

Index

- Action Party (Italy), 37
- actors, appeal to constitutional courts and, 195–196
- agrarian contracts, 21
- Albania, Constitutional Court of, 30
- Albertine Statute of 1848, 33–34, 51, 181–182
 - Article 81, 53–54
- Albornoz, Alvaro de, 20
- Ambrosini, Gaspare, 43–44
- ammonizione*, 54–55, 78–79
- amnesty, 154–155
 - in Italy (Togliatti Amnesty), 49–50
 - in Spain, 90
- Anschluss*, 25–26
- apartheid, 25–26, 30
- Apothekenurteil* case, 184
- appeal to constitutional courts, actors and, 195–196
- appointment procedures of constitutional judges, 193–195
- Arab Spring, 1, 10–11
- Arab world, 205–206
- attribution, conflicts of, 37, 42–43
- Austrian Constitution of 1867, 15–16
- Austrian Constitution of 1920, 120, 16–17
 - Article 89, 17–18
- Austrian Constitutional Court, 16–17, 21–22
 - difficulties of, 22
- authoritarianism, 3, 205–206
 - fundamental rights and, 118–119
- Italian Constitutional Court and, 61
- safety valves against, 200
 - transition from, 6–7
- Autonomous Communities, 93–97, 99, 124–131, 204
 - languages in, 129
- azione popolare*, 34–36
- Azzariti, Gaetano, 50
- Basque, 92–94
 - nationalism, 95–96
 - terrorism, 95–96
- Basque National Party, 96, 124–125
- Berlin Wall, 2–3, 9
- Bonn Constitution, 182
- del Bosch, Jaime Milans, 92
- Bracci, Mario, 43–44
- Brozova, Iva, 152
- Bund*, 21–22
- Bundestag*, 112
- Bundesverfassungsgericht*. *See* Constitutional Court of Germany
- Calamandrei, Piero, 37
- Calvo-Sotelo, Leopoldo, 102–103, 127–128
- Cappi, Giuseppe, 43–44
- Carnation Revolution, 87
- Cassandro, Giovanni, 43–44
- Catalonia, 21, 93–94
 - Catalan Parliament, 21
 - Statute of Autonomy for Catalonia of 2006, 21, 130–131
- Caudillo*. *See* Franco, Francisco
- centralized system of constitutional review, 16–17, 189–191
- Chamber of Deputies (Italy), 42–43
- Charter of Fundamental Rights and Basic Freedoms, 141, 144, 157, 182
 - adoption of, 169
 - Article 21, 172
- Cheli, Enzo, 189, 197
- Christian Democrat Movement (Czechoslovakia), 156, 174–175

- Christian Democratic Party (Italy), 34–35, 39, 43–46, 48
 Civic Democratic Party (ODS) (Czech Republic), 137–138, 142–143, 173
 on the territorial organization of the state, 138–139
 Civil Code (Spain), 107–108
 civil law, 28–29
 Committee of the Seventy-Five (Italy), 37
 Communism, 2–3, 5, 155–156, 199
 fall of, 32
 reform, 162
 Communist Party (Czechoslovakia), 161–164
 Communist Party (Italy), 34, 43–44, 101–102
 Communist Party (Spain), 96–97, 121, 199
 Competence Law, 137
confino, 54–55
Consell General de Catalunya, 90
 consensus, politics of, 87–91
 consolidated democracy, 15, 61
 consolidation
 substantive transition and, 15
 transition processes and, 13–14
 Constituent Assembly (Italy), 28, 36–37, 84
 debate in, 38–39
 divergence of opinion in, 45–46
 on religion, 67–68
 on strike, 71–73
 Constituent Assembly (Spain), 89, 97–101
 constitution
 as political document, 179–180
 provisional, 33–34
 as supreme norm, 180–181
 as symbolic text, 179–180
 Constitution of Czechoslovakia of 1920, 16–17, 147
 Constitution of Czechoslovakia of 1948.
See Czechoslovak Constitution of 1948
 Constitution of Czechoslovakia of 1960.
See Czechoslovak Constitution of 1960
 Constitution of Germany. *See* German Basic Law
 Constitution of Italy. *See* Italian Constitution of 1948
 Constitution of Spain of 1931. *See* Spanish Constitution of 1931
 Constitution of Spain of 1978. *See* Spanish Constitution of 1978
 Constitution of the Czech Republic of 1993, 162–163
 approval of, 139
 Article 10, 170
 Article 50, 158
 Article 87(d), 149–151
 Article 89(2), 149–151
 Article 112, 141
 Constitution of the Neapolitan Republic of 1799, 33–34
 Constitution of the Slovak Republic, approval of, 139
 Constitutional Court of Albania, 30
 Constitutional Court of Austria, 16–17, 21–22
 Constitutional Court of Czechoslovakia, 19–20
 Constitutional Court of Germany, 172–173, 184–189, 197–198
 establishment of, 192
 Constitutional Court of Hungary, 25–26, 153, 160, 163–164, 192
 Constitutional Court of Italy. *See* Italian Constitutional Court
 Constitutional Court of Romania, 198
 Constitutional Court of South Africa, 30
 Constitutional Court of Spain. *See* Spanish Constitutional Court
 Constitutional Court of the Czech and Slovak Federal Republic, 147–148, 155–161
 Constitutional Court of the Czech Republic, 5, 153, 193–194
 acceptance of, 146–147
 constitutional justice and, 147–148
 deference towards legislator of, 175
 establishment of, 146–147, 192
 on fundamental rights, 168–172
 Judgment Pl. ÚS 1/92, 157
 Judgment Pl. ÚS 9/01, 159–160
 Judgment Pl. ÚS 13/1999, 151
 Judgment Pl. ÚS 14/01, 153
 Judgment Pl. ÚS 25/96, 172–173
 Judgment Pl. ÚS 36/01, 170–171
 Judgment Pl. ÚS 38/1999, 149–151
 Judgment Pl. ÚS 42/2000, 173
 judiciary and, 148–149
 Law no. 100/1990, 164–168
 Law no. 119/1990, 164–168
 Law no. 403/1990, 164–168
 Law no. 427/1990, 164–168
 on Law on the Illegitimacy of the Communist Regime, 161–164
 on laws on the restitution of property, 164–168
 lustration laws and, 155–161
 rejection of, 146–147
 transitional justice and, 154–155, 171
 on voting rights, 172–175
 constitutional courts
 in constitution-making process, 29–31

- factors influencing, 192
- historical context of, 197–199
- Kelsen on, 16–17, 181
- legitimacy of, 203–204
- role and function of, 190
- setting up, 192–193
- shared actions, 178–185
- specific issues examined by, 185–189
- support of, 198
- uncertainty of transition processes and, 205–206
- constitutional culture, 190
- constitutional judges, appointment of, 193–195
- constitutional review, 78
 - centralized (European) model of, 16–17, 189–191
 - decentralized model in Italy, 50–57
 - decentralized (US) model of, 16–17, 189–191
 - direct and incidental methods of, 39–40, 196
 - gatekeepers of, 39–40
 - judges as, 33–34
 - Kelsen on, 181–182
 - parameter for, 202
- constitutional transitions, 11
- constitutionalism, democracy and, 1
- constitution-making process, constitutional courts in, 29–31
- Constitutions of Baden and Bavaria of 1818, 120
- Copenhagen Council, 144–145, 201
- Council of Ephors, 33–34
- Council of Europe, 31–32, 143, 199–200
 - Czech Republic in, 144
 - Parliamentary Assembly of, 201
 - Slovak Republic in, 144
 - Spain in, 103
- Council of the Revolution (Portugal), 12
- counter-majoritarian difficulty, 203–204
- Court of Cassation (Italy), 51–52, 62–63
 - on constitutional review, 33–34, 50–57
- Fascism and, 53
 - Judgment 7 February 1948, 53
 - Judgment 1212/1947, 33–34
- Court of Constitutional Guarantees (Spain), 20, 98–99
- Court of Strasbourg. *See* European Court of Human Rights
- Criminal Code (Czech Republic), Article 102, 171
- Criminal Code of 1930 (Italy), 47–48
 - Article 2, 53
 - Article 502, 73
 - Article 553, 80
 - Article 559, 58–59
 - Article 654, 80
 - on religion, 67
- Criminal Code of 1944 (Spain), 114–115, 118
- ČSSD. *See* Social Democratic Party
- Czech National Council, 135–137
- Czech Republic, 141–146. *See also specific topics*
 - continuity between Czechoslovakia and, 142
 - in Council of Europe, 144
 - in European Union, 144–146
 - independence of, 144–145
 - market economy in, 140–141
 - Parliament of, 158
 - proportional representation in, 174
 - substantive transition in, 146, 174
- Czechoslovak Communist Party, illegitimacy of, 161–164
- Czechoslovak Constitution of 1948, 168–169
- Czechoslovak Constitution of 1960, 168–169
- Czechoslovak Republic, 136
- Czechoslovakia, constitutional justice in, 22
- Czechoslovakian Constitution of 1920, 16–17
- Czechoslovakian Constitutional Court, 19–20
- decentralized (US) model of constitutional review, 25, 27–29, 189–191
 - in Italy, 50–57
 - risks of, 191
- Declaration of the Rights of Man and of the Citizen, 179–180
- deference, 175
- democracy
 - consolidated, 15, 61
 - constitutionalism and, 1
 - façade, 14
 - mature, 4, 85–86
 - uncertain, 4, 85–86
- democratization, 1–2
 - factors leading to, 9
 - first wave of, 9
 - fourth wave of, 10–11
 - outcomes of, 3
 - third wave of, 8–9
- d'Hondt formula, 173
- diachronic comparison, 2–3
- discrimination, 145
 - in Francoist regime, 116
- Dubček, Alexander, 135
- ECHR. *See* European Convention on Human Rights
- educational effects, 133
- EEC. *See* European Economic Community
- Einaudi, Luitgi, 36–37, 45
- electoral system
 - Czech Constitutional Court on, 172–175
 - in the Czech Republic, 172

- electoral system (cont.)
 - in Italy, 48–49, 174
- Employment Contract Law (Spain), 118
- equality
 - principle of, 109
 - Spanish Constitutional Court on, 116
- Europe factor, 199–202
- European Commission, 145, 199–200
- European Constitutional Courts, first experiences of, 18–22
- European Convention on Human Rights (ECHR), 26, 123–124, 143, 169–171, 183–185
 - ratification of, 103, 200
- European Council, 103
- European Court of Human Rights, 123–124, 132–133, 159–160, 168, 176, 201–202
 - on fundamental rights, 172
- European Economic Community (EEC), 103
 - establishment of, 199–200
 - Spain in, 103
- European model of constitutional review. *See* centralized system of constitutional review
- European Union, 31–32, 143
 - accession to, 201
 - Czech Republic in, 144–146
- Euskadiko Ezkerra*, 90–91, 95–96
- exhortative judgments, 58
- Fascism, 2–3, 24, 47, 112–113, 176
 - continuity following, 49–50
 - Court of Cassation and, 53
 - dismantling of, 185
 - fall of, 34
 - in Italy, 34, 47–48, 155
 - post-Fascism and, 57
 - public order under, 76
 - repeal of legislation from era of, 51–54, 62–66
 - Unified Code on Public Security of 1931 (Italy), 76–77
- Federal Assembly (Czechoslovakia), 136–137
- federalism, moderate, 21–22
- The Federalist*, 179
- federative contract, 15–16
- Fidesz party (Hungary), 8–9
- formal transition, 13–15, 182–183, 205
 - fundamental rights and, 182–183
- formalistic approaches, 163–164
- Forti, Ugo, 35
- Forti Committee, 35, 39–40, 50
- Franco, Francisco, 87, 93–94, 133
 - death of, 94–95, 154–155
- Francoism, 3, 88–89, 113–114, 185–186
- fraud law, 48–49, 174
- Free Law Movement, 17
- freedom of association, 78
 - negative, 78
- French Revolution, 38
- Fuero de los Españoles*, Article 16, 116–117
- Fundamental Laws (Spain), 88–89, 91–92, 105, 113–114, 181–182
- fundamental rights, 120, 183
 - authoritarianism and, 118–119
 - Constitutional Court of Czech Republic on, 168–172
 - essential content of, 122–123, 184
 - European Court of Human Rights on, 172
 - formal transition and, 182–183
 - Italian Constitutional Court on, 57
 - limits to, 183–184
 - protection of, 175–176, 178–185
 - Spanish Constitution of 1978 and, 119
 - Spanish Constitutional Court on, 118–119
- García-Pelayo, Manuel, 194
- De Gasperi, Alcide, 48–49
- Germany, 184
- German Basic Law, 112, 120, 184, 186–187
 - Article 19(2), 122
 - German Confederation, 15–16
 - German Constitutional Court, 184, 186–189
- global constitutionalism, 184–185
- González, Felipe, 102–103, 127–128
- Greece, 24–25
- Gronchi, Giovanni, 43–44
 - on constitutional justice, 44
- Grundgesetz*. *See* German Basic Law
- Hamilton, Alexander, 179
- Havel, Václav, 135–136, 149, 15⁸, 173, 193–194
- High Council of the Judiciary (Italy), 63
- Holländer, Pavel, 149
- Hungarian Constitutional Court, 192. *See* Constitutional Court of Hungary
- Hungary, 8–9, 25–26
- hybrid regimes, 8–9, 15
- HZDS. *See* Movement for a Democratic Slovakia
- Institutional Revolutionary Party (Mexico), 12
- International Covenant on Civil and Political Rights, 183
- International Covenant on Economic, Social and Cultural Rights, 183
- International Labour Organization, 156–157
- Internationalization of constitutional law, 183

Index

233

- interpretative judgments of dismissal, 58, 77–83
- intese*, 68, 70–71
- Italian Constitution of 1948, 33–34
 - adoption of, 45–46
 - Arata amendment, 39–40
 - Article 3, 59, 75–76
 - Article 7, 59
 - Article 8, 68
 - Article 8(3), 68, 71
 - Article 13, 54–55
 - Article 16, 54–55
 - Article 17, 69
 - Article 18, 78
 - Article 19, 68–69
 - Article 21, 54–55, 63, 79–80
 - Article 25, 51–52
 - Article 25(1), 51–52
 - Article 31, 54–55
 - Article 32, 54–55
 - Article 36, 55–56
 - Article 37, 54–55
 - Article 39, 54–55
 - Article 40, 55–56, 71–73, 76
 - Article 43, 54–55
 - Article 51, 59
 - Article 102, 56
 - Article 103(3), 56–57
 - Article 111(2), 56
 - Article 113, 56–57
 - Article 134, 63–64
 - Articles 134–137, 39–41
 - case law of ordinary courts and, 54
 - Constitutional Law no. 1/1948, 42–43, 63–64
 - Constitutional Law no. 1/1953, 42
 - freezing of, 46
 - substantive transition and, 45–50
- Italian Constitutional Court, 4, 33–34
 - appointment of judges, 41–45
 - authoritarianism and, 61
 - on constitutional illegitimacy, 65
 - Court of Cassation and, 81–86, 195–196
 - direct and incidental methods of constitutional review, 39–40, 81–86, 195–196
 - establishment of, 41–45, 192
 - governmental branches and, 85
 - Italian Parliament and, 59–60, 71–76
 - Judgment 1/1956, 61, 69, 77, 84
 - Judgment 2/1956, 78–79
 - Judgment 2/1957, 80
 - Judgment 3/1956, 58
 - Judgment 8/1956, 58
 - Judgment 9/1965, 80
 - Judgment 11/1956, 78–79
 - Judgment 15/1960, 184
 - Judgment 26/1961, 81–82
 - Judgment 29/1960, 72–75
 - Judgment 31/1969, 74
 - Judgment 33/1960, 58–59
 - Judgment 38/1961, 80
 - Judgment 40/1958, 65
 - Judgment 45/1957, 69, 79
 - Judgment 49/1971, 58–59
 - Judgment 54/1961, 80
 - Judgment 59/1958, 69
 - Judgment 64/1961, 58–59
 - Judgment 69/1962, 78
 - Judgment 114/1967, 78
 - Judgment 121/1957, 79–80
 - Judgment 123/1962, 73–74
 - Judgment 126/1968, 58–59
 - Judgment 290/1974, 6, 74–76, 116
 - judicial power of, 84–85
 - as promoter of reforms, 59, 61, 66–71
 - on public order, 76–83
 - on religion, 66–71
 - on repeal, 65
 - on strikes, 71–76
 - in substantive transition, 57–61
 - as substitute for parliament, 59, 71–76
- Italian Social Movement, 43–44, 48
- Italy, 28. *See also specific topics*
 - civil law in, 37–38
 - constitutional review in, 38, 57
 - conventio ad excludendum*, 48
 - Fascism in, 34, 47–48, 155
 - Jewish populations in, 47–48
 - obstructionism by majority in, 41–42, 48–49, 77, 84, 197
- Jacobins, 23, 38–39, 179–180
- Jaeger, Nicola, 43–44
- Jehovah’s Witnesses, 67, 150
- Jewish denominations, 70–71
- Juan Carlos (King), 91–93
- judgments
 - exhortative, 58
 - interpretative, of dismissal, 58, 77–83
 - manipulative, 58
- judicial review
 - Hamilton on, 179
 - in United States, 36–37, 178–179
- judiciary, fear of, 26–29
- Kelsen, Hans, 17–18, 21–22, 147, 181–182
 - on constitutional courts, 16–17
- Klaus, Václav, 137–138, 142, 152, 177, 193–194

- Labour Charter (Spain), 114–115
 Land Restitution Laws, 165
Länder, 15–16, 21–22
 languages, in Autonomous Communities, 129
 Latin America, 28–29
 Law on Extrajudicial Rehabilitation, 165
 Legislative Decree 44/1946 (Italy), 33–34
 Legislative Decree 89/1946 (Italy), Article 9(1), 56–57
 legislative void, 61, 70
 legislature, distrust towards, 27–29
 Leone, Giovanni, 37
 Liberal Party (Italy), 34–35
 liberalism, 18
 Lieutenant's Legislative Decree no. 98/1946, 33–34
 Lieutenant's Legislative Decree no. 151/1944, 33–34
 Lieutenant's Legislative Decree no. 159/1944, 51–52
 lustration laws, 5, 155, 159, 163–164
 - Constitutional Court of Albania on, 30
 - Constitutional Court of Czech Republic on, 155–161
 - Constitutional Court of Hungary on, 160
 - Constitutional Court of the Czech and Slovak Federal Republic on, 155–161
 - European Court of Human Rights on, 160
 - objections to, 157*Lüth* case, 184
 manipulative judgments, 58
Marbury v. Madison (1803), 33–34, 178–179
 Marshall, John, 178–179
 Masonic societies, 107
 mature democracy, 4, 85–86
 Mayr, Michael, 21–22
 Mečiar, Vladimír, 137–138
 Mexico, democratization in, 12
 moderate federalism, 21–22
 Monarchs, 43–44
 Moroccan Constitution, 11
 Movement for a Democratic Slovakia (HZDS), 137–138, 156–157
 - on the state, 138–139
 multiparty systems, 12
 National Movement (Spain), 90
 nationalism
 - Basque, 95–96
 - in Slovak Republic, 140–141
 NATO, 103, 143
 Navarro, Arias, 91–92
 Nazis, 2–3, 23–24, 181–182
 negative freedom of association, 78
 negative legislator, 17
 Nenni, Pietro, 35
 De Nicola, Enrico, 62, 194
 Nitti, Francesco Saverio, 38–39
 non-Catholic religion, 66–71
 non-discrimination, 117–118
 normative value
 - of constitutions, 178–185
 - of Spanish Constitution of 1978, 104–110
 North Africa, 205–206
 obstructionism by the majority, 41–42, 48–49, 77, 84, 197
 ODS. *See* Civic Democratic Party
Oktoberverfassung. *See* Austrian Constitution of 1920
 Opposition Agreement (Czech Republic), 173
 Ordinary courts (Italy), case law, 54
 Organic Law of the Constitutional Court (Spain), 100, 113–114
 Organic Law on the Harmonization of the Process of Autonomous Rule (Spain), 127–128
 Orlando, Vittorio Emanuele, 38–39
 Pacts of Moncloa (Spain), 88, 118
 Pagano, Mario, 33–34
 parliamentary sovereignty, 18–20, 22–24, 149–151
 Patricolo, Gennaro, 37
 Peacetime Military Criminal Code (Italy), Article 264(1)(c), 56–57
 pension agreements, 71
 Pentecostals, 67
 People's Alliance (Spain), 90–91, 96–97, 101–102
 La Pergola, Antonio, 31
 Philadelphia Convention, 179
Platajunta, 90
 Platform of Democratic Convergence (Spain), 90
 Poland, 199
 - Constitutional Court of, 30–31
 Polish Constitutional Court, 30–31
 political conflicts, 187–188
 political gray zones, 8–9, 15
 Political Reform Law (Spain), 88–89
 - ratification of, 89–90*Ponencia*, 96–97, 99
 Popular Socialist Party (Spain), 90–91
 Portugal
 - Constitutional Court, establishment of, 24–25
 - democratic transition in, 12
 - Portuguese Constitution of 1976, 119
 - Salazar regime, 23, 87
 post-Fascism, Fascism and, 57
 Prague Spring, 162
 preceptive constitutional provisions, 51–52
 - defining, 54

- preconstitutional legislation, 51–54, 62–66, 110–118, 185
- Pretore*, 55–56
- principio dispositivo*, 124–125
- principle of interpretation, Spanish Constitutional Court on, 110
- procedural gateways to constitutional courts, 195–196
- programmatic constitutional provisions, 51–52
- property rights, 18
 - Czech Constitutional Court on, 164–168
- proportional representation
 - in Czech Republic, 174
 - in Italy, 48–49, 174
- proportionality, 184
 - test, 184–185
- public order. *See also* Unified Code on Public Security of 1931 (Italy)
 - under Fascism, 76
 - Italian Constitutional Court and, 66, 76–83
 - Public Order Court, 90
 - purge of the judiciary, 191
- Racial Tribunal (Italy), 50
- reasonableness, 184
- recession, in Spain, 88
- recurso de amparo*, 118–124
- reform Communists (Czechoslovakia), 162
- reforma pactada*, 88
- regime collapse, 134–135
- Reichsgericht*, 15–16
- religion
 - Italian Constituent Assembly on, 67–68
 - Italian Constitutional Court on, 66–71
 - Italian Criminal Code of 1930 on, 67
 - non-Catholic denominations, 66–71
- Renner, Karl, 21–22
- repeal
 - Italian Constitutional Court on, 65
 - Spanish Constitutional Court on, 111
- restitution of property, 164–168
- reverential fear, 61
- Roma, 145
 - rights of, 172
- Romania, Constitutional Court of, 198–199
- Royal Decree Law no. 1/1978 (Spain), 94–95, 114–115
- Royal Decree Law no. 17/1977 (Spain), 114–115, 118
- Royal Decree Law no. 25/1944 (Italy), 47–48
- Royal Decree Law no. 26/1944 (Italy), 47–48
- Royal Decree Law no. 41/1977 (Spain), 94–95
- Royal Decree Law no. 289/1930 (Italy), 70
- Royal Decree Law no. 884/1932 (Italy), 66–67
- Royal Decree Law no. 1080/1932 (Italy), 66–67
- Royal Decree Law no. 1731/30 (Italy), 70–71
- Royal Decree Law no. 1848/1926 (Italy), 78
- rule of law, 160, 176
 - the state and, 162–163
- ruptura pactada*, 88
- Salazar regime, 23, 87
- separation of powers, 11–12
- separatism, 92
- Sicily, 10
 - High Court of Justice for Sicily, 59–60
 - Statute of the Region of Sicily, 59–60
- Slovak National Council, 135–137
- Slovak Republic, 139–140
 - in Council of Europe, 144
 - nationalism in, 140–141
- Social Democratic Party (ČSSD), 142–143, 152, 173
- socialism, 3, 30–31
- Socialist Constitution of 1960–1968, 140–141
- Socialist Party (Italy), 48
- solidarity strikes, 73
- South Africa, 25–26, 155
 - apartheid, 25–26, 30
- South African Constitutional Court, 30
- Soviet Union, 3
- Spain. *See also* specific topics
 - recession in, 88
 - transition process in, 87–91
- Spanish Constitution of 1931, 16–17, 120–121
- Spanish Constitution of 1978, 108
 - adoption of, 117–118
 - Article 1(1), 116
 - Article 2, 124–125
 - Article 7, 116
 - Article 9(1), 105–106
 - Article 9(2), 116
 - Article 10(2), 123–124
 - Article 14, 106–109
 - Article 20, 121
 - Article 22, 107
 - Article 28(2), 116
 - Article 30, 106
 - Article 39(2), 107–108
 - Article 43(1), 106
 - Article 45(1), 106
 - Article 53, 106
 - Article 53(3), 106–107
 - Article 159, 99
 - Article 161, 99
 - Article 162, 99
 - Article 164, 99
 - Bill of Rights in, 119
 - drafting of, 120–121
 - fundamental rights and, 119

- Spanish Constitution of 1978 (cont.)
 normative value of, 104–110
 Title IX, 99
 Spanish Constitutional Court, 5, 97–101
 on constitutional-conform interpretation, 110
 establishment of, 192
 on fundamental rights, 118–124
 Judgment 3/1981, 121
 Judgment 4/1981, 111, 127
 Judgment 7/1983, 117–118
 Judgment 11/1981, 111, 115–116, 123, 184
 Judgment 15/1982, 109
 Judgment 16/1982, 108–109
 Judgment 18/1982, 127
 Judgment 26/1981, 119
 Judgment 31/2010, 130–131
 Judgment 36/1982, 116
 Judgment 42/2014, 130–131
 Judgment 69/1988, 124–131
 Judgment 76/1983, 127–128
 Judgment 104/1986, 121
 on normative value of the Constitution, 105–110
 Organic Law of, 100, 113–114
 on pre-constitutional legislation, 104, 110–118
 on principle of equality, 116
 on repeal, 111
 Spanish Constitution of 1978 and, 105–110
 State of Autonomies and, 124–131
 in substantive transition, 101–105
 success of, 131–133
 on territorial organization of the state, 124–131
 Spanish Socialist Workers' Party, 90–91, 96–97, 100–102, 127–128
 Special Assize Courts (Italy), 49
Staatsgerichtsbarkeit, 4
Verfassungsgerichtsbarkeit and, 15–18
Staatsgerichtshof, 23–24
 the state
 HZDS on, 138–139
 ODS on, 138–139
 rule of law and, 162–163
 strikes and, 74–75
 territorial organization of, 93–97, 125–126, 138–139, 185–187
 traditional powers of, 61
 State of Autonomies, 5, 93–94, 104, 185–186
 construction of, 125
 evolution of, 130–131
 Spanish Constitutional Court and, 124–131
 stateness problem, 10
 Statute of Autonomy for Catalonia of 2006, 21, 130–131
 strikes, 115–116
- aims of, 74
 defining, 73–74
 under Franco regime, 114–115
 Italian Constituent Assembly on, 71–73
 Italian Constitutional Court on, 71–76
 partial, 73–74
 regime of the state and, 74–75, 116
 solidarity, 73
 Spanish Constitutional Court, 114–115
 Suárez González, Adolfo, 88–89, 91–92, 102–103
 substantive transition, 3–4, 13–15, 82–83, 205
 blocking of, 47
 consolidation and, 15
 in Czech Republic, 146
 enforcement of constitutional provisions and, 14–15
 fundamental rights in, 104
 Italian Constitutional Court in, 57–61
 in Italy, 45–50
 proceduralization of, 146
 in Spain, 101–105
 Spanish Constitutional Court in, 101–105
 turning points in, 62
 supranational jurisdictional bodies, 202
 Supreme Court (Spain), 104
 on case law, 107
 Supreme Court (United States), 15–16
 judicial review of, 178–179
 Supreme Military Court (Italy), 56
 Swiss Constitution, 15–16
- Tejero, Antonio, 92
 territorial organization of the state, 93–97, 104, 125–126, 138–139, 185–187, 204
 terrorism, Basque, 95–96
 theory of values, 158
 Togliatti, Palmiro, 34, 38–39, 50
 Togliatti Amnesty, 49–50
 transition processes. *See also* formal transition;
 substantive transition
 in action, 14–15
 actors and factors, 9
 from authoritarianism, 6–7
 consolidation and, 13–14
 constitutional, 11
 constitutional courts during, 205–206
 counter-majoritarian difficulty and, 203–204
 dynamism of, 15
 final outcomes of, 15
 provisional nature of, 11
 similarities in, 3
 in Spain, 87–91
 success of, 205–206
 temporal coordinates of, 13

Index

237

- uncertainty in, 15
transitional justice, 152–153, 187
Constitutional Court of Czech Republic and,
154–155, 171
defining, 154
transitional period, 33–34
transitology, 9
Treaty Establishing the European Defence
Community, 197–198
Tunisian Constitution, 11
Tura, Jordi Solé, 96–97

uncertain democracy, 4, 85–86
uncertainty, 10–11, 51
in transition processes, 10–11, 15
Unified Code on Public Security of 1931 (Italy),
47–48, 54–55, 58–59, 77
Article 2, 80–81
Article 18, 67
Article 25, 69–70
Article 68, 79–80
Article 111, 80
Article 112, 80
Article 113, 62–63, 65
Article 156, 80
Article 210, 78
Article 215, 78
Fascism and, 76–77
Union of the Democratic Centre (Spain), 90–91,
96–97, 100–103

United States, 28–29, 180–181
judicial review in, 28–29, 36–37, 179
Supreme Court of, 15–16
Universal Declaration of Human Rights, 183

values, theory of, 158
Velvet Revolution, 134–141, 162, 168–169,
175–177
beginning of, 135
Venice Commission, 16, 200–201
Verfassungsgerichtsbarkeit, 16
Staatsgerichtsbarkeit and, 15–18
Vienna Declaration, 143, 200
voting rights, Constitutional Court of Czech
Republic on, 172–175

wage freezes, 88
Weimar Constitution of 1919,
15–16, 182
Weimar Republic, 23–24, 188–189
women, in employment, 117
Workers' Statute (Spain), 117–118
World Trade Organization, 184–185
World War II, 2–4, 9,
154, 180

Xirinacs, Lluís Maria, 95–96

Zeigeist, 10, 205–206
defining, 10