

Index

- A.177, quasi-federal instrument 97
accident costs 133–4
accountability 38–9, 44
accounting techniques test 182
accreditation process, market exchange
and 184
Ackerman, R.M. 148, 151–2, 159
acquis communautaire 220, 224–5,
235–6
adaptation
dominant specification set and 79
legal rules and 54, 59, 77, 84
‘adaptive landscape’, path of evolution
and 56
additionality 194, 204
administrative law (*Verwaltungsrecht*)
12
administrative sciences, definition
241
Africa 76, 80
agencies, capture of 37
agency contracts 12, 15
agency theory 2, 12
Agenda 2000 224
agents 14–15, 56, 89
air quality standards 40–2
air transport 107, 111, 113
allocative efficiency 143–4
alternative dispute resolution 75, 82
alternative harmonization 36
America *see* USA
American Automobile Manufacturers’
Association 243
American Federalists, Articles of
Confederation and 10
Anglo-American jurisprudence,
evolutionary tradition 52
Anglo-Saxon legal system, trust
concept 80
Anglo-Saxon tradition, European
system of common interest and
105
*Annals of Economics, Administration
and Legislation* 244
Antitrust law, strategic innovations and
95
appendix, integrated law and
economics checklist 29, 47
approximating laws of member states,
art. 100 of EEC Treaty 139
approximation of law 224–5, 235–6
costs borne by applicant countries
235, 237
Asia 76
assignment of rights, competing courts
and 90
Association of South East Asian
Nations (ASEAN) 193
asymmetric information 11, 236
Atlantic area 195
Australia 7

Backhaus, Jürgen 2, 8, 16, 20,
248–9
Baltic Republics 217
Barings Bank 126
Barnard, Catherine 64–5
Basque country 209
Bauby, P. 105, 111
Becker, G.S. 120–22
Belgian rule 43
Belgium 124, 146, 161, 217
‘berichtgende Worte des Gesetzgebers’,
uniformity 51
Bertrand, O. 179–81, 189
bilateral accident, victim and accident
risks 135
border externalities (air pollution) 34
Bork, Robert H. 242–3
Boyer, R. 194–6, 198
British legal history 241
Brussels 12, 41, 150, 165, 237
Brussels Convention, ECJ and 94
BSE crisis 162

- Buchanan, James M. 1, 5, 7, 39, 133
 clubs 213–14, 218, 225
 social contract theory 226
- ‘calculus of consent’ 5
- Calendini, Jean-Baptise 6, 8
- cameral science, craft and knowledge
 of public manager (*Staatswirt*)
 242
- Canada 7
- capture of lawmakers, single-culture
 jurisdictions 81–2
- cartels 43
- Casella, A. 17, 144
- Cavaliere, A. 137–8, 142
- CCM air transport 107
- centralization
 advantages and disadvantages 39,
 169
 destructive competition and 148
 economic distortions and 27–8, 35
 European bureaucrats 44
 externality arguments 145
 product liability Directive and 159
 race to the bottom 148
- Centre for Economic Policy Research
 41, 218–19
- certifying logic* 181
- Chevallier, A. 201, 203
- citizens, FOCJ elections and 213, 215
- civil procedure in member states,
 transboundary enforcement 146
- classe politique 210, 215–16
- CMM (maritime transport of freight)
 107
- Coase theory 35, 133–4, 156–7
- Coasian bargain 37, 40–1
- Code Napoléon* 74
- Coke (common law jurist) 3
- common interest
 criteria of equity and efficiency 104
 public utility and 104–5
- common law 33, 60, 71
- common market, unification of market
 law 60
- ‘communitarization’ 105
- Commune of Almelo (ECJ/27/4/1994)
 110
- communication, criminals and 125
- comparative law 51–2, 63
- comparative lawyers
 desired outcomes by legal means 74
 harmonization and 38
 hybrid, mixed or pluralistic
 jurisdictions 80–81
 legal culture and 71, 77
 linguistic and conceptual structure
 of law 76
- competence catalogues, absence of 31
- competing courts, assignment of rights
 and 90
- competition
 between legal orders 72
 between local communities 145
 convergence of legal principles 72
 cost-reducing law reform and 73
 courts and production rights 90
 differing liability rules and 149–50
 European and national judges 11
 French on benefits of 112
 guaranteeing benefits from
 adding a sixteenth choice 33–4,
 44
 attributing of powers and
 subsidiarity 31–2, 44
 economic theory 29–30
 information measures 33
 lessons for European law 30–1
 mobility 32–3
 harmonization 2, 28, 34, 148, 161
 information and 33
 lawyers and 38, 42
 local governments and 8
 market goods and jurisdictional 9
 minimum harmonization 36
 model between two courts 91–3
 national courts and European judges
 93
 application of A.177 96–7
 behaviour of ECJ 93–5
 consequences of judicial
 innovation on European
 integration 98
 national courts on domestic legal
 matters 97–8
 national courts’ responses
 95–6
 natural monopolies 82
 neglect of between governments
 218

- organizing for institutional framework 17
- political institutions and 213
- prisoners' dilemma and 9
- product liability Directive and 153
- regulated between national and European judges 89
- regulation between legal orders 7–12
- sovereignty of member states 30
- spatial limits of 6
- competition law 28
- competition lawyers, competition and 42
- competitive model of federalism 8
- competitive protective agencies 2
- complementarity, cooperation 198, 203
- concessionary system, OPU and 112
- constitutions, agency contracts 12
- constitutional moment in Europe 2–3
- consumer, definition 155
- consumer protection 154
- contaminated sites 166
- contextualizing notion of qualification 185
- continental European law 63, 247–9
- Contract law 50, 53, 60–4, 72
- contractual publicity 3
- contributory negligence defence 135
- convergence
 - employment markets and 178
 - French and European public utility 109
 - vocational qualifications in Europe 179, 189
 - challenges of conformity and comparability 180–2
 - constraints and dimensions to system 179–80
 - system of skills accreditation 182–4
- cooperation
 - complementarity and 203
 - complementarity of territorial productive structures 198
- Cooter, Robert 19, 57, 128
- corporate law, EC law and 9, 72, 83
- corporations, limited liability 137
- corruption, bounty system and amnesty to tackle 128
- Corsica 209
 - Air Inter 107
 - definition of OPU 114, 116
 - external public transport 103–4, 107, 109, 113
- Costa v. ENEL 1964 13, 94
- Council Directive 52/59 (29 June 1992) 141, 149
- Council Directive 85/374/EEC (25 July 1985) *see* product liability Directive
- Council of Ministers, European decision-making institution 219
- courts 90, 92, 98
- criminal activities 119–26
- criteria for (de)centralization 143
 - bottom up federalism 143–5
 - race for the bottom 147–8
 - transboundary character of the externality 145–7
- criteria for (product) safety regulation 137
 - combination of product liability and 138
 - deterrent effect of tort suit 138
 - information 137
 - insolvency 137–8
- criterion of equity, underprivileged people and 114
- cultural evolution, biological evolution 4, 66
- Czech Republic 224
- Daimler and Chrysler merger 243
- damage to biodiversity 166
- damages, lost income and 158
- Darwin, Charles 5, 52, 55
- Darwinism 53–4, 57
- decentralization 16, 31–2, 144
- decentralization deficit 209–10, 221
- decline of nations, importance of regions 17
- decrees of Corbeau (ECJ/19/5/1993) 110
- definitions, limitations in 153
- degree-awarding logic* 182
- Delaware, company law standards 6
- democratic deficit 38, 45, 128, 209, 221
- depletion of ozone layer 40

- Descent of Man* 5
deterrence hypothesis 119–21
differentiated liability rules, benefit in 151
dilemma 16
Dineke Algera et al v. Common Assembly of the European Coal and Steel Community 14
direct effect doctrine 13, 95–6
Directive 13.12.1995 (com(95)617) 167
Directives 30, 41
diseconomies of scope 83
division of labour, size of club and 227
dominant legal culture, problems and 82
Donahue, John D. 8–10
downwards subsidiarity 16–17
Drexel affair 126
drugs policies 125–6
due process 242–3, 248
Duintjer Tebbens, H. 155, 160
Durand, J.P. 194, 198
dynamic competitive processes, voluntary harmonization 30
- Easterbrook, F.H. 27, 43
EC institutions, neo-functional conception 89, 99
EC law
centralization should have positive effects 9
cooperation brings larger competence 88
efficiency-enhancing regulatory competition 30
free movement of goods 36
local and community-wide pollution 40
national judges and 87
non-compliance and viability of domestic monopoly 96
EC policy fields 39–40
competition law 42–3
environmental policy 40–2
ECJ
article 164 EEC 13, 93–4
behaviour of 93–5
Community competences and 31
constitutionalization of European Treaties 87–8
delineation of public utilities 19
directive ruling to national judges 97
doctrine of direct effect and supremacy of EC law 95
enforcement of constitutional assignment 15
European Commission and 42–3
free movement of goods and 149
inferior courts and 97–8
interpretation problems 153–4, 171
judicial activism 13
on monopoly of public utility 112
national judges and 87
public utility and 19–20
restrictions on mobility and 32
restrictive principles of Commission and 115
Treaty of Rome and 14
ecoenvironmental problems in Mediterranean 202
economic distortions
curing
economic theory 34–5
lessons for European law 36–7
market imperfections and 27, 44
economic rents, votes and 37
economic theory
competition, jurisdictions and 8
crime and punishment 122
criminal law enforcement 120, 123
regional pollution problems 145
strict liability rule 136, 156
economic theory of federalism, democratic decentralized jurisdictions 210
economic theory of optimal legal areas 225–6, 236
enforcement cost function 227–8
income production function 226–7
optimal size of protective state 228–9
economics, law and economics 53–7
economics of innovation 88
economics of law and administration 240
basic issues 241–3
literature 244–6

- economies of scale 27–8, 34, 44–5, 78–9
 efficiency and 108
 FOCJ and 215
 law and 11
 monopoly justifications 83
 economies of scope 79, 108
 economic theory of optimal legal areas 224
 educational systems in EU 179–80, 188
 EEC Treaty 13
 efficiency
 collective skills 186
 downwards subsidiarity and 17
 fulfilment of citizens' demands 219
 interregional institutional cooperation 198–9
 efficiency of local public decisions, national policies and 16–17
 Eichenberger, Reiner 17, 27, 39, 144
Elgar Companion to Law and Economics 244
 elimination of internal borders, criminal mobility and 123
 Elliott, E. Donald 55, 57
empowerment 11, 87–90, 98
Encyclopedia of Social Sciences 241
 England 217
 English administrative law, concept of 'proportionality' 80
 English common law 3, 73
 English law, civil law of nineteenth century 63
 enlargement of EU 2, 17–18, 65
 approximation of law and 224–5
 benefits of political and military effects 234
 enlargement scenarios 231–2
 does it improve welfare of EU? 232–4
 what is optimal degree of? 234–5
 modified model 229–31
 sustaining peace 236
 equity, public intervention and 106
 equity and efficiency 104, 111, 113–14
 eradicating crime, declining social benefit 120
 ESCS Treaty 13
 Estonia 224
 'estoppel' 33
 EU 7, 27, 104, 193–4
acquis communautaire and 220
 centralization/decentralization within 144
 competences in 39
 concept of common interest 110
 convergence of employment markets 178
 cooperation programmes 200
 corruption 128
 decentralization deficit 209
 democratic deficit 38, 45, 128, 209
 failure and 210–11
 forms of governance 195–6
 history of 2
 law enforcement agency 225
 minimum standards of law and 65
 mobility of individuals 179
 non-discrimination in public utility 114
 optimum size 18, 224, 237
 public utility and 103
 regions in 219
 social dumping and 64
 success in opening markets 210
 tax evasion 127
 uniform rules and 64
 unitary states 219
 vocational training systems 179, 188
 EURATOM 13
 'Eurolaw game' 95
 Europe
 civil liability 127
 conception of public utility 107–8, 115
 constitutional status 13–15
 criminal liability for corporations 126
 debate on drugs policies 125
 different audit programmes 127
 four ingredients for future 209
 harmonization of private law 52
 incomplete institution 194
 judicial organization has become hierarchical 97
 labour mobility in 178–9
 legal innovation complicated 93
 principles in administrative law 246

- Europe (*cont.*):
 product safety standards and 131
 tax compliance policy 128
 uniform law, evolution of legal norms 57, 66
 uniform rules 149, 151
 variety is essence of 8, 211
 within French tradition 20
- Europe of variety
 proposals 212
 competition 213–14
 functions 212
 jurisdictions 214
 overlaps 213
- European accreditations, advantageous 183
- European bureaucracy, political distortions and 38
- European Civil Code 50
- European Commission
 ‘accreditation of skills’ 182
 Agenda 2000 224
 article 174 (1) EC treaty and 167
 enlargement and 18
 free access to the market 112
 German book trade and 249–50
 harmonization and 34
 how labour market should function 190
 interregional cooperation 17
 jurisdiction over nationwide distribution systems 43
 national governments and 38
 product liability Directive 159, 162, 166, 169
 green paper on 34, 132, 165, 167–8
 report 31.01.2001 (Com (2000) 893 final) 168
 white paper on environmental liability 166
 white paper on *teaching and learning* 8, 182
- European Community
 air pollution legislation 41
 Article 94 EC Treaty and 31
 ‘common will’ 105
 decentralized regulation 27
 European legal integration 87–8
 French administrative rules 249
 public utility and citizenship 20
 transport policy 108
- European Community of Defence 14
- European Community law, national courts and 95
- European constitution
 future and 38–9
 a ‘hybrid’ 13
 lack of 30–1
 lowest political units and 211
 secession from future 213
- European Constitutional Group 213, 218
- European Council of Corfu (June 1994) 202
- European Council of Essen (December 1994) 200
- European Court of Justice *see* ECJ
- European criminal market, national frontiers and 8
- European Directives, fields of private law and 50
- European federalism
 constitutional status of Europe 13–15
 inappropriateness of institutional framework 12–13
 Tiebout model and 8
- European integration process 11, 209
 convergence of qualifications 189–90
 harmonization of law and 2
 judicial behaviour as forward-thrusting force 98
 judicial strategies 93, 98
 national economic policies and 194
 problems in administrative law 249–50
 variability and 211
- European Journal of Public Policy* 3
- European jurisprudence, national courts and 87
- European labour market
 debates about 190
 Single Market and 178
- European law 13, 28, 31, 36, 44
- European law enforcement
 lessons concerning
 corporate criminal law 126–7
 EU corruption 128

- harmonization of 123–5
- narcotics 125–6
- tax evasion 127–8
- European legal order, hybridisation of legal systems 6
- European market of qualifications* 179
- European Mediterranean partnership, free-trade zone (2010) 202–3
- European minimum standards 4
- European Monetary Union (EMU) 194, 219
- European Parliament 19, 38, 209–10, 218
- European private law 4, 50–2
- European qualification passport* 181
- European regulator, could assign property rights 41
- European rules 9, 42
- European social contract 6–7
- European Union *see* EU
- Europol 123–4
- evolution
 - ‘accidents’ and 46
 - uniformity and 61
- evolutionary changes, natural selection 53
- evolutionary ‘crisis’, common European market and 60–1
- evolutionary economics, inheritability of characteristics 56
- evolutionary theory 3, 6–7, 53–4, 59
 - best rule surviving 58
 - economic analysis and comparative law 62
 - ‘path dependence’ 55
- ex-Soviet empire, FOCJ and 220
- externalities 9, 27, 34, 35–7, 39–40, 44
- externalization, non-pecuniary losses 158
- fairness of punishment 122
- family law 50, 53
- fault rule 134–5, 137
- Faure, Michael G. 8–11, 16, 35, 131, 148, 159
- federal systems, optimum regulation and 132
- federalism, functional dimension 17
- first-degree courses, ongoing training
 - and 180–81
- fiscal equivalence 212
- fittest rules survive 4
- FOCJ 17, 39, 144, 211, 214
 - claimed problems 215
 - citizens are overburdened 215
 - consumers are overburdened 215–16
 - coordination is need 216
 - income must be redistributed 216
 - competing proposals 218–20
- European treaties and 219
- examples in history 216–17
- examples today 217
 - Swiss communes 217–18
 - US special districts 217
- flexible concept 220
- school 213
- strengths 214–15
- FOCUS (one jurisdiction of FOCJ) 211, 213–15
- Fordism 194
- foreign language test 182
- formalities 75–6
- France 19–20, 41, 96, 124, 146, 181
 - benefits of competition 112
 - book trade 249
 - Conseil d’Etat* (‘theory of *acte clair*’) 97
 - consumer protection 155
 - decentralization law (1982) 194
 - evolution of administration jurisprudence 95
 - industry with lenient product liability 148
 - law and economics of administration 240–41
 - maritime transport restructuring (2000) 104
 - portfolio of skills* 181
 - public statute to run public utility 106
 - public utility 103, 106, 114
 - qualifications and 186–8
 - regulations on telecommunications and 110
 - restructuring of air transport (1999) 103–4
 - unitary state 219

- fraud, severe punishment with high probability 119, 126
 free competition 108–9
 free trade, law of comparative advantage and 211
 free-riding 124, 216
 French Civil Code, Napoleonic conquests 76
 French property owners, ‘trust’ and 73, 80
 Frey, Bruno
 direct democracy 150
 diversity of ideas in Europe 8
 drugs policy 125
 federalism and 17, 218
 FOCJ 39, 144, 211, 214, 216
 harmonization 2, 28
 functional, overlapping and competing jurisdictions *see* FOCJ
 ‘*Funktionswandel*’ of rule, elimination of rule 58
 future constitutional moment 15
 democratic and competitive federalism 15–18
 efficient control of future European state 18–20

 Gambaro, Antonio 53, 60–2
 game theory, legislative competition 35
 Garcia, Thierry 2, 19
 Garoupa, Nuno 2, 8, 119–20, 123, 128
 GATT 151
 general legal framework (‘*ordnungsrahmen*’) 30
 German Booksellers’ Association 249–50
 Germany 31, 33, 41, 96, 104, 155, 161
 book trade in 249
 government and FOCJ 216
 Hanse in 217
 judiciary and administration and 241
 law and economics of administration 240
 qualifications and 186–8
 globalization 193, 195
 Gneist, Rudolph von 241–2
 ‘good faith’ 73
 governance 193, 195
 consequences of global economy 193–4
 new institutional structure 194–5
 new public intervention 195–6
 Grazziani, Sylvie 17–18
 Great Britain, devolution process 16
 Greece 81
 green paper on liability for defective products 154, 160
 annex 7.1 173
 inefficiencies revisited 163–4
 more transparency 164–5
 objectives 163
 subsidiarity 166
 greenhouse effect 40

 Hamada, K. 133–4, 157
 Hamilton, federalist Papers and 18–19
 Hanse/*Handelskontore*, prosperity of 217
 harmonization 2, 43
 barriers to entry and 161, 169
 company laws in Europe 9
 different legal cultures and 71
 ‘essential safety requirements’ 149
 political distortions caused by 27
 product liability law 131–2
 qualifications and labour market 8
 rules of private law 149
 sovereign European authority 61
 spontaneous 42, 45
 transaction cost reduction 150–1
 ultimum remedium 44
 uniformity and total 37
 use of different methods 36
 harmonizing marketing conditions 148–50
 balance 152
 transaction costs 150–2
 Harnay, Sophie 2, 11–12
 Hartlief, T. 131, 159
 Hayek, Friedrich A. von 4–5, 55, 65–6, 216, 219
 Hayekian augmentation, spontaneous order and 3, 73
 Henry, C. 105, 114
 Herman report of the European Parliament 218
 heterogeneous preferences, advantages and 29

- heterogeneous spatial clubs 17
- Hirshleifer, Jack 55–6
- Hobbesian constructivism, rational calculus 3–4
- Hogue, Arthur 3–4
- Holy Roman Empire 216
- horizontal* competition 88
- human capital, neoclassical approach to qualifications 185
- human capital stock*, transparency and skill transfer 183
- Hume, David 2, 5, 16
- Hungary 224
- hybrid jurisdictions adapt 81, 83–4
- IMF 194
- immigrants 202
- immigration of offenders, law enforcement and 124
- imperfect mobility of individuals 17
- incentives, criminal justice system and 119
- independence 38–9, 44
- individualization of work relations 184
- inefficiencies 42, 46, 163–4
national product liability law 152, 157–8
- inefficiency, strict liability rule and 134
- inefficient rule, court disputes and 57
- information costs, uniform rules and 151
- information risk, accident cost and 134
- inheritability of characteristics 56–7
- insurance schemes 136
- interest group activities, regulatory standards and 138
- intergovernmental conferences 14–16
- interjurisdictional competition, suboptimal outcomes 36
- internalize externalities across jurisdictions 27
- International Encyclopedia of the Social Sciences* 241
- international markets, transactions and 72
- international transactions, freedom of choice in law 82
- interregional cooperation
cooperation within framework of European development 200–1
- European solidarity and 201
- harmonizing European territory 200
- new method of cooperative governance 196–9
- requirements 199
- interregional institutional cooperation, efficiency and 198–9
- interstate externalities 36–7
central authority and 40
- centralized governance 35
- pollution and 39
- ‘invisible hand’ 53, 105
- Ireland 209
- Italy 96, 216
- Japan 81
- Josselin, Jean-Michel 3–6, 12–13, 16–17
- Journal of Economic Literature* classification system 240
- Journal of Law and Economics* 243
- Journal of Social Philosophy* 246
- judges
desire to gain prestige 37
- juris dictio* 1
- monopoly right (licence or franchise) 89
- rational utility-maximizers 89–90
- judicial activism 11, 13, 87
- judicial decision, condition for enforcement 88
- judicial empowerment, legal innovation and 88–90
- jurisdictional competition, lowering of standards and 64
- jurisdictions 8, 10, 72
- justice, ‘historical moment’ 114
- Kirchgässner, G. 143, 216
- labour market and vocational qualification
national systems of certification and authentication 186–8
- qualification: an institutional construct 185–6
- theoretical bases of White Paper 184–5

- labour relations, timeless environment 184
- Laffont, J.-J. 105, 107, 114
- language of concepts, law and 76
- lateral* subsidiary 16
- Latin area 195, 197, 202
- law
- economic analysis, default and mandatory rules 63
 - enforcement 225
 - environmental 28, 34, 39, 167
 - errors in 76, 85
 - judges and civil servants trained in 241
 - part of *volksgeist* 52
- law of comparative advantage, free trade and 211
- Law and Economics Anthology* 244
- law enforcement, dabblers not addicts 126–7
- Law Merchant (*lex mercatoria*) 82–3
- lawyers, powerful pressure group 11, 37, 72–3, 82–3, 162
- learning process, competition and 29, 40, 42–4
- l'école de la régulation* 193
- Lefevre, J. 16, 35
- legal change, traditional points of view 52–3
- legal culture 6
- cum mune ley* 7
 - definition 71
 - dominant set of specifications 78
 - economic explanation 72–3
 - functional aspects 73
 - legal complexity 76
 - legal procedures 75–6
 - linguistic and conceptual structure of law 76–7
 - mystification of law 74–5
 - productive efficiency 74
 - natural monopoly and competition 10–12
 - obstacle to reforms 77
 - private law and 151
- legal externalities, low levels of government 9
- 'legal formants' 74
- legal innovation, disputed jurisdiction rights 90
- legal language, lay language 74
- legal orders, competition between 72–3
- legal principles in administration 246–9
- legal rules
- adapt to changing circumstances 66
 - benefits of diversity 44
 - harmonization of laws and competition 28
 - historical accident and 65
 - homogeneous product 29
 - reproduce in other countries 64
 - survival in changing society 58, 65
 - transactions costs savings in harmonization 151
 - why some survive 54
- legal systems 71, 82, 150
- 'legal transplants' 6, 51, 53, 63, 66, 77
- contract law and 63
 - problems of accepting 71
- legal unification 50
- legal uniformity
- competition between legislators and 29
 - organic* way for 51
- legislation, preferences of individuals and 150
- Legrand, Pierre 6, 51, 75
- Leichtenstein 216
- levelling the playing field 149–50, 168
- liability rules 133, 135–7
- liberalization, European transport and 108
- liberalizing policy, drugs and 125
- 'lifelong learning' 184
- 'lifelong training' 189
- limited liability, corporations and 137
- limited rationality 121
- lobbying 160–1, 169
- local governments, behaviour in non-cooperative game setting 10
- Luisiana 81
- Luxembourg 41, 216, 237
- Maastricht Treaty 15–16, 19, 32, 111, 131, 219
- majority rules 15
- Marciano, Alain 3–6, 12–13, 16–17

- maritime transport, high speed ships
 - and 111, 113, 116
- market competition, recognition of
 - skills and 184
- market integration
 - European goal of 149–50
 - rationalization process 60
- market selection, rational market
 - behaviour 55
- markets 17, 72, 178, 210
 - distribution of wealth 109
 - failure of 28, 34, 37, 45
 - social cohesion and 112
- Martinand, C. 105–6, 108
- Marxist theory 185
- Mattei, Ugo 51, 63
- Mayer, Otto 241–2
- Mediterranean cooperation 201
 - Mediterranean network and 202–3
 - new solidarity and 201–2, 203
- Mediterranean countries, regional
 - cooperation and 200
- Mediterranean Euro conference
 - (November 1995) 200
- Merle, V. 179–81, 183, 189
- migration 213
- minimum harmonization 36
- minimum level of safety 29
- minimum standards 45
- mobility 31–2, 45
- Monaco 216
- monopolies, overriding of public interest 75
- Mueller, Dennis C. 211, 213–14
- multilateral joint responsibility 194, 198, 203
- multipolar economy 194, 225
- Musgrave, Richard A. 9–10
- mutual recognition, technique to eliminate trade barriers 36

- national courts, marginalization 95
- national government, stripped of ruling powers 194–5
- National Vocational Qualifications (NVQs) in Great Britain 181–2, 187
- natural monopoly 77
 - characteristics of 77–8
 - economies of scale 78–9
 - economies of scope 79
 - exceptional case, competing networks 80–1
 - implications for legal change 79–80
 - legal culture as 11, 72
 - regulation or competition 82–3
 - single legal cultures 83
- negative externalities, across states 34, 44
- negative externality, drug restriction and 125
- negative integration 31, 46
- negligence rule 137
- neo-functional conception, EC institutions 89, 99
- neoclassical welfare economics 27–8, 55
- Netherlands 41, 124–5, 146, 161, 219, 249
- Neunzig, A.R. 2, 18, 146, 234
- New institutional Economics of International Transactions 225
- new law and economics, law and economics of administration 243
- ‘new legal order’ 94–5
- New Palgrave Dictionary of Economics* 244
- New Palgrave Dictionary of Economics and the Law* 244
- new political economy perspective, legal issues 2
- non-pecuniary losses 158, 160
- Nordwijk (Holland), meeting (June 1997) 201
- normative issues 4
- North American Free Trade Agreement (NAFTA) 193
- Northern Europe, tax compliance 127

- Oates, W. 143, 145, 212
- obligations of public utility *see* OPU
- OECD checklist for regulatory decision making 28, 44–5
- Ogus, Anthony
 - competition and harmonization 2, 143
 - convergence between jurisdictions 29
 - evolution 3

- Ogus, Anthony (*cont.*):
horizontal competition 88
 on lawyers 11–12
 legal transplants 6
 political distortions 37
 public safety directives 149, 161
 optimal deterrence 120, 123
 optimal law enforcement, controversy
 over 121–3, 129
 optional harmonization 36
 OPU 109, 112–14
Origin of Species 5, 52
 overcentralization, subsidiary principle
 (Art. 5(2) EC Treaty) 32
- pact of stability 111
 Pareto-improving ideas 7
 Paris metro, London underground 79
*Parti écologiste ‘Les Verts’ v. European
 Parliament* case 294/83 1986
 E.C.R. 1339 13
 partial harmonization 36
 path dependency
 areas of European private law and
 60–63
 Law and Economics scholarship
 57–8, 66
 Pecqueur, B. 195, 198
 penalties for crime, cost of 119
 Peraldi, Xavier 2, 19, 109
 Perrot, A. 107, 108
 physical mobility, EC Treaty regarding
 free movement 32
 plaintiffs, strategic behaviour 1
 Poland 217, 224
 Polinsky, A.M. 119–20, 122–3, 134–6
 political assignment of judicial rights,
 vertical competition and 88
 political distortions, coping with 27–8,
 37–9, 44–5
 politician, emphasis shifted to judge 1
 pollution 34, 39–42, 145, 167
 Pommerehne, W. 143, 216
 portfolio effect 10
portfolio of skills 181
 Priest, George 56, 136, 158
 primary agricultural products 160–1,
 162–3
 principal-agent theory, rational player
 and 236
 principalship, Article 3B Maastricht
 Treaty 19
 principle of attribution of powers
 (Art.5(1)EC Treaty) 31
 principle of equality, absence of
 discrimination 114
 Principles of European Private Law,
 uniformity and 51
 private interest theory, competences
 and 37
 private international transactions,
 ‘superclub’ and 228
 private law
 costs of harmonization 151
 differences between areas of
 general 57–9
 legal transplants and desire of
 legal rules to reproduce 63–4
 path dependence and areas of
 European 60–3
 race to the bottom and evolution-
 ary theory 64–6
 rules adapt to changing circum-
 stances 59–60
 harmonization and 150, 161–2
 legal culture 51
 property and contract law 226
 public law and 79
 resistancy to harmonization 50–1
 subsidiarity and 166
 uniformity and 66
 ‘privity of contract’ 33
 probability of punishment 122, 126
 problem of induction 6
 procedural law 76
 substantive law 79
 product defect, scientific proof and
 158
 product liability 132, 168–70
 attitudes toward risk and insurance
 135–7
 Coasean bargaining 133
 Directive of 25 July (1985) 139–40
 main principles of 140–1
 economic theory of 132–2
 market power 135
 optimal product safety 137
 safety standards and 149
 strict liability for ‘full internaliza-
 tion’ 133–4

- victim's care 135
- product liability (COM (1999) 396 final) 132
- product liability Directive 33, 131, 149–50, 152, 169
 - causation 159
 - centralization and 159
 - competition and 153
 - Directive 1999/34/EC (10 May 1999) 162
 - efficiency and consumer protection 154–5
 - European Commission and 132, 159, 162, 165–6
 - goals of 152–3
 - harmonization 153–4, 157–9
 - inefficiencies 152, 157–8, 160
 - lawyers and 162
 - product accidents and 153, 156
 - public choice considerations 160–2
 - rent-seeking in industry 161
 - review every five years 159, 163
 - seldom applied 168
 - some economic effects 155–7
 - curing externalities 158–9
 - distributional 157–8
 - subsidiarity principle 131, 166, 169
 - test 159–60
- product liability law, harmonization and 131–2
- product risks, safety regulations 138
- product safety
 - ex ante* regulation and liability rules 138, 168–9
 - goals and purpose 141–2
 - harmonization, few arguments in favour 152
 - main principles 142–3
- professionalization, a definition 75
- professional identities, blurring by new work organizations 184
- promises 60
- Property law 50, 53, 60–3, 66, 72
- property rights, well specified 40
- proportionality principle, Article 5(3) [old 3 B] EC Treaty 36–7
- Protocol on Social Policy 219
- psychologists and criminologists, criminals and 121
- public action 106, 113, 194
- Public Choice movement 122, 150
- public finance, definition 241
- public policy
 - interregional cooperation as means of organizing 196–201
 - maximization of social welfare 120, 122
 - methods of implementation 195
- public utility
 - concepts is process of conciliation 109–10
 - balance between equity and efficiency 113–14
 - complementarity between state and market 112–13
 - convergent perception of common interest 110–11
 - difficulty of conception 19
 - French and European approaches 103
 - goal to compensate for gaps in market 112
 - needs of citizens and 111, 115
 - public deficits and cost of financing 111
 - selection of supplier 112–13
 - special interest groups and 116
 - standardization and 115–16
 - systems in opposition 104
 - different conceptions of common interest 104–6
 - European system, market in the name of efficiency 107–9
 - French system, state in the name of equality 106–7
- qualifications 179
 - authentication and certification of 184, 189
 - conformity and codification 181
 - differences in European countries 186
 - difficulties of conformity 180
 - difficulty of defining 185
 - evolution of systems 188
 - organizational relationships 186
 - risk of becoming obsolescent 184
- R&D literature, profit from 90

- race to the bottom 9, 52, 58
 company law and 64, 66
 conditions for 65
 danger of 27–8, 34, 36–7, 44–5
 destructive competition 35, 43
 EC law and 40
 market integration and argument
 150
 overprotective product liability law
 148, 164
 product safety problems and 147–9
 race of the top 148, 159
 railway system 78
 ‘ratchet effect’ 2
 Rawls, J. 3, 114
 real democracy, bottom-up approach
 39
 ‘reciprocal empowerment’ 98
 referenda 39
 regulation 240, 242
 regulation capture 38
 regulatory competition 27–9, 40, 44
 regulatory failure 37
 Reich, N. 139, 160–2, 193
 rent-seeking 1, 8, 9, 71
 assignment of rights and 89
 in automobile industry 243
 Bentham on 74
 industry and product liability
 Directive 161
 lawyers and 38, 75, 77, 81
 regulations and 11–12, 128
 reputation sanctions, corporations and
 127
 restructuring, market and competition
 104
 Revesz, R. 27, 41, 150
 Rhine Action Plan 41
 risk neutrality, market participants and
 135
 risk pool 136
 risks, serial damage and 136
 Roe, Mark J. 55, 57–8, 60
 Roman model of law, Holy Roman
 Empire 76
 Rombaldi, Michel 17–18
 Rose-Ackerman, Susan 9, 11, 144–5,
 147, 242
routines, identity of firm 56, 58
 Rubin, Paul 56, 62
 rule of law principle, transaction costs
 and 226
 rule of unanimity 14–15
 rules, evolution of 3–7, 59–60
 Russia 217
 safety devices for cars 29
 safety of nuclear installations 29
 safety standards, product liability and
 149
 Samuels, Warren 245–6
 Samuelsonian public goods 10
 San Marino 216
 Sandoz firm (Basel) 41
 scale economies *see* economies of
 scale
 Scandinavia, ‘computer-use licence’
 183
 Schengen agreement 8, 123–5, 219
 Schmidt-Trenz, H.-J. 2, 18, 228, 234
 Schmidtchen, Dieter 2, 18, 228, 234
 school FOCJ 213
 school-FOCUS 214
 Schwab, R. 143, 145
 Schwartz, G.T. 145–6, 148, 151
 Scottish Enlightenment, classical polit-
 ical economy 4
 Scottish law 64
 self-regulatory powers, competitive
 franchising 82
 severity of punishment 119, 122, 126
 Sharpe, L.J. 219–20
 Shavell, S. 119–20, 122–3, 134, 137–8
 Silva, F. 137–8, 142
 Single European Act 131
 single-culture jurisdictions 81–3
 skill, definition 182
 Slovenia 224
 small-risk pools insurance coverage
 136
 small-sized local governments, advan-
 tage of cooperation 198
 Smith, Adam 2, 5, 226
 Smits, Jan 2–4, 17, 51, 60, 62, 64, 88
 SNCM maritime transport of passen-
 gers 107
 Sober, Elliott 54–5
 social contract theory 224–6
 social welfare, politicians and 122
 social welfare law 79

- social welfare maximization, public policy and 122
- 'source principle', environmental damage and 42
- South Africa 64, 81
- South Europe, tax compliance 127
- Soviet bloc, Marxist principles 76
- specialized lawyers, competition between legal systems 38
- specific property rights, legitimate decisions and 89
- spillovers 40, 43, 123, 212, 215
- standard law and Economics scholarship, other disciplines and 56
- standardization 31, 33, 44, 115
- state-protected monopolies, deregulated 43
- Stigler, G.J. 108, 243
- Storai, Christophe 6, 8
- Strasbourg 209, 237
- 'strategic incentive', innovation and 90
- strict liability 133–8, 155–8
- subsidiarity principle 15–16, 19, 32, 38
 - European product liability Directive 131, 166, 169
 - governance and 194, 203
 - ineffectiveness of 210
 - national cultures and 184
 - OPU and 112
 - standardization and 115–16
 - vague goal 27, 219
- substantive law 37, 76
 - procedural law 79
- supremacy doctrine 13, 95
- Sweden 219
- Switzerland 41, 150, 216
- Sylverstre, J.J. 182, 186
- Taschner, H. 161–2
- taxation law 34, 79
- Teaching and Learning: Towards the Learning Society* 8, 182
- telecommunications systems 82, 110
- territorial continuity, equity and efficiency 114
- territorial governance 194
- territorial protection, European rules and 42
- tests of authentication 182–3
- 'the law is observed' in A. 164 94
- theoretical apprenticeships 180
- theory of Economic Regulation 108
- theory of social evolution, consequences for 5
- third parties, risk and 134, 137, 155, 158
- third party insurance schemes 136
- Tiebout assignments, metaphor and 9
- Tiebout, C.M. 29, 143, 145
- Tiebout model
 - European Federalism and 7–9, 15, 144
 - going beyond 9–10
- Tirole, Jean 12, 88
- Tort law 50, 53, 61, 63–4, 131
 - overdeterrence (inefficient safety requirements) 138
- total harmonization, competition ruled out 37
- trade-offs 17, 39
- traditional telephone system, fixed link networks 78–9
- trans-boundary civil law cases, Article 65 EC 33
- transaction costs 8, 27–8, 34, 45, 150–2, 153, 158
 - reduction argument 169
 - rule of law principle and 226
- transborder cooperation 200
- transborder governance, 'cohesion policy' and 196
- transboundary effects of pollution 40, 167
- transboundary externality, product liability and 145–6
- transparency 38–9, 44, 109, 160, 164–5, 169, 183
 - vocational profiles as instrument 180
- transport systems 82, 103
- Treaties, quasi-constitutional framework 30–1
- Treaty of Amsterdam 19, 33
- Treaty of Rome 178
 - articles 54 and 58 9
 - 'basic constitutional charter' 13
- Treaty of Rome 178 (*cont.*):

- common economic interest and 108
 - expression of public utility 115
 - majority voting with article 189 14
- Turin School 74
- Turkey 81

- UK 96, 123, 181, 186
- ultra vires* 249
- underdeterrence, strict liability and 137–8, 158
- unification, drugs policies in Europe 125
- uniformity 8, 37, 51–2
- ‘unwritten rule’ 5
- upwards* subsidiarity 16
- USA 7, 27
 - administrative law 241
 - air pollution 41
 - Articles of Confederation* 18
 - Bill of Rights 20, 241
 - civil liability 127
 - company law standards 64–5
 - competition and 34
 - constitution 31
 - criminal liability for corporations 126
 - criticism of tests 183
 - debates about Convention of Philadelphia 19
 - devolution and 16
 - economics of law and administration 240
 - insurance crisis and adverse selection problem 136
 - interstate pollution 42
 - principles in law 246
 - ‘product liability explosion’ 140, 160, 165, 169
 - Supreme Court of Justice 14
- Van den Bergh, Roger 2, 9, 17
 - competition and 8, 11, 16, 34–5, 39, 88, 143
 - differences in legal systems 144
 - environmental problems 16, 145
 - mobility and 32
 - non-pecuniary losses 147
 - paper (1994) 15
 - product liability 146, 148–52
 - product liability Directive 157–9, 161
 - subsidiarity and 27
 - Van Gend & Loos 1963* 13, 94
 - Van Wassenauer van Catwijck, A.J.O. 153, 155
 - Vaubel, R. 38, 216
 - vertical* competition 88
 - veto power 14–15, 19
 - Vibert, Frank 2
 - victims, strict liability rule and 136, 156
 - Vigouroux, Isabelle 2, 11–12
 - Villanova Law Review* 246
 - Virginia School 225
 - vocational skills, quality standards 181–2
 - vocational profiles, definition of 180
 - Vogel, D. 151
 - voters, detrimental strategic behaviours 9
 - voting group, impact on law making 38
 - Vromen, Jack J. 55–6, 58

 - Wagner, Richard 12, 217
 - Wall Street Journal* 243
 - water quality, state-specific standards 40
 - Watson, Alan 52–3, 61
 - Weiler, Joseph 12–13, 88, 97
 - welfare maximization, controversial 121
 - Welfare State, decline of 17, 195
 - well-informed citizens, voting with their feet 143
 - Western systems, legal reforms in Eastern Europe 81
 - white paper on environmental liability 166–7
 - Wilcox, Clair 241–2
 - Wincott, Daniel 94, 96–7

 - yardstick competition 81
 - Yugoslavia 209