimension of, 241–2,  
 243–5, 246–7
- economic and financial crises as  
 influence on, 1–2, 226–7
- through elite-led institutional  
 reform, 264–70
- in European Court of Justice cases,  
 290–2
- incrementalism as element of,  
 266–7, 268–9
- Inter-Governmental Conference,  
 264–6
- jurisprudence and, contributions  
 of, 270–4
- Kompetenz-Kompetenz* and,  
 273, 288
- obstacles to, 241–50
- popular sovereignty and,  
 261–4
- public awareness of, strategies for,  
 290–2
- recommendations for, 275–92
- rule of law dimension of, 242,  
 243–4
- signalling as element of, 262



- Spitzenkandidaten system, 267–8, 286–7
  - in Switzerland, 245
- crisis of legitimacy, 232–4
  - foundational factors for, 232–3
  - incrementalism and, 233
  - terrorism and, 233–4
  - transnational crime and, 233–4
- economic and financial crises, 225–9
  - causes of, 225–6
  - constitutionalization influenced by, 1–2, 226–7
- Council of Euro Finance
  - Ministers' response to, 226
- Court of Justice of the European Union and, 256–8
- European Stability Mechanism and, 227–8, 256–7
  - in Greece, 257
- European Central Bank and, 251, 256–7
- European Commission and, 251
- International Monetary Fund and, 251
- rejection of European Constitutional Treaty, 254–5
- socio-political crisis, 229–32
  - Euro-sceptical Parties' role in, 230
  - Euro-scepticism studies on, 230
  - low voter participation as factor in, 230–1
  - under Treaty of Lisbon, 230, 231
  - under Treaty on European Union, 230
- Treaty of Lisbon and, 230, 231, 266–7
- European Economic Community (EEC), 30, 46
  - shared values in, homogeneity of, 81–2
- European Parliament (EP)
  - collection of rights and, EU-wide political parties and, elections for, 119–20
  - constitutional development and, in EU, 132–3
  - U.S. Constitution and, distinctions with, 132
  - elections for, 103–4, 112–13
  - as EU law-making body, 131–41
    - Bilateral Investment Treaties and, 136
    - of budgetary provisions, 134
    - creation of, 133–40
    - democratic representation through, 135–6
    - for EU elections, 139–40
    - in European Court of Justice cases, 136–9
    - functions of, 137–9
    - objections to, 131
    - under Treaty of Lisbon, 135
- European Coal and Steel Community Treaty, 141
- German Constitutional Court and, 131, 132–3
  - under Lisbon Treaty, 137
  - under Maastricht Treaty, 137
  - under Treaty of Lisbon, 137
  - as law-making body, 135
- European Referendum Act (2015), 236
- European Stability Mechanism (ESM), 155, 227–8, 256–7
- European Union (EU). *See also* Brexit; Constitutional Treaties; European crises; *specific countries*; *specific topics*
  - accountability towards citizens, 101–2
  - Basic Law in, constitutionalization under, 170
  - Charter of Fundamental Rights of the European Union, 147–8, 211
  - EU-wide political parties under, 119–20
  - unitary elections under, 106–7
  - collection or rights in. *See* collection of rights
  - Constitutional Convention in, 14–23
    - administrative structure of, 18
    - European Council and, 20–1
    - failure of, 15–19
  - as constitutional polity, 56
  - demos* in. *See demos*
  - economic integration project in, 3, 4–5

- European Union (EU) (cont.)
  - Election Act, 107
  - Founding Treaties, 82
  - rule of law in. *See* rule of law
  - rule of law in, lack of, 155–6
  - unitary elections in, 106–14. *See also*
    - collection of rights
- European Union (Notification of Withdrawal) Act (2017), 237
- Euro-sceptical Parties, 230
- Euro-scepticism studies on, 230
- The Failure of the Founding Fathers* (Ackerman), 116
- federal courts. *See* unitary federal courts
- Federal Supreme Court Act, Switzerland, 185, 191
- federalism
  - collection of rights and, 102–3
  - EU constitutionalization influenced by, 13–14, 42, 44–5
  - in Argentina, during early federal period, 49–50
  - in Canada, during early federal period, 49–50
  - in Germany, during early federal period, 49–50
  - in Switzerland, during early federal period, 49–50
  - in U.S., during early federal period, 49
- Feldman, David, 298
- financial crises. *See* European crises
- foreign relations and security policies, rule of law and, 213–16
  - in Canada, 214
  - Common Foreign and Security Policy, 213
  - constitutional development and, 213–14
  - in Court of Justice of the European Union, 215
  - in Germany, 214
  - in U.S., 213–14
- Founding Treaties (EU), 82
- France
  - rejection of EU Constitutional Treaties, 14–15
  - unitary elections in, 111–12
- German Constitutional Court, 13, 38, 39–41, 42, 170
  - appellate powers of, 173–4
  - collection of rights and, international treaties and, 150
- Council of the European Union and, 146–7
- demos* issues in, 59–60, 88, 94–5, 96
- European Parliament and, 131, 132–3
- European Stability Mechanism and, 155
- on lack of common public spaces, 248
- rule of law in, 155–6, 190–1, 210, 215–16
- Germany
  - Basic Law, 197–8
  - collection of rights in
    - through development of political parties, 117–18
  - Federal Presidential system and, 126–7
  - German Federation of 1832 and, 148–9
  - through unitary elections, 105, 113
  - constitutional development in, 25–6
  - Council of the European Union and, Bundesrat compared to, 143
  - demos* in
    - citizenship homogeneity, 65
    - common public space for political debate and, 94–5, 96
    - in Constitutional Court cases, 59–60, 88, 94–5, 96
    - linguistic homogeneity and, 88
    - social homogeneity and, 88
  - early federal period in, 49–50
  - Landau Agreement, 214
  - rule of law in, 161
    - constitutional review in, 182

- court jurisdictions in, definitions of, 190–1. *See also* *Kompetenz-Kompetenz*
- foreign relations and security policies in, 214
- human rights protection systems in, 208
- unitary elections in, 105, 113
- Glencross, Alex, 61
- Greece, collapse of government in, 50
- Grillo, Pepe, 251
- Grimm, Dieter, 12, 13–14
- human rights protections. *See* rule of law
- IGC. *See* Inter-Governmental Conference
- IMF. *See* International Monetary Fund
- incrementalism
- crisis of legitimacy and, 233
  - EU constitutionalization through, 3–4
  - during European crises, 266–7, 268–9
- Inter-Governmental Conference (IGC), 264–6
- inter-governmentalist approach, to EU constitutionalization, 12–13
- international approach, to EU constitutionalization, 12
- International Law, shared values under, homogeneity of, 78
- International Monetary Fund (IMF), 251
- Internet, as common public space, 281–2
- Italy, human rights protection systems in, 208
- ius*. *See* rule of law
- Ius Commune Europaeum* (European common law), 8–9
- Jefferson, Thomas, 117
- Johnson, Boris, 238–9
- Judiciary Act of 1789, U.S., 172
- Juncker, Jean-Claude, 119, 120
- jurisdictions, of courts. *See* rule of law
- justices, for courts systems, selection of. *See* rule of law
- Kahn, Paul, 24–5
- Kelsen, Hans, 38
- Kompetenz-Kompetenz*, determination of jurisdiction and, 197–203
- under Basic Law, of Germany, 197–8
  - constitutional development and, 198–9
  - in Germany, 199, 201–2
  - in Switzerland, 198
  - in U.K., 202
  - in U.S., 198–9
- throughout EU, 199–202
- during European crises, 273, 288
- in Switzerland, 198
- under Treaty of Lisbon, 199–201
- Laeken Declaration, 17–19, 21, 304–5
- Landau Agreement, Germany, 214
- legitimacy. *See* crisis of legitimacy
- linguistic homogeneity
- demos* and. *See demos*
  - lack of, during European crises, 248, 252–3, 282–4
- Lisbon Treaty. *See* Treaty of Lisbon
- living constitutions, 27
- Loughlin, Martin, 296–7
- Luxembourg
- common public space for political debate in, 96
  - demos* in, 96
- Maastricht Treaty, 29, 46
- collection of rights and, 149
  - common criminal law under, in EU, federal control over, 205–6
  - common police force under, in EU, federal control over, 205–6
  - court jurisdictions under, definitions of, 193–4
  - EU citizenship under, 66
  - European Parliament under, 137
  - human rights protection systems under, 210
- Madison, James, 189, 209

*Marbury v. Madison*, 160, 182–4  
 May, Teresa, 237, 238  
 Menendez, Agustin Jose, 34–5  
 Merkel, Angela, 119  
 Miliband, Ed, 119  
 Miller, Gina, 237

the Netherlands, rejection of EU  
 Constitutional Treaties,  
 14–15

Nice Treaty, 46

Obama, Barack, 142

parliamentary systems. *See* European  
 Parliament; *specific countries*

Penn, William, 71–2

Pescatore, Pierre, 300–1

Poland

Constitutional Court cases in, 96  
 rule of law in, 165–7

political parties, in EU. *See also specific  
 topics*

Euro-sceptical Parties, 230

principle of subsidiarity. *See*  
 subsidiarity principle

public spaces and spheres. *See* rule  
 of law

Rubinfeld, Jed, 27

rule of law, as dimension of  
 constitutionality, 8–9, 11,  
 42–3, 52–3

in Canada, 161

foreign relations and security  
 policies of, 214

selection of justices in, procedures  
 for, 177

common criminal law, federal  
 control over

in Argentina, 204

in EU, lack of, 203–7

European Arrest Warrant  
 and, 206

under Maastricht Treaty, 205–6

under Treaty on the Functioning  
 of the European Union, 205–6

in U.S., 204–5

common police force, federal control  
 over  
 constitutional development and,  
 204–5

in EU, lack of, 203–7

under Maastricht Treaty, 205–6

under Treaty on the Functioning  
 of the European Union, 205–6

in U.S., 204–5

Constitutional Courts and, 42–3  
 Czech Constitutional Court,  
 167–8

German Constitutional Court,  
 155–6, 190–1, 210, 215–16

constitutional review and  
 constitutional development and,  
 182–5, 217–18

by Court of Justice of the  
 European Union, 185–8

in EU, lack of, 182–8

by European Court of Justice, 187

in Germany, 182

in Switzerland, 184–5

in U.S., 182–4

court jurisdictions, definitions of  
 constitutional development and,  
 189–91

of Court of Justice of the European  
 Union, 192–3, 195–6

in EU Member States, 188–97

in Germany, 190–1. *See also*

*Kompetenz-Kompetenz*

under Lisbon Treaty, 193–4

under Maastricht Treaty,  
 193–4

in Switzerland, 191

in U.S., 189–90

Court of Justice of the European  
 Union and, 167–9

constitutional review by, 185–8

court jurisdiction for, 192–3,  
 195–6

foreign relations and security  
 policies, 215

in Poland, 165–7

selection of justices for, 179–81

supremacy of EU law, 164–9

criticisms of, 155–6

- under European Constitutional Treaty, 163
- European Court of Justice, constitutional review by, 187
- during European crises, 242, 243–4
- foreign relations and security policies and, 213–16
- in Canada, 214
- Common Foreign and Security Policy, 213
- constitutional development and, 213–14
- in Court of Justice of the European Union, 215
- in Germany, 214
- in U.S., 213–14
- in Germany, 161
- constitutional review in, 182
- court jurisdictions in, definitions of, 190–1. *See also Kompetenz-Kompetenz*
- foreign relations and security policies in, 214
- human rights protection systems in, 208
- human rights protection systems in Canada, 208
- Charter of the Fundamental Rights of the European Union and, 211
- constitutional development and, 208–9
- Court of Justice of the European Union rulings on, 209–12
- in EU, lack of, 207–12
- in German Constitutional Court, 210
- in Germany, 208
- in Italy, 208
- under Maastricht Treaty, 210
- in U.S., 208–9
- key factors for, 216–22
- as obstacle to constitutionalization, 48
- selection of justices under, procedures for, lack of clarity in in Canada, 177
- constitutional development and, 177–9
- for Court of Justice of the European Union, 179–81
- in EU, lack of, 176–82
- under Treaty on European Union, 179–80
- under Treaty on the Functioning of European Union, 179–80
- in U.S., 177–9
- subsidiarity principle, 193–4
- in Switzerland constitutional review in, 184–5
- court jurisdictions in, 191
- Treaty on European Union selection of justices for CJEU under, 179–80
- unified rule of law under, 165–7
- Treaty on the Functioning of the European Union common criminal law under, federal control over, 205–6
- common police force under, federal control over, 205–6
- selection of justices under, 179–80
- unified rule of law, in EU, 162–9
- through constitutional development, 158–62
- in Court of Justice of the European Union cases, 164–9
- expansion of, 165–6
- lack of, 157–69
- obstacles to, 157, 169
- under Treaty of Lisbon, 163
- under Treaty on European Union, 165–7
- U.S. Supremacy Clause as influence on, 162–3
- unitary federal courts and. *See* unitary federal courts
- in U.S., 216–17
- constitutional review in, 182–4
- court jurisdictions in, 189–90
- development of, 158–60
- foreign relations and security policies of, 213–14
- selection of justices in, procedures for, 177–9

- rule of law (cont.)
  - under Supremacy Clause, 158–9, 162–3
  - in Supreme Court cases, 160
- Sadurski, Wojciech, 298
- Schulz, Martin, 119
- Sharpston, Leo, 6
- social homogeneity, *demos* and. *See demos*
- Spitzenkandidaten system, 267–8, 286–7
- State of Missouri v. Holland*, 196
- Stein, Eric, 34–5, 51
- subsidiarity principle, 193–4, 280
- Supreme Courts
  - in Argentina, 174
  - Federal Supreme Court Act, Switzerland, 185, 191
  - in U.S.
    - appellate powers of constitutional courts and, 173
    - Marbury v. Madison*, 160, 182–4
    - rule of law dimensions and, 160
    - selection of justices for, 177–9
    - State of Missouri v. Holland*, 196
- Sweet, Alec Stone, 26–7, 32, 272–3
- Switzerland
  - collection of rights in
    - through development of political parties, 117
    - rotational head of state and, 127
  - Constitution of 1848, 93
  - constitutionalization in, 245
  - demos* and
    - common public space for political debate, 93
    - linguistic homogeneity and, 85
    - religious homogeneity, 74
    - shared values and, homogeneity of, 78–9
    - social homogeneity and, 85
  - early federal period in, 49–50
  - Federal Supreme Court Act, 185, 191
  - Kompetenz-Kompetenz* and,
    - determination of jurisdiction influenced by, 198
  - rule of law in
    - constitutional review in, 184–5
    - court jurisdictions in, 191
- TCE. *See* Treaty Establishing a Constitution for Europe
- terrorism, crisis of legitimacy and, 233–4
- TEU. *See* Treaty on European Union
- TFEU. *See* Treaty on the Functioning of the European Union
- transnational crime, crisis of legitimacy and, 233–4
- Treaty Establishing a Constitution for Europe (TCE), 15–16
- Treaty of Lisbon, 15–17, 52. *See also* Treaty Establishing a Constitution for Europe (TCE)
- Brexit and, 235
- collection of rights and, 149–50
- European-wide political parties under, 118, 119
- Council of the European Union under, 147
- court jurisdictions under, definitions of, 193–4
- European crises and, 230, 231, 266–7
- European Parliament under, 137
  - as law-making body, 135
- Kompetenz-Kompetenz* under, 199–201
- socio-political crisis under, 230, 231
- unified rule of law under, 163
- unitary head of state for EU under, 124–5, 130
- Treaty of Rome
  - appellate powers of constitutional courts under, 174
  - unitary elections under, 103–4
- Treaty on European Union (TEU)
  - Brexit and, 235
  - collection of rights and, 104, 106–7, 109, 147–8, 152–3
  - selection of justices for CJEU under, 179–80
  - shared values under, homogeneity of, 80–1, 82–3

- socio-political crisis under, 230
- unified rule of law under, 165–7
- Treaty on the Functioning of the European Union (TFEU), 106–7, 147–8
- Brexit and, 240
- common criminal law under, federal control over, 205–6
- common police force under, federal control over, 205–6
- selection of justices under, 179–80
- U.K. *See* United Kingdom
- unitary elections, in EU. *See also* collection of rights; *specific countries*
- European Parliament and, 139–40
- unitary federal courts, in EU, lack of, 169–203
- appellate powers of constitutional courts, 169–76
  - Argentine Supreme Court, 174
  - in case law, 174–6
  - constitutional development and, concepts of, 170–4
  - in Court of Justice of the European Union cases, 174–6
  - in European Court of Justice cases, 174–6
  - German Constitutional Court, 173–4
  - obstacles to, 169–70, 176
  - under Rome Treaty, 174
  - in U.S. *See* United States
- unitary head of state, for EU, 124–31
  - conflicts between national Executive and EU president, 127–8
  - constitutional development and, 125–7
  - in Court of Justice of European Union cases, 129–30
  - foundational agreements for, 127–8
  - under Lisbon Treaty, 124–5, 130
  - Member state interests as influence on, conflicts between, 128–9
  - obstacles to, 124–5, 130–1
- United Kingdom (U.K.). *See also* Brexit
  - collection of rights in, through development of political parties, 120
  - constitutional crises and, 2
  - crisis of constitutionalization in, 2
  - Kompetenz-Kompetenz* in, determination of jurisdiction influenced by, 202
  - United States (U.S.). *See also* Constitution, U.S.
  - appellate powers of constitutional courts in, 170–3
  - under Articles of Confederation, 170–2
  - under Judiciary Act of 1789, 172
  - Supreme Court decisions and, 173
  - collection of rights and through constitutional development, 148
  - through development of political parties, 116–17
  - through electoral system, 105–6
  - presidential system and, 125
  - democratic dualism in, 28–9
  - demos* and
    - citizenship issues, 64–5
    - common public space for political debate and, 91–2
    - religious homogeneity and, 71–2
    - shared values and, homogeneity of, 78
  - Early Republic period, 49
  - electoral system in, 105–6
    - constitutional amendments and, 105–6
    - decentralization of, through state-run elections, 106
    - Voting Rights Act of 1965 and, 105–6
  - Kompetenz-Kompetenz* in, determination of jurisdiction influenced by, 198–9
  - rule of law in, 216–17
    - constitutional review in, 182–4
    - court jurisdictions in, 189–90
    - development of, 158–60
    - foreign relations and security policies of, 213–14

370	INDEX
United States (U.S.) (cont.)	Senate in, Council of the European Union compared to, 141–3
selection of justices in, procedures for, 177–9	
under Supremacy Clause, 158–9, 162–3	von Pufendorf, Samuel, 8
in Supreme Court cases, 160	Voting Rights Act of 1965, U.S., 105–6
selection of justices in, procedures for, 177–9	Walker, Neil, 31, 297
	Weiler, Joseph, 34–5, 301–2