

INDEX

- Abelshauser, Werner, 274
 Abortion in US, 112
 Adaptive management, 191
 Administrative law
 domestic administrative law, 303–4
 global administrative law, 303–4, 326
 private administrative law (*See*
 Private administrative law)
 Agreement on Social Policy, 289
 Ali Enterprises garment factory fire,
 320, 321
 Alliance for Bangladesh Worker
 Safety, 194
 Ambulatory reference clauses, 285–7
 American Civil Liberties Union
 (ACLU), 309
 Anthropocene, 181–2, 184, 185, 186–7,
 199. *See also* Ecological law,
 political economy and
 Arbitration and Mediation Centre, 353,
 362–3
 Arendt, Hannah, 12–13
 Atria, Fernando, 344
 Austin, John, 130–1
 Autonomy of European labour law
 external dimension of, 279–80
 historical background, 278
 internal dimension of, 278–9
 judicial overturning of, 283–4
 overview, 277–8
 revival of, 291–5
 Backer, Larry Catá, 195–6
 Bakhtin, Mikhail, 68
 Bank for International Settlements, 173
 Banks, risk management in, 304–5
 Bartl, Marija, 28, 220
 Basle Committee on Banking
 Supervision (BCBS), 173
 Bavaro, Vincenzo, 278
 Berman, Harold J., 320, 328, 346–7
 Biermann, Frank, 188
 BizNGO (NGO), 194
 Bodin, Jean, 14
 Böhm, Franz
 generally, 60–1
 on co-determination
 (*Mitbestimmung*), 46–7
 on economic constitutionalism, 34,
 35, 36
 Wirtschaftsverfassung, 42–3
 von Böhm-Bawerk, Eugen, 35
 Bourdieu, Pierre, 326
 Brandt, Willy, 219
 Bremen University, 205, 211
 Bremer Straßenbahn AG (BSAG)
 (German corporation), 368
 Bretton Woods system, 157, 164–9
 de Búrca, Gráinne, 78, 81
 Bush, George H.W., 120
 Bush, George W., 120
 Cafaggi, Fabrizio, 224
The Captive Mind (Milosz), 216
 Cardozo, Benjamin, 132–3
 Cartels
 natural resource extraction and, 159
 in Netherlands, 263
 TFEU and, 256, 258
 Cavell, Stanley, 301
 Centre of European Legal Policy
 (ZERP), 205, 206, 211, 218
 de Certeau, Michel, 302
 Chakrabarty, Dipesh, 181, 186
 Charlesworth, Hilary, 133
 Charter of Fundamental Rights, 226
 Charter of Fundamental Rights (EU)
 generally, 349

- integration and, 226
- labour law and, 283–4, 286–7, 292, 295
- China
 - natural resource extraction in, 173
 - Unequal Treaties, 138
- Chinkin, Christine, 133
- Christodoulidis, Emiliós, 25–6
- CJEU. *See* Court of Justice of the European Union (CJEU)
- Classical Legal Thought
 - judicialisation and, 102, 105–6, 109
 - ‘juridified universe’ and, 95–6, 97–8
 - overview, 90
 - social imaginaries and, 233–6
- Co-determination (*Mitbestimmung*)
 - as exemplary case, 46–7
 - Mestmäcker on, 46–8
 - overview, 45–6
 - social market economy and, 47–8
 - Wiethölter on, 48–50
- Cold War, 129–30
- ‘Collecting societies’, 312–13
- Collective redundancies, 287–8
- Collins, Hugh, 241, 292
- Commodity futures and options, 163
- Competition law
 - consumerism versus producerism, 254–5, 260–1
 - EC and, 256–7, 261–3, 269–70, 271
 - economisation, transformative effects of, 255–61
 - first-mover disadvantage, 259
 - free-rider problem, 259
 - liberal professions and, 261–3
 - modernisation, transformative effects of, 255–61
 - in Netherlands
 - chicken meat, 266–8
 - sustainability versus competition, 264–6, 268–74
 - transformation of, 263–4
 - overview, 28, 255, 274–5
 - private regulation and, 259–60
 - self-regulation and, 257–8
 - sustainability versus competition constitutional reflection on, 271–4
 - European Commission on, 269–70
 - in Netherlands, 264–6, 268–74, 344
 - US compared, 261
- Conflicts-law constitutionalism, 54–5
- Constitutional Charter (2000), 223
- Constitutionalisation
 - ‘ambition’ versus ‘modesty’, 119–22, 123–4
 - beyond judicialisation, 115–17
 - landlord/tenant law and, 117–19
 - neo-formalism and, 122
 - as normative change, 112–15
 - overview, 111–12, 122–3
 - politics of, 117–19
 - transnational constitutional rights
 - external constitutionalisation, 365–70
 - as foundation of governance, 359–62
 - freedom of contract and, 356–7
 - horizontal rights, 357–8, 360–1
 - internal constitutionalisation, 362–5
 - legitimacy and, 356–9
 - as limitation on governance, 359–62
 - objections to, 361–2
 - overview, 356
- Consumer Credit Directive (EU), 244
- Consumer law
 - access and, 250–2
 - Commission Consumer Programme (1981), 242–3
 - Commission Consumer Programme (1991), 243–4
 - Consumer Agenda (1998), 244–5
 - Consumer Agenda (2012), 246, 250
 - EC and, 221–2
 - in European private law, 219–20, 221–2
 - evolution of, 242–6
 - in Germany, 219
 - Green Paper (2001), 245–6
 - historical background, 242–6
 - information and, 249–50
 - ‘internal market’ and, 242, 248

- Consumer law (cont.)
 - overview, 229
 - social imaginaries in, 241–6
 - overview, 229–30
 - social whole, relation to subject, 249–52
 - subject of, 247–8
 - transformation from consumer protection law to, 247
 - transformation from consumer protection law
 - overview, 240
 - social imaginaries and, 247
 - vulnerable consumers and, 248–9
- Consumer Rights Directive (EU), 221–2
- Contemporary legality
 - constitutionalisation (*See* Constitutionalisation)
 - ‘hermeneutic of suspicion’, 91–5 (*See also* ‘Hermeneutic of suspicion’)
 - judicialisation (*See* Judicialisation)
 - ‘juridified universe’ (*See* ‘Juridified universe’)
 - overview, 26, 89–91
- Contemporary Legal Thought, 90
- Cooter, Robert, 335
- Corporatism, 14–18, 70
- Council on Foreign Relations, 140
- ‘Counter-rights’
 - collective action and, 388–9
 - communicative media and, 390
 - inter-individual communication and, 386–8
 - overview, 373, 375, 382–6
 - polycontextuality of, 390–3
 - preconceptual affection and, 382–4
 - protest movements and, 388–9
- Court of Justice of the European Union (CJEU). *See also* European Court of Justice (ECJ)
 - generally, 283, 349
 - competition law and, 255
 - consumer law and, 247
 - Critical Legal Studies and, 207
 - financial crisis and, 58–9
 - genetic engineering and, 306
 - ICANN and, 356
 - labour law and, 283–4, 285–8, 292, 295
 - private regulation and, 332–3
 - UN Security Council Resolutions and, 366
- Critical Legal Studies, 207, 211, 214–16
- Critical political economy, 3
- Critique of Rights* (Menke), 372
- Cruel and unusual punishment in US, 113
- ‘Cybergripping’, 360, 362, 367–8
- Damrosch, Lori, 133
- D’Antona, Massimo, 285
- Das Rheingold* (Wagner), 181
- Data-driven technologies, 304–7
- ‘Data owners’, 312–13
- Deakin, Simon, 346
- Debt collection in US, 113
- Defamation in US, 113
- Derivatives, 163
- Derrida, Jacques, 68, 376, 383, 384
- Deutsches Network Information Center eG (DENIC), 367
- Discrimination in US, 113
- Domain names
 - description of transnational law and, 350–4
 - external constitutionalisation and, 365–70
 - freedom of contract and, 356–7
 - free speech and, 362–5
 - in Germany, 367–8
 - ICANN (*See* Internet Corporation for Assigned Names and Numbers (ICANN))
 - internal constitutionalisation and, 362–5
 - interpretation of transnational law and, 354–6
 - national courts and, 365–6
 - trademarks as, 363–4
 - transnational constitutional rights and, 356–7, 359–62
- Uniform Domain Name Dispute Resolution Policy (UDRP) (*See* Uniform Domain Name

- Dispute Resolution Policy (UDRP)
 - in US, 369
- Domenach, Élise, 301
- Domestic administrative law, 303–4
- Durkheim, Émile, 382
- EC. *See* European Commission (EC)
- ECJ. *See* European Court of Human Rights (ECtHR)
- Ecological law, political economy and
 - calculative approaches, 192–3
 - cognitive challenges, 190–1
 - contract law versus public law, 195–6
 - ecological risk versus political risk, 182
 - economic actors and, 182–3
 - economics versus ethics, 189–90
 - humankind as planetary force, 181–2, 186–7
 - jus naturalis* versus *jus gentium*, 184, 185–6, 188, 199
 - labour codes and, 195
 - law, role of, 183–4
 - limitations of, 197, 200–1
 - overview, 27, 181–4, 199–201
 - planetary boundaries concept, 185–9, 192
 - regulatory techniques, 193–5
 - science, role of, 184, 185–9, 197–9
 - time of ecosystems, challenge of, 191
 - uniqueness of challenges, 189–91
- Economic constitutionalism
 - co-determination (*Mitbestimmung*) and (*See* Co-determination (*Mitbestimmung*))
 - competition as discovery procedure, 36, 51–2
 - conflicts-law constitutionalism and, 54–5
 - critique of *Wirtschaftsverfassung*, 41–3, 44–5
 - economic sociology and, 54–5
 - economic versus political in, 34–7
 - European crisis and, 55–61
 - freedom and, 34–7
 - Keynesianism and, 36
 - ‘law-collisions’ approach, 52–5
 - new economic governance and, 57–9
 - overview, 25, 33
 - political administration in, 37–8
 - Wirtschaftsverfassung*, 39–41, 44–5
- Economic sociology, 54–5
- The Eighteenth Brumaire of Louis Bonaparte* (Marx), 90
- Eldorado (Canadian mining company), 175
- Ellis, Jaye, 27
- Embedded liberalism, 157
- Empty signifiers, 63–4, 66–7, 68, 86–7
- Energie Nederland*, 265
- ‘Epistemic communities’, 316
- Erhard, Ludwig, 37
- Esping-Andersen, Gøsta, 8
- EU. *See* European Union (EU)
- Eucken, Walter, 35, 36, 60–1
- Euro (currency), 52, 58–9, 139
- Euro dollars, 168
- European Central Bank (ECB), 58–9
- European Commission (EC)
 - competition law and, 256–7, 261–3, 269–70, 271
 - consumer law and, 221–2
 - on genetic engineering, 306
 - ICANN and, 355
 - ‘internal market’ and, 211–13
- European Convention on Human Rights (ECHR), 286, 349, 363
- European Court of Human Rights (ECtHR), 366
- European Court of Justice (ECJ). *See also* Court of Justice of the European Union (CJEU)
 - generally, 283
 - competition law and, 271, 273
 - debt and, 146
 - private law and, 207, 212–13, 220, 221, 222–3, 225, 226
- European Economic Community (EEC), 282
- European Monetary Union (EMU), 56–7
- European private law
 - consumer law, 219–20, 221–2
 - ‘contractual underworld’, 225

- European private law (cont.)
 Critical Legal Studies and, 207, 211, 214–16
 expectations of, 213–14
 integration and, 222–7
 ‘integration through law’ and, 212
 ‘internal market’ and, 211–13
 Ius Commune and, 224
 labour law, 220–1
 Lisbon Agenda and, 213, 219, 220, 221
 New Approach on Technical Product Standards and, 224–5
 Open Method of Co-ordination (OMC), 224
 overview, 27–8, 208–9, 227
 ‘practice of theory’ versus ‘theory as practice’, 207–8, 211
 Single European Act (SEA) and, 205–6, 211–12, 219, 222–3
 ‘Social’ and, 209–10
 social imaginaries in (*See* Social imaginaries)
 transformative function of, 216–17
 welfare states and, 210–11
 European Union (EU). *See also specific country*
 generally, 23, 139
 Charter of Fundamental Rights (*See* Charter of Fundamental Rights (EU))
 competition law in (*See* Competition law)
 Consumer Credit Directive, 244
 consumer law in (*See* Consumer law)
 Consumer Refit, 221–2
 Consumer Rights Directive, 221–2
 debt and, 146
 Interinstitutional Agreement on Better Law-Making, 344
 ‘internal market’ and, 211–13
 labour law in (*See* Labour law)
 Lisbon Agenda (2000), 213, 219, 220, 221, 223
 Market Abuse Directive, 339
 New Approach on Technical Product Standards, 224–5
 Posting Worker Directive, 220, 281, 293–4
 private administrative law in
 judicial sources of, 340–4
 legislative sources of, 339–40
 private law in (*See* European private law)
 private regulation in, 325, 332–3, 335–8
 Product Safety Directive, 211, 212–13, 339
 ‘rejection crisis’, 280–1
 Services Directive, 339
 Everson, Michelle, 25
 ‘Evolutive networks’, 304–7
 Facebook, 314
 Feichtner, Isabel, 26–7
 Femia, Pasquale, 378–9
 Feminism, 62
 Financial crisis, 320–1
 First-mover disadvantage, 259
 Fiscal policy versus monetary policy, 174
 Fischer-Lescano, Andreas, 378–9
 Floating exchange rates, 169
 Floating signifiers, 63–4, 67, 86–7
 Forsthoff, Ernst, 38
 Foucault, Michel, 20–1, 323, 337, 346–7, 375
 France
 Code Civil des Français, 235–6
 collective redundancies in, 287
 French Revolution, 358
 Napoleonic Code, 235–6
 welfare state in, 210–11
 Frankfurter, Felix, 120
 Free-rider problem, 259
 Free speech, domain names and, 362–5
 Freud, Sigmund, 91
 Friedman, Milton, 169
 The Gap (US corporation), 195
 General Agreement on Tariffs and Trade (GATT), 136, 143, 161, 172
 Genetic engineering, 305–6
 German Free Law School, 93

- Germany
 Act against Restraints of Competition, 37
 Basic Law, 366, 367–8
 Bremen, labour law in, 218–19
 Civil Code, 368
 co-determination (*Mitbestimmung*)
 in (*See* Co-determination (*Mitbestimmung*))
 constitutional rights in, 366–7
 consumer law in, 219
 corporatism in, 17–18
 as creditor country, 281
 ‘cybergripping’ in, 367–8
 domain names in, 367–8
 Keynesianism in, 36
 ‘open statehood’ in, 367
 Piratenpartei Deutschland (Pirate Party), 309
 Trade Mark Act, 368
 welfare state in, 210–11
 van Gerven, Walter, 224
 Gindis, David, 346
 Giscard d’Estaing, Valéry, 167
 Giubboni, Stefano, 28, 220
 Glasman, Maurice, 87
 Global administrative law, 303–4, 326
 von Goethe, Johann Wolfgang, 52–3
 Gold as commodity, 175–6
 Gold-exchange standard, 165–6
 Gordon, Robert W., 346
 Governance
 analysis and explanation in, 72–3
 associative versus market transactions, 79
 ‘bridging and blurring’ distinction
 between economics and government and, 65
 command economy versus, 70–1
 common good and, 76–7
 corporatism and, 70
 ‘democratic register’ and, 74–6
 empty signifiers and, 63–4, 66–7, 68, 86–7
 evolution of, 66, 69–79
 first wave of, 71
 floating signifiers and, 63–4, 67, 86–7
 functional level, resolution at, 87
 at global level, 73
 governing distinguished, 64
 hegemony and, 68–9, 86–7
 ideological support for, 77–9
 international law and, 143–5
 of Internet (*See* Internet governance)
 joined-up governance, 72
 myth of democratic governance,
 25–6, 66
 networks and, 72
 new economic governance, 57–9
 New Right and, 70–1
 overview, 86–8
 phenomenality and, 79–80
 polysemy and, 63–6
 private regulation and, 323
 regulation of publicly relevant issues
 by non-state actors, 79, 80–1
 second wave of, 72
 semantic level, resolution at, 86–7
 shift from government to
 governance, 70–1
 signification and, 67–8
 stakeholding and, 81–6
 at state level, 73–4
 subsidiarity and, 77
 successive waves of, 72–3
 turn to, 22–5
 in UK, 71
 Gramsci, Antonio, 68–9
 Greece
 collective redundancies in, 287–8
 gold in, 175
 Green Chemistry and Commerce
 Council, 194
 Groys, Boris, 309
 Gruber, Malte, 378–9
 Grundmann, Stefan, 313–14

 Habermas, Jürgen, 38, 39, 84, 373
 Hadfield, Gillian, 335
 Halley, Janet, 62
 Hamilton, Clive, 186–7
 Hand, Learned, 120
 Hart, H.L.A., 355–6
 von Hayek, Friedrich A.
 generally, 9–10, 18

- von Hayek, Friedrich A. (cont.)
 on competition as discovery
 procedure, 36, 51–2
 on floating exchange rates, 169
 on social market economy, 47–8
- Hegel, G.W.F., 5–7
- Hegemony, 68–9, 86–7
- Helleiner, Eric, 172
- Heller, Herman, 34, 43, 60–1
- Hepple, Bob, 291
- ‘Hermeneutic of suspicion’, 91–5
 as ‘disenchantment narrative’, 93
 existence of ‘right answer’ and,
 91, 93–4
 extreme sceptical legal theory and,
 93
 ‘hermeneutic of restoration of legal
 meaning’ versus, 91–2
 ideological intelligentsias and, 94
 intensity of, 94–5
 overview, 123
 ‘suspicious believers’, 111
- Herzog, Lisa, 52
- Hierarchy versus spontaneity, 1,
 16–17, 24–5
- Hobbes, Thomas, 5–6, 14, 328
- Hodgson, Geoffrey, 346
- Holism versus differentiation
 debate, 5–7
 in economics, 7–11
 law and, 11–14
 neoliberalism and, 10–11
 overview, 1
 totalitarianism and, 9–10
- Holmes, Oliver W., 44, 49–50
- Huang, Kainan, 346
- Huber, Josef, 179
- ICANN. *See* Internet Corporation for
 Assigned Names and Numbers
 (ICANN)
- The Idea of Private Law* (Weinrib), 327
- The Idea of Public Law* (Loughlin), 327
- Identity rights, 99, 103, 105–6
- Ideological intelligentsias, 94
- Imaginaries. *See* Social imaginaries
- Intellectual property
 ‘collecting societies’, 312–13
- Internet governance compared,
 312–13
- World Intellectual Property
 Organization (WIPO), 353, 354,
 362–3
- Intergovernmental Panel on Climate
 Change, 181–2, 192
- Interinstitutional Agreement on Better
 Law-Making, 344
- International Chemical Secretariat, 193
- International Clearing Bank
 (proposed), 165
- International Covenant on Civil and
 Political Rights, 363
- International law and political
 economy
 activism and, 142–3
 Cold War and, 129–30
 conflict, role of law in, 141–2
 dispute settlement in, 133
 distributional struggle, role of law in,
 145–9
 failures of, 134
 governance and, 143–5
 historical background, 128–30
 ideology, international law as, 133–4
 illusion of stability, 136–40
 inequality, role of law in, 141–2
 injustice and, 138–9
 League of Nations and, 129
 legal norms and, 142
 overview, 26, 127–8
 paradigm shift, need for, 149–51
 Permanent Court of International
 Justice and, 130–1
 political dysfunction, role of law in,
 141–2
 politics versus law, 128–30
 positivist legal science and, 130–1
 pragmatic disenchantment with,
 134–5
 principles and purposes in, 131
 problem-solving in, 132–3
 sociological turn in, 131–2
 ‘wake-up calls’ regarding, 140–1
- International Law Commission, 134–5
- International Monetary Fund (IMF)
 generally, 23

- natural resource extraction and, 157,
 160, 164–73
 private law and, 228–9
- International Organization of
 Securities Commissions, 173
- International Petroleum Council
 (proposed), 155–6
- Internet Corporation for Assigned
 Names and Numbers (ICANN)
 generally, 29–30, 359, 367
 description of transnational law and,
 350–4
 dispute settlement and, 352–4, 355–6
 horizontal constitutional rights
 and, 361
 interpretation of transnational law
 and, 354–6
 private regulation and, 335
- Internet governance
 data flow processing, observing
 collective effects of, 311–12
 ‘data owners’, self-organisation of,
 312–13
 domain names (*See* Domain names)
 ICANN (*See* Internet Corporation
 for Assigned Names and
 Numbers (ICANN))
 intellectual property compared,
 312–13
 ‘network contracts’ and, 313–15
 new institutions, 309–10
 social norms and, 307–8
 ‘society of networks’ and, 309–10
 transformation of communication
 and, 308–9
- Uniform Domain Name Dispute
 Resolution Policy (UDRP) (*See*
 Uniform Domain Name
 Dispute Resolution Policy
 (UDRP))
- Ipsen, Hans Peter, 38
- Italy
 Constitution, 295
 corporatism in, 17
 La Lega, 294
 Movimento 5 Stelle (Five Star
 Movement), 294
 neopopulism in, 294
- Stability and Growth Pact and, 294–5
- Ius Commune* (van Gerven), 224
- Jenks, Wilfred, 158–9
- Jessop, Bob, 9
- Joerges, Christian
 on economic constitutionalism,
 25, 53
 on private law, 121, 205, 207,
 211, 227
- Johnson, David R., 360
- Johnson, Lyndon, 166
- Joined-up governance, 72
- Judicialisation
 identity rights and, 103, 105–6
 legal activists and, 109–11
 legal discourse and, 104–6
 liberal activists and, 100–3
 neoliberals and, 101, 103
 ‘outside’ and ‘inside’ intelligentsias,
 role of, 100–3
 overview, 99–100, 122–3
 race and, 103
 ‘realist cause lawyers’, 110–11
 separation of powers and, 106–8
 ‘suspicious believers’, 111
 tools of, 102–3
- ‘Juridified universe’
 constitutionalisation of (*See*
 Constitutionalisation)
 horizontal spread of administration
 in, 95–8
 judicialisation of (*See* Judicialisation)
 overview, 122–3
 politics in, 98–9
- Jus gentium*, 184, 185–6, 199
- Jus naturalis*, 184, 185–6, 188
- Kahn-Freund, Otto, 291
- Kant, Immanuel, 6, 358, 373, 385
- Kaunda, Kenneth, 165–6
- Kaupa, Clemens, 272
- Kelsen, Hans, 12, 120–1, 135, 342
- Kennedy, David, 26
- Kennedy, Duncan, 26, 227, 230–1,
 278–9
- Keynes, John Maynard, 165, 168
- Keynesianism, 36, 237

- Kierkegaard, Søren, 6
 King, Michael, 197
 Kirshner, Nathan, 165–6, 167
 Kissinger, Henry, 170
 Kjaer, Poul, 64, 196, 205, 323–4
 Kohl, Helmut, 219
 Kumm, Matthias, 113–15, 227
- Labour law
 ambulatory reference clauses, 285–7
 autonomy of
 external dimension of, 279–80
 historical background, 278
 internal dimension of, 278–9
 judicial overturning of, 283–4
 overview, 277–8
 revival of, 291–5
 in Bremen, 218–19
 collective redundancies, 287–8
 crisis in, 291–3
 functional displacement of, 285–8
 fundamental importance of, 276–7
 harmonisation of national labour
 law, 281–3, 289
 neoliberalism and, 291
 Open Method of Co-ordination
 (OMC), 290–1
 overview, 28, 220–1
 Posting Worker Directive and, 281,
 293–4
 social dumping and, 284–5
 sources of, 288–91
 Stability and Growth Pact and, 290,
 294–5
 techniques of, 288–91
 Laclau, Ernesto, 66–7, 68
 Ladeur, Karl-Heinz, 29
 Landlord/tenant law in US, 117–19
 Lash, Scott, 300, 301
 Latour, Bruno, 184, 185–6, 188
 Law and economics, 4–5
 Law and political economy
 affirmative approaches, 2–3
 critical approaches, 2–3
 critical political economy, 3
 discourses on, 2–5
 law and economics, 4–5
 Marxist approaches, 3
 ordoliberalism, 4–5
 primacy of economy, 3–4
 public choice and, 2–3
 social choice and, 2–3
 Law of money, natural resource
 extraction and, 164, 173–9
 Law of the Sea Convention, 175
 League of Nations, 129
 Leibniz, Gottfried Wilhelm, 5
 Liberal professions, 261–3
 Lisbon Agenda (2000), 213, 219, 220,
 221, 223
 Lochnerism, 92–3, 115, 116–17, 120
 Locke, John, 6
 London Interbank Offered Rate
 (LIBOR), 171
 Loughlin, Martin, 327–8, 343
 Luhmann, Niklas
 generally, 5, 82
 on cognitive rationality, 302
 on ecological law, 187, 193, 197,
 200–1
 on subjective rights, 372–3, 376, 383,
 384, 386, 387
 Lyon-Caen, Gérard, 276, 285
 Lyotard, Jean-François, 85
- Maastricht Treaty (1992). *See* Treaty on
 European Union (TEU) (1992)
 MacIntyre, Alasdair, 76
 Maduro, Miguel Póaires, 272
 Maher, Imelda, 342
 Malthus, Thomas, 233–4
 Market Abuse Directive (EU), 339
 Marshall, John, 120
 Marx, Karl, 6, 7, 91, 277, 375
 Marxist approaches, 3
 Mascareno, Aldo, 388
 Mataija, Mislav, 327
 Mattei, Ugo, 99–100
 Media
 ‘counter-rights’ and, 390
 ‘reified will’ and, 378–82
 ‘serial law’ and, 300, 301–2
 Menke, Christoph
 collective action and, 377–8, 388, 389
 communicative media and, 379,
 381–2, 390

- on 'counter-rights', 373, 375, 382–3, 385–6, 390–3
- critique of subjective rights, 372–5
- on individual conception of subjective rights, 375–6
- inter-individual communication and, 376–7, 387
- on 'new law', 373, 374–5
- on welfare state, 374
- 'Meroni doctrine', 329
- Mestmäcker, Ernst-Joachim
 - generally, 25, 33, 34, 39
 - on co-determination (*Mitbestimmung*), 46–8
 - on competition as discovery procedure, 51–2
 - economic constitutionalism and, 38–9, 55
 - on economic versus political, 34–7
 - on Europe, 59–61
 - 'Hayekian turn', 36, 51–2
 - on 'internal market', 212
 - on *Wirtschaftsverfassung*, 39–41, 44–5
- Mexico, debt crisis in, 171
- Micklitz, Hans W., 27–8, 240, 248
- Microsoft, 317–18
- Milder, Jotta, 28
- Milosz, Czeslaw, 216
- Mody, Ashoka, 59
- Monetary policy versus fiscal policy, 174
- Monetary sovereignty, 157
- Money as commodity, 174
- Montesquieu, Baron, 6
- Monti, Giorgio, 343
- Monti, Mario, 261–2
- Mulder, Jotte, 343
- Müller-Armack, Alfred, 47
- Myth of democratic governance, 25–6, 66
- Nancy, Jean-Luc, 300–1, 302
- Nanotechnology, 305, 306–7
- National Arbitration Forum, 353
- Natural resource extraction
 - attempts to establish international resource politics and administration, 158–9
- Bretton Woods system and, 157, 164–9
- cartels and, 159
- collective action to promote distributive justice, 158–9
- commodity futures and options and, 163
- derivatives and, 163
- Euro dollars and, 168
- expansion and proliferation of markets, 161–3
- exploitation and, 152–5, 164, 173–9
- fiscal policy versus monetary policy and, 174
- floating exchange rates and, 169
- gold-exchange standard and, 165–6
- IMF and, 164–73
- law, role of, 173, 179–80
- law of money and, 164, 173–9
- marketisation and, 154, 172–3
- monetary sovereignty and, 157
- nationalisation and, 162–3
- New International Economic Order (NIEO) and, 157, 158–9
- overview, 26–7, 152–5
- permanent sovereignty over natural resources (PSNR), 155–6
- petrodollars and, 169–72
- politicisation and, 154
- private enterprise and markets as guarantors of development and fair distribution, 159–61
- profit motive and, 173–4, 177–9
- public revenue and, 173, 174–6
- transnational economic law and, 159–61
- unintended consequences of asserting political control, 161–3
- US dollar and, 164, 166, 167, 168–71
- US on, 155–6
- World Bank and, 160, 171–2
- Neo-corporatism, 18–22
- Neo-formalism, 122
- Neoliberalism
 - evolution of, 98, 99
 - holism versus differentiation and, 10–11

- Neoliberalism (cont.)
 - judicialisation and, 101, 103
 - labour law and, 291
 - social imaginaries and, 232–3, 239
- Netherlands
 - cartels in, 263
 - collective redundancies in, 287
 - competition law in
 - chicken meat, 266–8, 344
 - sustainability versus competition, 264–6, 268–74, 344
 - transformation of, 263–4
 - Dutch Competition Authority (ACM), 265–8
 - Energy Agreement for Sustainable Growth (Energy Accord), 264–6, 268–9
 - Ministry of Economic Affairs, 263, 268
 - ‘polder’ model, 263
 - ‘Network contracts’, 313–15
- Neumann, Franz L., 13, 17, 18–19, 197
- New Approach on Technical Product Standards, 224–5
- New economic governance, 57–9
- New International Economic Order (NIEO), 157, 158–9
- New Left, 238
- New Public Management, 2–3, 23
- New Right, 70–1, 238–9
- Nietzsche, Friedrich, 91, 374, 389
- Nivarra, Luca, 278–9
- Nixon, Richard, 166
- Nordhaus, Ted, 181–2
- North American Free Trade Agreement (NAFTA), 139
- Obscenity in US, 112
- Offe, Claus, 63–7, 79, 80–1, 86
- Open Method of Co-ordination (OMC), 224, 290–1
- Ordoliberalism, 4–5
- Organisation for Economic Co-operation and Development (OECD), 23
- Organization of Petroleum Exporting Countries (OPEC), 159, 164, 169–71
- Pahuja, Sundhya, 161
- Pakistan, Ali Enterprises garment factory fire in, 320, 321
- Paris Agreement, 192
- Parsons, Talcott, 386
- Pavone, Tommaso, 221
- Perišin, Tamara, 207
- Permanent Court of International Justice, 130–1
- Permanent sovereignty over natural resources (PSNR), 155–6
- Petrodollars, 169–72
- Pistor, Katharina, 346
- Planetary boundaries concept, 185–9, 192
- Polanyi, Karl Paul, 9–10, 18, 54–5, 58, 295
- Police interrogation in US, 112
- Polysemy, 63–6
- Porter, Theodore M., 198
- Positivism
 - international law and, 130–1
 - social imaginaries and, 234
- Posner, Eric, 335
- Posner, Richard, 51
- Post, David G., 360
- Posting Worker Directive (EU), 220, 281, 293–4
- Pound, Roscoe, 131–2
- Preussag (German corporation), 162
- Private administrative law
 - constitutionalisation and, 325–6
 - in EU
 - judicial sources of, 340–4
 - legislative sources of, 339–40
 - global administrative law and, 326
 - good governance standards and, 341–2
 - judicial sources of, 340–4
 - legislative sources of, 339–40
 - legitimate purpose and, 341
 - as moving beyond private regulation, 330
 - origins of, 324, 339
 - overview, 29, 324–6, 345–7
 - private ordering and, 326
- Private law
 - European private law (*See* European private law)

- IMF and, 228–9
- public versus private law, blurring of distinction, 354–5
- World Bank and, 228–9
- Private ordering, 326, 332, 333–5, 337–8
- Private police powers, 332–3, 335–8
- Private regulation
 - assimilationists, 329
 - competition law and, 259–60
 - denialists, 328–9
 - discretionary regulatory authority, 331
 - empiricist approaches, 329
 - in EU, 325, 332–3, 335–8
 - governance and, 323
 - law, role of, 323–4
 - normativist approaches, 328–9
 - origins of, 326
 - overview, 322–4
 - private administrative law as moving beyond, 330
 - private ordering and, 332, 333–5, 337–8
 - private police powers and, 332–3, 335–8
 - in US, 325, 332, 333–5, 337–8
- Product Safety Directive (EU), 211, 212–13, 339
- Proportionality, 109–10
- Protocol on Social Policy, 289
- Public choice, 2–3
- Raiser, Ludwig, 380
- Reagan, Ronald, 120
- Regulatory takings in US, 112
- Rehg, William, 198
- ‘Reified will’
 - collective action and, 377–8
 - communicative media and, 378–82
 - inter-individual communication and, 376–7
 - motivational imperatives, 378–82
 - socialised will, 376–7
 - ‘will-formation’, 377–8
- Ricardo, David, 7, 233–4
- Ricoeur, Paul, 91–2, 95, 112
- Ridder, Helmut, 380
- The Road to Serfdom* (Hayek and Polanyi), 9–10
- Rodin, Siniša, 207
- Rodrik, Dani, 281
- Röling, Bernard, 158–9
- Röpke, Wilhelm, 155
- Rousseau, Jean-Jacques, 6
- Sabel, Charles, 62
- Safer Chemicals, Healthy Families (NGO), 193
- Samaras, Antonis, 175
- de Saussure, Ferdinand, 67
- von Savigny, Friedrich, 53
- Scharpf, Fritz W., 8–9, 57–8
- Schellenberger, Michael, 181–2
- Schepel, Harm, 184
- Schiller, Karl, 36
- Schmid, Christoph, 230–1
- Schmidt, Helmut, 219
- Schmitt, Carl, 43, 114, 380
- von Schmoller, Gustav, 7
- Schumpeter, Joseph, 7
- Security Council Resolutions, 366
- Separation of powers, 106–8
- ‘Serial law’
 - civil law and, 315–18
 - contractual practice and, 315–18
 - data-driven technologies and, 304–7
 - domestic administrative law and, 303–4
 - ‘epistemic communities’ and, 316
 - ‘evolutive networks’ and, 304–7
 - global administrative law and, 303–4
 - internet governance and (*See* internet governance)
 - limitations on institutions, 318–19
 - media and, 300, 301–2
 - ‘network contracts’ and, 313–15
 - overview, 29, 299, 302–3
 - singulars versus particulars, 300–2
 - ‘society of networks’ and, 309–10, 316
 - technology and (*See* Technology)
- Services Directive (EU), 339
- Shock Therapy, 239, 252
- Signification, 67–8

- Single European Act (SEA), 205–6,
 211–12, 219, 222–3
- Sinzheimer, Otto, 209
- Smith, Adam, 7, 233, 247
- Smith, Ian, 165–6
- Snowden, Edward, 321
- Social choice, 2–3
- Social dumping, 284–5
- ‘Social Europe’, 206
- Social imaginaries
 Classical Legal Thought and, 233–6
 in consumer law, 241–6
 overview, 229–30
 social whole, relation to subject,
 249–52
 subject of, 247–8
 transformation from consumer
 protection law to, 247
 defined, 231
 dynamism and, 235–6
 in economics, politics, and law,
 231–2
 European private law and, 234–5
 facilitative law and, 239–41
 futility in, 236
 Keynesianism as, 237
 limitations of argument, 230–1
 markets as means of rationalisation,
 252–3
 neoliberalism as, 232–3, 239
 overview, 28, 229
 positivism and, 234
 Social Legal Thought and, 236–8
 social whole, relation to subject, 235,
 249–52
 subject of, 235, 247–8
 symmetries in, 234–6
 theoretical account of, 229–30
- Social Legal Thought
 judicialisation and, 105, 106, 109
 ‘juridified universe’ and, 95–6
 overview, 90
 social imaginaries and, 236–8
- Social media, ‘network contracts’ and,
 313–15
- Social norms, Internet governance and,
 307–8
- ‘Society of networks’, 309–10, 316
- Somek, Alexander, 251
- Sovereign Wealth Funds, 175
- Stability and Growth Pact, 290, 294–5
- Stakeholding, 81–6
- Steffen, Will, 181–2
- Streeck, Wolfgang, 8–9, 10, 280,
 290–1
- Subjective rights
 critique of, 372–5
 trans-subjective rights (*See* Trans-
 subjective rights)
- Subsidiarity, 77
- Sum, Ngai-Ling, 9
- Supiot, Alain, 82, 277
- Sustainability versus competition
 constitutional reflection on, 271–4
 European Commission on, 269–70
 in Netherlands, 264–6, 268–74, 344
- Sustainable Apparel Coalition
 (NGO), 194
- Taylor, Charles, 231
- Technology
 civil law and, 315–18
 contractual practice and, 315–18
 data-driven technologies, 304–7
 ‘epistemic communities’ and, 316
 ‘evolutive networks’, 304–7
 Internet governance (*See* Internet
 governance)
 ‘society of networks’ and,
 309–10, 316
- Teleology, 109–10
- Teubner, Gunther, 30, 100, 121,
 227, 316
- Thatcher, Margaret, 211, 218–19
- Thompson, Grahame, 388
- Thornhill, Chris, 197
- The Three Worlds of Capitalism*
 (Esping-Andersen), 8
- Totalitarianism, 9–10, 18
- Trademarks as domain names, 363–4
- Transatlantic Trade and Investment
 Partnership (TTIP), 241
- Transnational governance
 constitutional rights
 external constitutionalisation,
 365–70

- as foundation of governance, 359–62
- freedom of contract and, 356–7
- horizontal rights, 357–8, 360–1
- internal constitutionalisation, 362–5
- legitimacy and, 356–9
- as limitation on governance, 359–62
- objections to, 361–2
- overview, 356
- domain names and
 - description of law, 350–4
 - interpretation of law and, 354–6
- international versus national law,
 - blurring of distinction, 354
- overview, 29–30, 348–50, 370–1
- public versus private law, blurring of
 - distinction, 354–5
- secondary rules in, 355–6
- statute versus contract, blurring of
 - distinction, 355
- Trans-subjective rights
 - ‘counter-rights’
 - collective action and, 388–9
 - communicative media and, 390
 - inter-individual communication and, 386–8
 - overview, 373, 375, 382–6
 - polycontextuality of, 390–3
 - preconceptual affection and, 382–4
 - protest movements and, 388–9
 - emotions and, 386
 - ‘new law’ and, 373, 374–5
 - non-individual dimensions of, 375–6
- overview, 30
- ‘reified will’
 - collective action and, 377–8
 - communicative media and, 378–82
 - inter-individual communication and, 376–7
 - motivational imperatives, 378–82
 - socialised will, 376–7
 - ‘will-formation’, 377–8
- Treaty of Lisbon (2007), 255, 283
- Treaty of Rome (1957), 222–3, 279. *See also* Treaty on the Functioning of the European Union (2007) (TFEU)
- Treaty on European Union (TEU) (1992), 56–7, 280, 289, 349
- Treaty on the Functioning of the European Union (2007) (TFEU)
 - competition law and, 256, 257, 258, 262, 265–6, 267, 269, 271, 272–3
 - defence of national laws under, 211
 - euro and, 52, 58–9
 - monetary financing and, 174
 - private administrative law and, 340
 - private regulation and, 332–3
- Trente Glorieuses*, 278
- Trubek, David, 205, 207
- Trump, Donald, 120, 140, 174
- Tucker, Paul, 59
- Unger, Roberto Mangabeira, 338
- Uniform Domain Name Dispute Resolution Policy (UDRP)
 - dispute settlement and, 352–4, 355–6
 - external constitutionalisation and, 365–6
 - free speech and, 362–5
 - national courts and, 365–6
- United Kingdom
 - ambulatory reference clauses in, 285–6
 - Brexit, 60, 139, 140, 280–1
 - governance in, 71
 - welfare state in, 211
- United Nations
 - Law of the Sea Convention, 175
 - Security Council Resolutions, 366
 - Universal Declaration of Human Rights, 363
- United States
 - abortion in, 112
 - Commodities Futures Modernization Act of 2000, 163
 - competition law, EU compared, 261
 - Constitution, 368
 - constitutionalisation in (*See* Constitutionalisation)

- United States (cont.)
 cruel and unusual punishment
 in, 113
 debt collection in, 113
 defamation in, 113
 discrimination in, 113
 domain names in, 369
 Federal Communications
 Commission (FCC), 308
 Federal Reserve Board, 171
 First Amendment, 363
 judicialisation in (*See* Judicialisation)
 ‘juridified universe’ (*See* ‘Juridified
 universe’)
 landlord/tenant law in, 117–19
 legal hegemony of, 90–1
 on natural resource extraction,
 155–6
 New Deal, 38, 98–9
 obscenity in, 112
 police interrogation in, 112
 private regulation in, 325, 332,
 333–5, 337–8
 regulatory takings in, 112
 US dollar, natural resource
 extraction and, 164, 166, 167,
 168–71
 Universal Declaration of Human
 Rights, 363
 University of Wisconsin, 205
- Vallejo, Rodrigo, 29
The Varieties of Capitalism (Hall and
 Soskice), 8
 Veyne, Paul, 124
 Viellechner, Lars, 29–30
 Vietnam War, 166
 Volcker, Paul, 171
- Wagner, Richard, 181
 Warren, Earl, 92, 116, 120
 Washington Consensus, 239, 252
- Watt, Horatio Muir, 224
 Weber, Max, 7, 93, 381
 Weiler, Joseph H.H., 121, 212–13
 ‘Weimar Legacy’, 209
 Weinrib, Ernest, 327–8
 Welfare state, 210–11, 374
 White Paper on Governance
 (2001), 223
 Whiteside, Kerry, 189
 Whitman, James, 260–1
 Wiethölter, Rudolf
 generally, 25, 33, 34, 39
 on co-determination
 (*Mitbestimmung*), 48–50
 critique of *Wirtschaftsverfassung*,
 41–3, 44–5
 economic constitutionalism and,
 38–9, 55–6
 on economic versus political, 35
 on Europe, 59–61
 on ‘law-collisions’ approach, 52–5
 on political administration, 37–8
 on proceduralisation, 48–50
 on *soziale Rechtsstaat* (social rule-of-
 law state), 34, 37, 43, 55–6
 Witteveen, Johan, 171
 World Bank
 generally, 23
 natural resource extraction and, 160,
 171–2
 private law and, 228–9
 World Intellectual Property
 Organization (WIPO), 353, 354,
 362–3
 World Trade Organization (WTO),
 136, 139, 161, 172, 349
- Yergin, Daniel, 162
- ZERP. *See* Centre of European Legal
 Policy (ZERP)
 Zumbansen, Peer, 205, 334–5