

# Index

---

- Abbott, Andrew 176  
acceptability  
    normative justification of 169  
    normative virtues of 161  
accommodation  
    Nash equilibrium 160–61  
    normative justification of 159–60  
    passive virtues and conflict management 160  
    role of 158–9  
accommodation mode 213  
acquiescence 41  
acquisition of norms 259–60  
action situations 183–4  
actors, in government 37–9  
adaptive bias 64  
additional players, in constitutional framework 7, 12–13, 143, 147, 201, 214, 249, 276  
adoption of constitutions 252–3  
advisory services 281–2  
affective perspective taking 160  
affiliation 125  
agglomeration effect 246  
aggressive tactic 87, 88  
agnosticism, reasons for 25  
Akerlof, George 106  
Alesina, Alberto 94  
ambiguities  
    in context 241  
    of meaning and indeterminate 241–2  
ambiguity aversion 86  
ambiguous problems 175–6  
    disaggregation 178  
American constitution 19, 36  
    Bill of Rights 49  
American Founding Fathers 42, 60–61  
analytical knowledge 121–2  
Anderson, Elizabeth 139  
appropriateness 207  
Arab Spring 112  
arbitrariness  
    compounding effect of 190  
    hierarchical decision taking 188  
    of powers 191–2  
Archimedean neutrality 261  
aspirations, expressions of 72–3  
assent  
    conveyance and 40–42  
    and private sphere 48–53  
assimilation mode 213  
associative rationality 125, 174  
associative reasoning 92  
assurances 117, 118  
attention deficit democracy 116  
attention directing mechanisms 183  
austerity 112  
authoritative resolution 151–3, 229  
    blind spots 151, 157–8  
    bounded awareness 156  
    bounded ethicality 157  
    emotion-based 156  
    gatekeeper role of 154–5  
    intergenerational equity 157–8  
automaticity 203  
autonomy of behavior 48  
autonomy of judgment 48–9, 260–62, 273–4  
bargaining democracy 196  
Barry, Brian 115  
basic norm, validity and 256  
Baumgartner, Frank 215  
behavioral rationality 121  
behavioral reactions 87  
    defensive thinking 88–90  
    motive to protect 87–8  
behavioral theory 23–4  
Beitz, Charles 250  
Belgium 1

- benchmarking 167
  - ambiguities of meaning and indeterminate 241–2
  - consent 13–14
  - and diversity 238
  - essentially contestable 240–41
  - in financial markets 239–40
  - ill-structured choices 240–41
  - injunctive role 235–6
  - manipulation 243
  - marketing, problems with 242–3
  - in modern societies 233
  - moral hazard 243
  - narrowness and oversupply 242–3
  - in normative choice 240
  - normative, weaknesses in *see* normative benchmarking
  - oversight 249
  - and reduction of search costs 242
  - role of rights as 13–14, 234
  - and search costs 238–9
  - social rights 235
  - variety 234–5
  - wicked and ambiguities in context 241
- benign neglect 69–72
- Bennett, Lance 202
- Berger, Ben 116
- Bicchieri, Christina 139, 140, 259, 260
- Bill of Rights 19, 29, 85, 237
  - American constitution 49, 65
  - South African constitution 71, 72
  - Article 7 237
  - Article 7 (1) 71
  - Article 14 43
  - Article 29 85
- binding power of democracy 155–6
- Binmore, Ken 142, 145
- black box 252, 257
- blind spots
  - in democratic politics 151, 157–8, 225–6
  - institutional defenses against 269–70
  - intergenerational justice 270
  - oversight of systemic instability 270–71
- Blokker, Paul 26
- Blomquist, William 232
- Bogdanor, Vernon 15
- bottom-up processes 99
- bounded awareness 156
- bounded ethicality 157
- bounded rationality 8, 100, 104, 108–9
- Brennan, Geoffrey 137
- Breslin, Beau 29, 147
- Brettschneider, Corey 250
- Brexit vote 8, 57, 155, 156, 253
- Buchanan, James 20–21, 25, 50, 103, 105, 151
- Bundesrat 28, 58
- Bundestag 28
- Burke, Edmund 19, 56, 132, 134, 136, 141, 143
- Büthe, Tim 215
- Camerer, Colin 143
- canonical constitution, obsolescence 56
  - instability 58–60
  - institutional misbehavior 60–64
  - stability 56–8
  - unrepresentative policy making 58–60
- capital requirements, for banking intermediaries 228
- Care Quality Commission 281
- Carpenter, Daniel 154
- chain relationships, and citizen 281–2
- chains of intermediation 12–13, 166, 268
  - analysis 217–18
  - directness and selection 227–8
  - dispersion and positioning 221
  - experimentalist democracy 224, 225
  - feedback and constitutional chain 228–31
  - financial markets 219–22
  - length 218–19
  - National Health Service (NHS) 220–21
  - non-financial markets 220, 222
  - organization and 9–10
  - overstretch of contract 224–6
  - overview 217–18
  - selection and prioritizing 226–7
  - US Financial Fraud Enforcement Task Force 222–3
- Charter of Fundamental Rights of the European Union 16, 117
- citizen juries 192
- civic constitutionalism 26–7

- civic purpose/good 101–2
- civic virtue 106
- civil society 154
- civil society organizations 105, 162
- Clinical Commissioning Groups 281
- closed systems, Luhmann's assumption of 127
- cognition
  - group 89
  - individual 88–9
- cognitive dimension, in constitutional choice 104, 107–9
- cognitive dissonance 88
- Cohen, Geoffrey 202
- Colón-Ríos, Joel 232
- Common Agricultural Policy (CAP) 188
- common ground 143, 144
- common knowledge 10–11, 144, 165, 267
- communicative theory 196
- Comparative Constitutions Project 29
- compensation 111, 112
  - rights as 254–5
- compromises 253–4
- concealment 44, 46
- conduct of business regulation 228
- conferral 189
  - European Union 41
- conflict avoidance 160
- conflict management 160
- Congleton, Roger 15, 67
- consent 40, 134, 167, 272–6
  - assent and conveyance 40–42
  - autonomy of judgment 273–4
  - benchmarking 13–14
  - fairness 274–6
  - identification and 51–2
  - legitimacy 13–14
  - and public/private boundary 42–3
  - reciprocity 274–6
  - rights 13–14, 272–3
- consociational democracy 153
- consociationalism 59, 190
  - decision rules and 193–4
  - and persuasion 197
  - weakness of 197
- constituent power 41, 257, 264
- constitution
  - adoption of 252–3
  - for democracies 2–3, 14, 265–6
  - extending 266–8
  - immutability of 26
  - legitimation of 252
  - marginalization of 25–8
    - agnosticism 25
    - democracy 25–6
    - juridic constitution 26–7
    - loss of relevance 28
    - primacy of politics 27
  - overarching role of 19
    - constraints 21
    - contracts 20–21
    - coordination 21–2
    - emotions 23–4
    - heterogeneity 23
    - limitations of contracts 22–3
    - normative element 24
    - reflection and correction 22
  - and referendums 282–4
  - rights and ethical foundation of 257–60
    - structural 28–9
    - ubiquity of 17–19
- constitution content
  - bounded rationality 100, 108–9
  - bundle of motivations 106–8
  - civic/public purpose 101–2
  - cognitive dimension 104
  - goals 100–101
  - motivation *see* motivation
- constitution, definition of 15
- constitution making 2–3
- constitutional analysis 3
  - chains of intermediation 9–10
  - different levels of 4–5
  - dual processing 9
  - fairness 6–7
  - group affiliations 4
  - individual behavior 4
  - key challenges 10
    - consent to rules of association 13–14
    - democratic politics 11–12
    - need for additional players 12–13
    - problem management 10–11
  - motivation 5
  - rationality 7–8
  - social diversity 5–6
  - units of observation and 4–5

- see also* explicit rules; tacit coordination
- constitutional chain, feedback and 228–31
- constitutional economics 5, 104, 110
- constitutional goals, Portugal 101–2
- constitutional grounding 143, 144, 182–4
- constitutional referendum 231, 232
- constitutional responses 10, 15
- constitutional self-reference 49–50
- constitutional treatment 69–70
- constitutionalism 55
- constraining democracy 25–6
- constructive model, Rawls's notion of 126–7
- consumer champion 221, 225
- content-based approach 267
- content-based decision making 164, 174, 181, 182, 205, 208, 210
- content-lite communication 199, 266
- content rationality 8, 122–4
- context 105–6
- contingency theory 205
- contractarian approach 103
- contracts 20–21
  - limitations of 22–3
  - and loss aversion 110
  - overstretch of 224–6
- conventional wisdom 156
- conveyance
  - assent and 40–42
  - private sphere and 43–7
  - privacy and services 44
  - redefining private 47
  - voluntary exchange 44–7
- cooperative behavior 132
- co-originality 50, 54, 237
- 'correlated' concept of 'ought' 255–6
- critical juncture 211, 214, 269
- crony capitalism 39
- cross crowding effect 246
- crowd sourcing 99
- crowding effect 246
- cultural distinctions 6
- culture 82
- Dahl, Robert 25, 59, 69, 71, 132, 153, 182, 193, 259, 260
- Davis, John B 107
- decisional fairness 141
- decision-making environment 108
- decision rules
  - and consociationalism 193
  - from hierarchical perspective 193–4
- declarations of rights 13–14
- deep difference 75
- defensive behavior 90
- defensive tactic 87, 88
- defensive thinking 88
  - competition to control 90
  - defensive behavior 90
  - group cognition 89
  - individual cognition 88–9
  - stereotypes 89–90
- deliberative democracy 102, 104, 151
- Della Vigna, Stefano 202
- demand stress 57–8
  - policy effectiveness and 59–60
- democracy 100, 101
  - constitutions for 2–3, 14
  - enhancing or constraining 25–6
  - improvement 161–4
- democratic constitutions and referendums 282–4
- democratic deficit 101
- democratic government systems 1–2
- democratic politics 11–12, 22, 90, 92, 109, 228
  - acceptable improvements 161
  - and accommodation *see* accommodation
  - accommodation
  - authoritative resolution *see* authoritative resolution
  - authoritative resolution
  - benchmarking 167
  - binding power 155–6
  - chains of intermediation 166
  - consent 167–8
  - fair play 168
  - feedback 162
  - grounding the relationships with 182–4
  - importance of 265
  - key challenges 164–8
  - models 190
  - normative choice 167
  - normative role *see* normative role, of democratic politics
  - normative role of 114–15
  - organizational advantages of 163

- polarizing effects 156
- political parties in 191
- political persuasion 164, 165
- qualitative analytic rules 164, 165–6
- rights and legitimacy 167–8
- role of 11–12, 128
- serial processing 162–3
- strength 153
- systemic bias of 155
- trade-offs in 201
- transvaluational role of 11–12, 161–3
- vulnerability 157
- weakness of 4, 266, 269
- width and span 162
- democratic theory 99, 225
- diagnostic choices 198, 203
- diffusion, and delaying of authority 36–7
- dignity values 146, 140, 167, 237
- Directive EU 2015/412, 11 March 2015 278
- disaggregation 174
  - ambiguous problems 179
  - contestable 178
  - ill-structured problems 179
  - indeterminate problems 179
  - organizing principles for 179–82
  - sufficient structure, provision of 178
  - time ordering 177–8
  - ‘wicked’ problems 178–9
- discourse model
  - and distance 192
  - and persuasion 196–7, 202
- dispersion, and positioning 221
- distance
  - discourse and 192
  - hierarchical decision taking 189
- distributive fairness 132, 136, 139
- distributive justice 135
- diversity 82
  - benchmarking and 238
  - constitutional implications of 91–3
  - cross-cutting distinctions 83
  - group affiliations 82–3
  - intensity 84
  - separability 83–4
  - social *see* social diversity
  - types of relationship 83
- dominant motivations 106
- Downs, Anthony 141, 198
- Dryzek, John 170
- dual processing 9
- dual processing theories 126
  - challenge of unified models 127
  - democratic politics, role of 128
  - Habermas and ‘open’ systems 127
  - mismatching 128–9
  - organizing the setting 128
  - Rawls’s constructive model 126–7
  - unified rationality 126
- dualism, in decision taking 182
- Dworkin, Ronald 51, 52, 73, 127, 138, 140, 237, 257, 260–61, 266
- Dyzenhaus, David 263
- ‘ease of fit’ version 88, 213
- Easton, David 57, 153, 155
- easy assimilation 89
- ECJ *see* European Court of Justice (ECJ)
- economics of attention 194
- Edelman, Murray 232
- egalitarianism 139
- ego-centric groups 83
- Egypt constitution 59
- elementary principle 132
- Elster, Jon 105, 176
- emotional motivation 107
- emotion-based decision taking 156, 157
- emotions 23–4, 31, 107
- emotive motivation
  - fairness 131–3
  - reciprocity
    - constitutions and playing fair 142–7
    - and relationship values 141–2
  - togetherness *see* togetherness
- emotive politics 112–13
- enhancing democracy 25–6
- entropic search 215
- enumeration 189
- epistemic authority 155
- epistemic proceduralism 16
- equality matching 133, 134, 139
- equality of treatment 133, 137–9
  - Germany Article 3 138
  - South Africa Article 9 138
- equilibrium 108, 109, 142, 160–61, 164, 176, 187, 204
- correlated

- and empathy 142
  - see also* additional players; Nash equilibrium
- equilibrium selection 143, 145, 233, 234
- essential juncture 208, 211
- essentially contested problems 174–5, 240–41
- Estlund, David 140
- ETFs *see* exchange traded funds (ETFs)
- ethical foundation, of constitutions 257–60
- Etzioni, Amitai 47
- EU *see* European Union (EU)
- European civilization 132
- European Court of Justice (ECJ) 208
- European Court of Justice and the ‘Right to be Forgotten’ Case C-131/12, 13 May 2014 277–8
- European Union (EU)
  - agencies 38
  - Article 7 of the Charter of Fundamental Rights 235
  - Charter of Fundamental Rights 117
  - codecision and power sharing in 61
  - conferral 41
  - constitutional (treaty) change in 65
  - goals of 68
  - institutional capacity 120, 121
  - qualitative analytic decision taking in 206
  - treaties and character norms 72
- exchange traded funds (ETFs) 239
- exclusionary decision rules 189–90
- exclusive club 246–7
- experimentalism 224
- experimentalist democracy 224, 225
- expert bodies 181
- explicit rules 143–6, 165, 182, 194
- expressive norms 71
- external skepticism 261
- externalities 84
  - ambiguity reduction 86
  - cognitive and 86
  - ‘extrinsic’ and ‘intrinsic’ values 85
  - positive and negative 85–6
  - reference points 86–7
  - uncertainty reduction 86
- extrinsic values 85
- fair play 7, 15, 167, 168
- fairness 6–7, 131–3
  - definition 91, 147
  - equality of treatment 133
  - imagined communities 132
  - and reciprocity 133, 142–7, 274–6
  - see also* togetherness
- feedback, and constitutional chain 228–31
- feeling motivation 107, 131
- FFETF *see* Financial Fraud Enforcement Task Force (FFETF)
- filtering process 135
- ‘final say’ principle 153
- financial benchmarks 14
- Financial Fraud Enforcement Task Force (FFETF) 222–3
- financial markets 219–22
  - benchmarks in 14, 239–40
  - supervision in 228–9
- Fink, Alexander 30
- Fiske, Alan 133, 134, 139
- focal points 144–5
- foundational pillar of constitution 35
  - diffusion
    - delaying of authority and 36–7
    - different actors 37–9
    - societal constitutions 39–40
  - founding principles 40
    - assent and conveyance 40–42
    - consent 40
    - public/private boundary 42–3
  - functional and principled elements 35–6
  - private sphere
    - assent and 48–53
    - conveyance and 43–7
- Founding Fathers of the American system 56
- founding moments 253
- Freedom in the World* report 56
- functional reason 153
- functionalism 100, 101
- Fung, Archon 232
- Gallie, Walter 174, 175
- gatekeeper role 153, 154–5
- Gavazza, Alessandro 232

- genetically modified organisms (GMOs) 114
  - cultivation in the EU 278
- Gentzkow, Matthew 202
- German Basic Law, amendments 28
- German constitution 36, 73, 132, 204
  - Article 1 (1) 146
  - Article 1 (3) 28, 236
  - Article 3 138
  - Article 9 (1) 73
  - Article 10 42–3
  - Article 13 (1) 43
  - Article 20 (1) 28
  - Article 21 (1) 191
  - Article 23 204
  - Article 50 58
  - Article 51 58
  - Article 79 (2) 28
  - Article 79 (3) 28
  - Basic Rights 73
  - Preamble of the Basic Law 18
  - private sphere 42–3
  - see also* American constitution; South African constitution
- Gewirth, Alan 51
- Gintis, Herbert 140, 145–6
- GMOs *see* genetically modified organisms (GMOs)
- goals, constitutional 68, 100–101
- Goodin, Robert 200
- Griswold case 46, 235
- grounding, constitutional 143, 144, 182–4
- group cognition 89
- group think 89
  
- Habermas, Jürgen 27, 50, 126, 127, 151
  - theory of ‘co-originality’ 237
- Hamilton, Alexander 49
- Hamilton, James 61
- Hardin, Russell 21
- Hayek, Friedrich 19
- Health Watch 281
- Health and Wellbeing Boards 282
- hegemonic preservation theory 115
- heuristics 128, 206
  - source 129
- hierarchical decision taking, institutional participation in 213–14
- hierarchy 12, 186–8
  - approaches
    - arbitrariness of powers 191–2
    - consociationalism 193–4
    - decision rules 193–4
    - discourse and distance 192
    - market model and role of parties 190–91
    - political parties 190
    - source rationality 194–5
    - problems of 188–90
  - Hofstede, Geert 80
  - ‘hold-out’ problem 197
  - Honneth, Axel 137
  - Human Fertilization and Embryology Authority 281
  - Hume, David 20, 21, 105, 108, 109, 145, 159, 259
  - hypergoods, notion of 161, 162, 164, 169
  
  - IBM, corporate setting of 78
  - ideal speech situation 202
  - identification, and prudential considerations 258–9
  - identity 51–2
  - identity management 83
  - ill-structured choices 240–41
  - ill-structured problems 175
    - disaggregation 179
    - public policy management 175
  - imagined communities 132
  - IMF *see* International Monetary Fund (IMF)
  - immigration 209
  - immutability
    - of constitutions 26
    - costs of 66
  - incentive to narrow rights 244
  - inclusion of rights, pragmatism and 252–5
  - inclusive clubs 245–7
  - incoherence 173
  - independent oversight 230–31
  - indeterminate problems
    - disaggregation 179
    - public policy management 176–7
  - individual motivation 103
  - Indonesia’s constitution 69
  - inequality aversion 140–41

- injunctive role of rights 235–6, 248
- instability 93
  - demand stress and 57–8
  - in framework 64–6
  - and institutional misbehavior 60–64
  - sources of 56–7
  - support stress and 57–8
  - and unrepresentative policy making 58–60
- institutional arrangements 30
- institutional capacity 120, 121
- institutional choice theory 31
- institutional defenses 269–71
- institutional economics 218, 226
- institutional guidance 114
- institutional misbehavior, instability and 60–61
  - adaptive bias 64
  - cash nexus in electoral politics and business 62
  - chains of intermediation 64
  - checks and balances
    - against collusion 61–2
    - against over-dominance 61
  - complementary relationships 63
  - institutional misbehavior 62–3
  - system relationships 63–4
- institutional participation, in
  - hierarchical decision taking 213–14
- interactive knowledge 121–2
- intergenerational equity 157–8
- intergenerational justice 270
- intergenerational statistics 279–80
- intergovernmentalism 62
- Intergovernmental Panel on Climate Change (IPCC) 36, 279
  - 2013, Summary for Policy Makers. The Physical Science Basis 279
- intermediate problems 176–7
- internal skepticism 261
- international financial crisis of 2008 225
- International Monetary Fund (IMF) 36
- intrinsic values 85
- intuitive theologian 199
- IPCC *see* Intergovernmental Panel on Climate Change (IPCC)
- Jay, John 42, 70
- John (King of England) 17
- Johnson, James 168, 215
- Jones, Bryan 184, 185, 215, 231
- judgment, autonomy of 48–9, 260–62, 273–4
- judicial oversight 230
- juridic constitution 26–7
- justice as fairness 51, 139, 261
- Kalyvas, Andreas 263
- Kay, Richard 29
- Keane, John 224
- Kelly, Paul 74
- Kelsen, Hans 159, 252, 255–7
- Kiser, Larry 15
- Knight, Jack 168, 215
- Kranton, Rachel 106
- Krisch, Nico 15
- Kymlicka, Will 79, 94
- law and politics, validity and autonomy 255–6
- legal constitutionalism *see* civic constitutionalism
- legal positivism 262
- legitimacy 13–14, 237
  - rights in
    - autonomy of judgment 260–62
    - and ethical foundation of constitutions 257–60
    - pragmatism and inclusion of 252–5
    - and transcendent 255–7
- Levinson, Sanford 66
- ‘liberal-communitarian’ approach 47
- LIBOR benchmark 239–40, 243
- Lijphart, Arend 59, 160
- limited government, concept of 101–2
- Lindblom, Charles 178
- Lindenberg, Siegwart 107, 108
- linked ecologies 247–8
- liquidity requirements 228
- Lochner case (1905) 44, 45
- logic of consequences 204, 206–7, 215
- loosely coupled systems 174, 179–82
- looseness 75
- losers consent 193
- loss aversion 110



- Loughlin, Martin 263, 264  
 Luhmann, Niklas 127
- MacCormick, Neil 215, 216  
 macro oversight, politics and 229  
 Madison, James 58, 62  
 Magna Carta 17  
 Mahoney, James 216  
 majority voting 189–90  
 manipulation 243, 247–8  
 March, James 175–9  
 marginalization of constitutions 25–8  
 market inequalities 136  
 market model  
   persuasion and 195–6  
   and role of parties 190–91  
   of togetherness  
     anonymity and flexibility 135  
     fairness and 135–6  
     social esteem 136–7  
 market theory 223  
 Masters, Adrian 231  
 matching efficiency 241  
 material insecurity 110, 111  
 material motivation 107, 109–10, 173  
 material uncertainty, constitutional  
   approaches to 117–18  
 McCrudden, Christopher 150  
 Medicines and Healthcare Products  
   Regulatory Agency 281  
 metacognition 90  
 Miller, David 74  
 ‘minorities rule’ 69  
 mixed goods 245  
 mixed strategies 244–5  
 moderation 105, 106, 108  
 modern constitutions 14–15  
 monitory democracy 224  
 moral hazard 243, 248–9  
 motivated information processing 86  
 motivation  
   bundle of 106–8  
   constitutional analysis 5  
   constitutional economics and 5  
   in constitutional politics 105  
   context 105–6  
   contracts and loss aversion 110  
   dominant 106  
   emotive politics 112–13  
   as framing device 108  
   group of 103  
   market 110–11  
   material 107, 109–10  
   multiple 100, 106  
   normative 113–14  
   problem management 111–12  
   self-interested 104, 105  
   single 100, 104–5, 107  
   strengths 103–4  
   weakness 103  
   welfare and compensation 111  
 multiculturalism 70, 74, 79  
 multiple streams analysis 178  
 multivocality 209–11, 278
- narrow rights 244  
 narrowness, and oversupply 242–3  
 Nash equilibrium 160–61, 169  
 National Health Service (NHS) 220–21  
   chain relationships and citizen 281–2  
 National Institute for Health and Care  
   Excellence (NICE) 221, 281  
 negative externalities 85–6  
 negativity bias 87  
 NHS Improvement Authority 281  
 NICE *see* National Institute for Health  
   and Care Excellence (NICE)  
 non-financial markets 220, 222  
 non-market oversight 229  
 normal/reference transaction 136  
 normative benchmarking 240  
   weaknesses in 243–4  
     incentive to narrow rights claims  
     244  
     inclusive clubs 246–7  
     linked ecologies 248–9  
     mixed goods 245–6  
     mixed strategies 244–5  
     oversupply 245  
     risk of manipulation 247–8  
 normative concept 167  
   rights in 240  
   and transcendent concept 256–7  
 normative diversity 113–14  
 normative element, in constitutions 24  
 normative guidance 143, 145–6  
 normative justification  
   of acceptability 169  
   of accommodation 159–61  
 normative motivation 107, 113–14

- role of politics *see* normative role, of democratic politics
- normative objectives 100, 101
- normative reason 153
- normative role, of democratic politics 114–15
  - authoritative resolution *see* authoritative resolution
  - blind spots 151
  - constitutional rules 152
  - gatekeeper role 153–5
  - policy making role 154
  - three concepts of 151–3
  - transformation 152
  - transvaluational 152, 153
  - see also* democratic politics
- Nozick, Robert 19, 135, 136
- Obama, Barack 1, 45
- Obamacare 44–6, 209
- obsolescence
  - canonical constitution
    - instability 58–60
    - institutional misbehavior 60–64
    - stability 56–8
    - unrepresentative policy making 58–60
  - foundational constitution
    - assent and private sphere 48–53
    - founding principles: consent 40–43
    - functional diffusion and 36–40
    - functions and principles 35–6
    - private sphere and conveyance 43–7
  - purposive constitution
    - character norms 70–73
    - goals and character 68–70
    - multiculturalism 73–5
    - shared setting 76–8
- Olson, Mancur 202
- ‘open’ systems, Habermas’s notion of 127
- opportunism 163
- optimum domain 191
- ordering 208
- Organisation for Economic Co-operation and Development (OECD) 239
- organization
  - horizontal axis 39, 40
  - vertical axis 39–40
- Ostrom, Elinor 139, 142, 183
- Ostrom, Vincent 22
- ‘overlapping consensus’ 151
- over-regulation 209
- oversupply 245
  - narrowness and 242–3
- parallel processing, advantages of 179, 180
- participatory democracy 102
- passive virtues 160, 161
- path dependency 209
- path rules 143, 145
- performative knowledge 144
- persuasion
  - choosing process 198
  - integration 198
  - political 11–12, 164, 165
  - and politics *see* politics, persuasion and
  - process communications 198
- Pettit, Philip 102, 137
- polarization 12, 24, 129, 200, 269
- policy effectiveness, and demand stress 59–60
- policy experts 181
- policy making role 154
- political association, principles for 134
- political bargaining 188
- political communication 204, 206
- political discontents 2
- political parties
  - constitutional recognition 191
  - in democratic politics 191
  - role of 190–91
- political persuasion 11–12, 164–5
- politics
  - communication in 198
  - and macro oversight 229
  - persuasion and
    - consociationalism 197
    - content-lite communication 199
    - discourse 196–7
    - market model 195–6
    - source-based model 197–8
    - unresolved challenge 199–201

- primacy of 27
- validity and autonomy 255–6
- popular consent 253
- popular sovereignty 101
- populism 24
- Portugal, constitution of
  - Article 1 146
  - Article 2 102
  - Article 9 101
  - Article 18 (1) 236
  - Articles for social rights 235
  - goals 101–2
- positive externalities 85–6
- ‘post parliamentary’ politics 224
- powers, arbitrariness of 191–2
- practical reasoning 161, 169
- pragmatism, and inclusion of rights 252–5
- pre-allocation 188
- Preamble of the Basic Law, German 18
- pre-designation 188
  - by territory 119–20
- preliminary ruling procedure 208
- prerogative powers 210
- presuppositions 256, 257
- principal/agent theory 225
- principle of consent 13–14
- principle of generic consistency 51
- principles-based regulation 179
- priority fixing procedures 179
- privacy right 235
- private realm 42
  - ‘liberal-communitarian’ approach 47
  - personal space and 43
- private sphere 13, 35, 42, 260, 273
  - assent and 48–53
  - conveyance and 43–7
  - German constitution 42–3
  - public concerns and 44
  - redefining 47
- problem management 10–11, 108, 111–12, 118–19, 173
  - analytical *vs.* interactive knowledge 121–2
  - behavioral rationality 121
  - content *vs.* source rationality 122–5
  - dual processing *see* dual processing theories
  - pre-designation by territory 119–20
  - in public policy *see* public policy management
  - system capacity 120–21
- procedural rights 245
- Professional Standards Authority 281
- proportionality 208–9
- prosperity 210
- prudential considerations, identification and 258–9
- prudential norms 70–71
- Public Health England 281
- public policy decisions 108
- public policy management
  - ambiguous problems 175–6
  - essentially contested problems 174–5
  - ill-structured problems 175
  - indeterminate problems 176–7
  - policy making and 178
  - ‘wicked’ problems 175
- purchasers of services 281
- purposive pillar of constitution 68
  - character norms 69, 70
    - aspirations 72–3
    - benign neglect 71–2
    - expressive 71
    - prudential 70–71
    - self-regulation 73
  - constitutional treatment 69–70
  - goals 68
  - prevailing dichotomies 73
    - deep differences 74–5
    - multiculturalism 74
    - preferences 75
    - tightness and looseness 75
  - shared setting 76
    - differences in 78
    - urban setting 76–8
- qualitative analysis
  - decision taking in the EU 206
  - logic of consequences 206–7
  - strategies 205–6
  - subsidiarity 206
- qualitative analytic path rules 12, 164–6, 207–8
  - critical juncture 211
  - essential junctures 211
  - institutional participation in hierarchical decision taking 213–14

- multivocality 209–11
- panacea 214
- positioning 212–13
- and processing of information 212
- proportionality 208–9
- reversibility 208–9
- sequencing 208
- specification 213
- stronger 268–9
- qualitative analytic procedures 277–9
- ‘query’ theory 208
- Rabin, Matthew 139–40
- Raich case (1965) 45
- rational choice theory 7, 104, 107–9
- rationality 7–8
  - associative 125, 174
  - behavioral 121
  - bounded 8, 100, 104, 108–9
  - content 8, 122–4
  - source 8, 9, 122–5, 194–5
  - unified 126, 127
- Rawls, John 20, 21, 50–51, 103, 126–7, 135, 137–40, 151, 256, 261, 266
- Raz, Joseph 29, 262, 263
- reciprocity 7, 133, 139
  - defined 149
  - fairness and 133, 142–7, 274–6
  - and relationship values 7, 141–2
  - tacit coordination 142–3
  - and togetherness 139–40
- reference points 86–7
- referendums 227–8, 271–2
  - democratic constitutions and 282–4
  - reliance on 271–2
- reflective equilibrium 9, 16
- reflexivity deficit 230
- regime theory 27
- regulators of providers and purchasers 281
- relationship values, reciprocity in 7, 141–2
- relationships, variety of 83
- reliance on referendums 271–2
- representative democracy 102
- republicanism 102
- reversibility 208–9
- rights 49–50, 250, 272–3
  - and circumstances of adoption 252–3
  - as compensation 254–5
  - consent 13–14, 272–3
  - of constitutions 257–60
  - declarations of 13–14, 52, 92–3, 233
  - delinking the roles 237–8
  - and ethical foundation of constitutions 257–60
  - injunctive role 235–6, 248
  - linking the roles 237
  - in normative choice 240
  - pragmatism and inclusion of 252–5
  - and reduction of search costs 242
  - and transcendent concept 255–7
  - two roles of 233–8
- ‘right to be forgotten’ case 208, 277–8
- right-wing authoritarians 100
- Rittel, Horst 175, 177
- Rosanvallon, Pierre 39
- Rueschemeyer, Dietrich 216
- rule-based approach 124
- rule-based international order 132
- rule-based regulation 179
- rules-based behavior 29
- Sager, Lawrence 147
- satisficing behavior 108
- Scheffler, Samuel 148
- Schelling, Thomas 145
- search costs 233
  - benchmarking and 238–9
  - reduction of 240–42
- search markets 14, 273
- Segerberg, Alexandria 202
- self-identity 51
- self-interested motivation 104–5
- self-regulation 73
- self-restraint 105
- sequencing 208
- sequential processing, advantages of 179, 180
- serial processing 162–3
- shared setting 76
  - corporate 78
  - social diversity in London 76–8
  - urban 76–8
- sharing fairness, concept of 113, 115, 131, 133, 134, 136
- sharing model of togetherness 135–40
- Shevchenko, Andrei 231

- short cut communication 194, 198–200
- Simon, Herbert 78, 159, 162, 175, 178, 179, 182–3, 240
- single motivation 100, 104–5, 107
- Smith, Adam 21–2, 24, 48, 49, 136, 137, 145, 259
- social diversity 5–6  
externalities of 86  
in London 76–8
- social esteem 136–7
- social harmony 113
- social identity 94
- social influence theory 125
- social justice 136, 174
- social rights, case of Portugal 235
- social solidarity 113
- socialization process 136
- societal constitutions 39–40
- socio-centric groups 83
- sociological theory 133
- Somek, Alexander 39
- source-based decision making 182
- source-based model 190  
persuasion in 197–8
- source rationality 8, 9, 122–5, 194–5
- South African constitution 28–9, 71, 137  
Article 7 (2) 236  
Article 9 (1) 137, 138  
Article 9 (3) 29, 132, 138  
Article 10 146  
Bill of Rights 71  
Article 7 237  
Article 7 (1) 71  
Article 14 43  
Article 29 85  
Preamble of 28–9
- Spain, Chapter 4 (1) 236
- spontaneous order 18, 19
- stereotypes 89–90
- Stigler, George 53
- Stone Sweet, Alec 15, 250, 251, 262
- strategies, qualitative analysis 205–6
- strengths, motivation 103–4
- stronger ‘qualitative’ rules 268–9
- subsidiarity 204, 206
- substantive rights 245
- Sunstein, Cass 215, 262
- support stress 57–8  
representation and 58
- synoptic ideal 155
- systemic instability 270–71
- tacit coordination 142–4
- Tajfel, Henri 94, 95
- Task Force 223
- Taylor, Charles 48, 51, 74, 161, 262
- temporal diversity 238
- Tetlock, Philip 170, 215
- TEU *see* Treaty on European Union (TEU)
- Teubner, Gunther 39
- TFEU *see* Treaty on the Functioning of the European Union (TFEU)
- Tierney, Stephen 232
- tightly coupled systems 179–80
- tightness 75
- time ordering 177–8
- timely conjuncture 211
- togetherness 113, 131  
authority model 134  
equality of treatment 137–9  
inequality aversion 140–41  
market model 135–7  
reciprocity model 139–40  
sharing model 135  
and weakness 138  
*see also* fairness
- top-down processes 99
- Town Hall democracy 192
- trade-offs  
in democratic politics 201  
in valuations 207
- transcendent concept  
and normative 256–7  
rights and 255–7  
variants of 256
- transformation role 152
- transvaluational role 11–12, 152, 161–6, 204
- Treaty on European Union (TEU) 19  
Article 2 72, 159  
Article 3 68, 118  
Article 5 41  
Article 5 (3) 204, 206  
Article 6 72  
Article 6 (1) 236  
Article 9 137–8  
Article 10 128  
Article 10 (1) 102

- Article 10 (4) 191
- Article 11 (4) 102
- Article 13 120–21, 183
- Article 13 (1) 121
- Article 14 61
- Article 15 (1) 153
- Article 17 61
- Article 26 (2) 111
- Article 48 65
- Article 101 (1) 111
- Article 119 (1) 111
- character norms 71, 72
- civic good in 102
- market order in 111
- material assurance in 118
- Preamble and Article 1 132
- Treaty on the Functioning of the European Union (TFEU) 19
  - Article 2 119
  - Article 3 119
  - Article 4 119, 201
  - Article 5 201
  - Article 6 201
  - Article 10 72
  - Article 352 120–21, 128, 183
  - Title V 120
- Trump vote 8, 156
- Tullock, Gordon 20–21, 25, 105
- Tully, James 74, 78, 262
- ubiquity of constitutions 17–19
- ‘Ulysses’ metaphor 21, 23
- uncertainty reduction 86
- unconventional monetary policy 177
- unified rationality 126, 128
  - challenges of 127
- unrepresentative policy making, instability and
  - consociationalism 59
  - demand stress 59–60
  - representation and support stress 58
  - structuring the policy setting 60
- US Financial Fraud Enforcement Task Force (FFETF) 222–3
- US Food and Drug Administration (USFDA) 154
- validity, and basic norm 256
- Vallone, Robert 203
- Vincent-Jones, Peter 232
- Voigt, Stefan 31
- Waldron, Jeremy 141, 189, 261
- Walker, Neil 41
- Walzer, Michael 75, 261
- weak constitutionalism 232
- weakness 103
  - of consociationalism 197
  - of democratic politics 4, 266, 269
  - in normative benchmarking *see* normative benchmarking
  - togetherness and 138
- Webber, Melvin 175, 177
- welfare and compensation 111
- Wickard case (1942) 45
- ‘wicked’ problems 175
  - disaggregation 178–9
- World Health Organization (WHO) 239