

Index

- academic response to judicial activism 211–32
 - academics, role of 211–15
 - ambiguity claims 223–5
 - annulment actions 216
 - common law and legal scholarship 212–13
 - consensus testing 218, 227–30
 - contra legem* interpretation 225–7
 - failing to follow precedent 216–17
 - future response 230–32
 - interdisciplinary and contextual scholarship 213–14
 - judicial activism, evidence of 221–30
 - judicial activism overview 215–21
 - judicial activism, vertical direct effect 224
 - judicial creativity objections 218–19
 - judicial impartiality, importance of 220–21
 - judicial legislation 217, 218
 - online publishing and editorial review 215
 - political institutions, court dialogue with 103–5
 - preliminary rulings procedure 226–7
 - result-oriented judging 218
 - scepticism and criticism of EU litigation 214–15
 - statute interpretation 216–17
 - temporal effect of rulings 219
- Ackerman, B 11–12, 196
- Adams, M 105
- Aghion, P 65
- Ahlers, E 72
- Aksoy, D 40
- Aleinikoff, A 59
- Alemanno, A 143, 157, 227
- Alexy, R 59
- Alston, P 86, 100
- Alter, K 19, 33, 105
- Anderson, D 79, 84
- Andreadakis, S 111
- annulment actions 194–8, 199, 216
- Apap, J 234
- Arnall, Anthony 103, 109, 139, 211–32
- asylum and external border law 95, 96, 240, 243–4, 246
 - Dublin II system 248–57
 - see also* refugees and stateless people
- Austria 15, 169–70, 186, 271–2
- Avbelj, M 100
- Ayres, I 115
- Azoulai, Loïc 16, 167–87, 231
- Baeten, R 125, 126
- Balzacq, T 234, 239
- Barak, A 59, 188
- Barber Protocol 17, 42–3, 277
- Barbier de la Serre, E 143, 165
- Barnard, C 14, 26, 70, 137
- Basedow, J 140
- Bateup, C 18
- Bauby, P 113
- Bazzocchi, V 235
- Beck, G 105
- Belgium 184, 190, 204–5
- Bell, J 111
- Bellamy, R 11, 23, 78, 82, 84, 86
- Bengoetxea, J 105, 186
- Besson, S 118
- Bezemek, C 239
- Bickel, A 47, 192, 196, 237
- Bingham, T 216, 220–21
- Biondi, A 110
- Black, J 166
- Bologna process 16, 127–8
- Boulanger, C 190
- Bradley, K 258
- Braun, A 212
- Broussy, E 178
- Brown, N 103–4

- Bruff, H 107
 Brunell, T 19, 35, 36, 40, 41, 42
 Brünneck, A von 49
 Brunner, G 196, 199
 Buckel, S 56
 Budras, C 3
 Bulterman, Mielle 264–78
 Burgoon, B 72
 Burley, A 33, 34, 35
 Busch, L 69
 Button, C 149
- Cabral, P 124
 Çali, B 188
 Canada 18, 20
 Caporaso, J 57
 Cappelletti, M 103
 Cardozo, B 102
 Carrera, Sergio 233–63
 Carrubba, C 36–7, 38, 39–40
 cases *see* ECJ cases
 Cass, D 116
 Cassetti, M 63
 Chalmers, D 37, 87, 110, 144, 152, 169
 Champeil-Desplats, V 182
 Chaves, M 110
- checks and balances doctrine 32–55
 allies of ECJ 48–53
 Barber Protocol adoption 17, 42–3, 277
 constitutional courts in horizontal and vertical regimes 45–8
 ‘court packing plan’ reform proposal 54–5
 dispute resolution role 32, 46, 48–9
 incomplete contracting problem 39
 institutional power, expansion opportunities 45, 49–53
 intergovernmentalism 36–9, 40, 50–53
 intergovernmentalism, principal–agent model 38–9
 judicial activism 46–7, 49
 judicial behaviour and intergovernmentalism 37–8
 judicial governance checks and balances 44–53
 legislative override and non-compliance threat 38–44
 legislative override and non-compliance threat, private pension exception 42–3
 legislative override potential 37–8
 logrolling effects 39–41
 neofunctionalism 34–6
 political neutrality, advantages of 47–8
 preliminary procedure 35–6
 prisoner’s dilemma problem 37, 39
 private litigation cases 35–6
 qualified majority rulings 40
 revision coalitions 40–41
 separation of powers, importance of 50–53
 supranationalism effects 35–6, 38–9, 42–4, 50–53
 US comparison 46–7, 52
 veto power 49–50
- Cichowski, R 43, 106, 243
 civil society *see* third-party intervention and civil society and human rights organizations, potential of
- Claes, M 19, 101
 Conant, L 38, 106
contra legem interpretation 225–7
 Conway, G 105
 Coppel, J 87, 237, 239
 Costanzo doctrine 2–3
 Cottier, T 161
 Cox, A 219
 Cox, H 113
 Craig, P 77, 99, 105, 107, 149, 151–2, 154, 164, 188, 237
 Curtin, D 277
 Cuyvers, A 186
 Czech Republic 190, 193, 194
- Damjanovic, D 126, 170
 Daniels, P 65
 D’Aspremont, J 104
 Dautricourt, C 79
 Davies, A 26
 Davies, G 87, 110, 124, 140, 144, 169, 173
 Davies, P 76, 120
 Dawes, A 104, 124
 Dawson, Mark 1–31, 101

- De Búrca, G 77, 80, 99, 104, 105, 237
 De la Mare, T 172–3
 De la Rosa, S 126
 De Mol, M 24
 De Schutter, O 138, 242
 De Visser, Maartje 18, 84, 188–210
 De Waele, H 105
 De Witte, Bruno 1–10, 12, 13, 17, 25–6,
 77, 79, 96, 173, 182, 183–4, 212,
 214, 225, 230
 Deakin, S 138
 Dehousse, R 33, 103, 106, 111
 Delnoij, D 126
 Dembour, M 238
 Devlin, P 216, 217, 218–19, 220, 227
 Di Fabio, U 54
 Dickson, B 216, 221, 223, 231
 Dixit, A 64, 67
 Donnelly, C 172
 Dopagne, F 104
 Dougan, M 22, 139–40, 170, 178–9,
 228
 Douglas-Scott, S 111
 Doukas, D 111
 Dublin II system and asylum law
 248–57
 Dworkin, R 218–19
- ECJ cases
Abdulla 249, 256–7
Akrich 99, 274, 275
Albany 177
Almeida 113–14
Altmark 114–15, 179
Aranitis 116, 117
B and D 249, 256
Barber 17, 42–3, 277
Bidar 178
Bilka 42, 43
Bolbol 249, 256, 257
Bosman 171
Brasserie du Pecheur 42
BRAX 274, 275
Bressol 15–16, 17, 169, 186
Brüstle 172, 180, 181
BUPA 139
Carpenter 108
Cassis de Dijon 111–12, 116, 182
Chatzi 88, 89–90, 205
Chernobyl 199, 227
Commission v Austria 15, 169–70,
 186, 271–2
Commission v Belgium 184
Commission v France 136, 179, 181,
 184, 185
Commission v Germany 112, 120,
 174
Commission v Greece 117
Commission v Ireland (An Post) 132,
 134
Commission v Italy 71, 134, 182, 183,
 186
Commission v Luxembourg 104, 120,
 121, 122, 170
Commission v Poland 176
Commission v Spain 136, 274, 275
Coname 131
Continental Can 111
Corbeau 113–14
Costa 11, 41, 224
Defrenne 93, 108, 123, 167
Delattre 184, 185
Deliège 177
Dereci 99
Dominguez 93
Dutch Vitamin 143
EC-Biotech 162
El Dridi 88–9, 90, 256
Elgafaji 81, 249, 255, 257
Environmental Crimes 21
*ESE Insight World Education System
 Ltd* 117
Evi v Seco 119
Fedesa 144, 146–9, 162
Förster 22, 178
Foto-Frost 226
Francovich 41–2, 225
Freskot 65
Germanwings 278
Gestoras Pro-Amnistia 197, 226–7
Glöckner 113–14
Gowan 143, 157
Gözütok and Brüggge 264
Grogan 96, 177–8, 277
Grunkin Paul 183
Grzelczyk 38
Hartlauer 137
Herren der Verträge 199
Hormones 161, 162
Humbel 178

- Ireland v Parliament and Council* 202
Italian Trailers 71
Jia 108, 274–5
Kadi II 80–81, 104, 108, 206, 234, 269
Kalanke 76, 93, 228, 229–30
Kattner Stahlbau 65
Keck & Mithouard 178
Kersbergen-Lap 17
Khalil 129–30
Köhl 124, 125
Küçükdeveci 3, 24, 92, 137, 228
Laval 14, 16–17, 23, 26, 27–8, 56, 75, 121, 122, 137, 230, 234
Les Verts 196–7, 227, 237
Liga Portuguesa de Futebol 177, 183
Luxemburg 56
McCarthy 22, 98–100
Mangold 3, 17, 21, 23, 24, 137, 217, 227–8, 231, 250
Marschall 228–9
Metock 21, 99, 274, 275, 276–7
Michanichi 182
Michaniki 171–2
Mickelsson 71
Mobistar 178
N.S. 95, 96, 249, 253, 256
Omega 180, 182
Palhota 181
Parking Brixen 131–2
Pfizer 144–5, 152–61, 162, 163, 164
Plaumann 199
PNR 108
Poucet and Pistre 178
Promusicae 23, 235
Pupino 84, 197, 226
Racke 144
Rüffert 56, 75, 121, 137
Rush Portuguesa 119
Sayn-Wittgenstein 181
Schecke 87–8, 90
Schmidberger 181
Schumacher 181
SECO v EVI 119, 135
Sjöberg 187
Smits & Peerbooms 124, 125
Snares 17
Soysal 267
Star Fruit 245
Steenkolennijnen 176
Sturgeon 110, 217, 278
Technische Universität München 144, 149–52, 154, 157
Telaustria 131
Test-Achats 17, 91–2, 93, 110, 277–8
Tobacco Advertising 20–21, 129–30
UGT-Rioja 178
Unectef 116, 127
Van Binsbergen 116
Van Gend en Loos 11, 41, 224, 225
Vanbraekel 124, 125
Vander Elst 119, 135
Viking 14, 56, 59, 66–7, 71–4, 75, 121, 137, 230, 234
Vlassopoulou 116, 127
Wouters 177
Zambrano 3, 21–2, 23–4, 97–8, 99–100, 108, 231, 265, 275–6
Zhu & Chen 108
 Eckert, G 113
 education and vocational training 126–8, 169–70, 186
 Edward, D 226
 Edwards, H 214
 Elkins, Z 191
 Ellis, E 228
 Elster, J 190
 employment law *see* labor law
 Enchelmaier, S 71
 Epinay, A 118
 Estonia 202
 EU Charter of Fundamental Rights 77–8, 87–8, 89, 92, 93
 data protection and language 23
 protocol interpretation problems 84
 third-party intervention 234, 240–41, 246, 254–5, 262
 EU Directives
 Audio-visual Media Services 123
 Biotechnological Inventions 172
 Citizenship 22, 98–100, 117–18, 123
 Employment Framework 24
 Family Reunification 94–5
 Framework Equality 92
 Freedom of Movement 22
 Gender 91–2, 93, 277–8
 General Systems 117, 127–8, 130–32
 Hormones 146–9, 162
 Parental Leave 89–90
 Patients' Rights 126, 135–6

- Posted Workers 16–17, 119–22, 123, 135, 137
 Public Procurement 122–3, 131
 Qualification 130–31, 248, 255, 257
 Return 88–9, 90
 Services 56, 125, 273
 European Convention on Human Rights, EU accession to 76, 77, 78, 80, 81–2, 240–41
 European Court of Human Rights 235–6, 237, 238, 239–40
 absolute rights 239–40
 Amnesty International *amicus* brief 243
 asylum and external border law 240, 243–4, 251–7, 260
 Bosphorus 83, 252, 253
 Chahal 249
 and Dublin II system 251–2
 failure to comply with decisions 271
 Gebremedhin 243, 249
 Hirsi 249, 260–62, 271
 judicial activism claims 238, 239
 K.R.S. 251–2
 Lautsi 271
 Loizidou 237
 M.S.S. 95, 249, 251, 252, 253, 254
 and ‘push back’ control violation 260
 Ramzy 249
 Saadi 243–4, 249
 Sharifi 246, 249
 Soering 243, 249
 third-party intervention 242–4
 Europe’s law-politics imbalance 11–31
 age discrimination 23
 Bologna process 16
 collective bargaining and right to strike 27–8
 constitutional dialogue 18–24
 constitutional dialogue, inadequate reasoning problem 19–22
 court reasoning, unpredictability of 13
 data protection and language of Charter rights 23
 fundamental rights, defining and implementing problems 24
 institutional structure drawbacks 12–13
 integration ‘through law’ 27–8
 internal market through individual litigation, success of 27
 interpretive problems 16–17
 judicial activism 11–13, 20, 27, 29–30
 legislative competence and jurisdiction, imbalance between 13–17
 legitimacy improvement measures 15, 18–19, 23, 27, 28–9
 national constitutional frameworks 12
 national courts and constitutional dialogue 19
 national policies as prejudicial to EU rules 14–16, 17, 28–9
 policy restabilization problems 14–15
 political response to judicial decisions 12
 politically autonomous concepts 23–4
 posted workers and open labour markets 16–17
 proportionality test on market barriers 26–7
 residence rights of third-country nationals 21–2, 23–4
 social and economic goals, conflict between 24–9
 ‘substance of rights’ doctrine 22
 supremacy principle 14
 terms of engagement, concealment of 20
 treaty amendment problems 17
 US comparison 29–31
 Everson, M 142, 160

 Faigman, D 161
 Favoreu, L 192
 Feldman, R 161
 Ferejohn, J 34
 Ferrera, M 60
 Ferreres Comella, V 192
 Finland *see* ECJ cases, *Viking*
 Fishkin, J 12
 Foster, C 143, 161
 France 189, 197–8, 200, 202–3, 208
 Commission v France 136, 179, 181, 184, 185

- feminine quotas* case 203
- Security and Liberty* 204
- Fried, C 59
- Friedman, B 18
- Fujita, M 64
- fundamental rights protection 76–101
 - Citizenship Directive 22, 98–100, 117–18, 123
 - constitutional and corresponding legislative rights, benefits and conflicts in use of 92–3
 - defining and implementing problems 24
 - EU Charter *see* EU Charter of Fundamental Rights
 - EU legislative competences review 93–6
 - European Convention on Human Rights (ECHR) accession 76, 77, 78, 80, 81–2, 240–41
 - Family Reunification Directive 94–5
 - Framework Equality Directive 92
 - Gender Directive 91–2, 93, 277–8
 - guardianship of autonomy of EU legal order 80–82
 - judicial activism 76–7, 78–9, 81–2
 - judicial review 90–93
 - judicial review, interpretative techniques 88–9
 - judicial review of ordinary EU acts, enhanced power 87–90
 - legal order, adjudication over evolving and plural 82–5
 - monitoring, and third-party intervention 235–6, 240–41
 - national legal systems, policing reach of EU law 96–100
 - Parental Leave Directive 89–90
 - personal data processing 87–8, 90
 - policy visibility, increasing 85–6
 - political asylum *see* asylum and external border law
 - political institutions, court dialogue with 108, 123
 - politicization of fundamental rights questions 78, 86, 92, 95–6
 - residency and work-permit rights 97–8, 99–100
 - Return Directive 88–9, 90
 - standard setting 84–5
 - universalism and citizenship, conflict between 96–100
 - unwritten general principles of EU law 82–4, 86
 - violations by EU agencies 245
 - written constitutional sources of rights 79–85, 86
- Funk, L 119
- Galbraith, JK 68
- Garben, S 16, 128
- Garlicki, L 198
- Garrett, G 37
- Gattini, A 104
- Geradin, D 115
- Gerken, L 3, 12, 20, 54, 217
- Germany 48, 190–91, 193, 194, 198, 200, 205, 206, 239
 - Commission v Germany* 112, 120, 174
 - Honeywell* 83, 228
 - Parliamentary Dissolution* 208–9
 - Solange* 84
 - Technische Universität München* and supremacy quarrel threat 144, 149–52, 154, 157
- Gertner, R 115
- Gil-Bazo, M 250, 255
- Ginsburg, T 191, 197
- Glenn, H 241
- Gormley, L 71
- Granger, M 265
- Greece 117
- Green, A 103
- Greer, S 111, 240
- Greven, T 71
- Grimm, D 32, 190–91
- Groppi, T 206
- Guarnieri, C 32
- Guild, E 233–4, 239, 244, 258
- Gutiérrez-Fons, J 171
- Hailbronner, K 3
- Hale, R 70
- Hall, P 61
- Hamilton, A 47
- Hamson, C 219
- Hanf, D 99
- Harpaz, G 104
- Hart, H 219

- Hartley, T 103, 222
 Hatzopoulos, Vassilis 102–41
 Hayes, M 62
 healthcare 124–5, 128, 133, 180–81
 Hechter, M 39
 Helpman, E 63
 Heremans, T 57
 Hertig, G 115
 Hervey, T 125, 126
 Herzog, R 3, 12, 20, 54, 217
 Hilson, C 148
 Hinarejos, A 197
 Hirschl, R 32
 Hix, S 48, 50, 53
 Hogg, P 18–19
 Hohfeld, W 72
 Hojnik, J 174
 Holder, J 164
 Hoogenboom, A 16
 Höpner, M 3, 61
 Höreth, Marcus 32–55
 Hudon, F 274
 human rights organizations *see* third-party intervention and civil society and human rights organizations, potential of
 Hungary 190, 194, 195–6, 198, 199
 Hunt, J 238
 Huntington, S 49

 Iglesias, G 53, 183
 Ikenberry, J 70
 intergovernmentalism 36–9, 40, 50–53
 see also checks and balances doctrine
 intervention decisions *see* national government strategies to interact with ECJ
 Ireland 132, 134, 202, 277
 Italy 71, 134, 182, 183, 186, 206

 Jacobs, F 79, 82, 146, 221, 225
 Jacqué, J 81, 82, 104, 107
 Janssen, A 157
 Jasanoff, S 69, 160, 161, 164
 Joerges, C 25, 26, 52, 56, 58, 142, 146, 147, 149, 151
 Johnson, M 68
 judicial activism definition 188–9
 judicial governance checks and balances 44–53
 judicial impartiality, importance of 220–21
 judicial review
 fundamental rights protection 90–93
 grounds, national experience of 201–2, 206
 interpretative techniques 88–9
 ordinary EU acts, enhanced power 87–90

 Kagan, R 49
 Kallioras, D 64–5
 Karkkainen, B 115
 Katrougalos, G 118
 Kaupa, Clemens 56–75
 Keeling, D 11, 221
 Kelemen, D 33, 49
 Keller, H 237
 Kennedy, T 103–4
 Kenner, J 115
 Keynes, JM 60, 61, 62, 62–4, 67, 68, 70
 Kielmansegg, P 48
 Kirk, L 100
 Kmiec, K 215, 216–18, 219, 223, 224
 Komárek, J 100
 Kommers, D 200, 203
 Kötz, H 212
 Krajewski, M 113
 Krugman, P 64
 Kumm, M 59
 Kunoy, B 104
 Kuper, R 104, 106

 labor law
 forthcoming adjustments 137–9
 neoliberal bias *see* neoliberal bias in labor cases, allegations of
 posted workers 16–17, 118–22, 123, 133, 135, 137
 residency and work-permit rights 21–2, 23–4, 97–8, 99–100
 Ladeur, K 155–6
 Lakoff, G 68
 Lamping, W 15
 Lancaster, K 64
 Lapavitsas, C 65
 law/politics imbalance *see* Europe's law-politics imbalance
 Lawson, R 178

- Leczykiewicz, D 105
 Lee, M 162, 164
 legitimacy
 and court dialogue with political institutions 109–10, 111
 improvement measures 15, 18–19, 23, 27, 28–9
 judicial, and third-party intervention 241–2
 political legitimacy threat, national experience 194–5
 Lenaerts, K 57, 79, 171, 250
 Lesch, H 119
 Limbach, J 208
 Livet, P 185
 Lock, T 81, 100, 252
locus standi rules, national experience of judicial activism 197–9
 Louis, L 113
 Luhmann, N 69
 Luxembourg 104, 120, 121, 122, 170
- McCaherty, J 115
 McHale, J 125
 McNelis, N 143
 Maduro, M 27, 28–9, 59, 66–7, 71, 73, 83, 143, 182, 231, 239, 247, 255
 Majone, G 45
 Mak, E 105
 Malecki, M 57
 Mancini, F 11
 Mankiw, G 62
 Marchant, G 163
 Martin, R 64
 Mathews, J 59
 Mathisen, G 186
 Mattli, W 33, 34, 35, 44
 Mavroides, P 161
 Mayer, F 54, 228
 Meardi, G 72
 Meyer, F 120
 Micklitz, H 12
 Milgrom, P 32
 Mitsilegas, V 244
 Möllers, C 199
 Monti, G 70, 87, 144
 moral issues *see* sensitive national interests, duty to respect
 Morano-Foadi, S 111
 Moravcsik, A 36, 57
- Moses, J 13
 Mosman, K 163
 Muir, Elise 1–10, 21, 24, 76–101, 227
 Münch, R 105
 Murphy, C 79, 84
- national experience of judicial activism 188–210
 a priori review 195–6
 activism claims 110–11
 annulment actions and abstract review 194–8, 199
 comparative perspective 189–92
 constitution as reference standard 203, 204
 constitutional complaints criteria 198
 constitutional courts, jurisdiction and access 192–9
 constructions, saving and delaying 204–6
 decision-making techniques 199–206
 deference rhetoric, importance of 200–201
 ECJ, difference between 192
 ex officio grounds for review 202
 freedom of expression 204–5
 judicial activism definition 188–9
 judicial review grounds 201–2, 206
 judicialization of legislative debate 208
 jurisdiction of constitutional courts 193–7
 legislative omission procedure 194
 locus standi rules 197–9
 ‘manifest error’ test 200
 monopolistic view of constitutional review, departure from 206–9
 non-judicial involvement 207, 208
 political legitimacy threat 194–5
 preliminary references, restrictive approach to 199
 quality of judicial reasoning 202–4, 207
 scrutiny test 201
 national government strategies to interact with ECJ 264–78
 Barber Protocol 277
 constitutional frameworks and dialogue 12, 19

- coordination between Member States 268–70
- Council Working Party on the Court of Justice 269
- decision compliance and acceptance 272–3
- ECJ activist decisions 277–8
- failure to comply with decisions 270–72
- informal network of national agents, creation of 269–70
- intervention decisions, rejection by ECJ 275–6
- Irish Abortion Protocol 277
- legal systems, policing reach of EU law 96–100
- ne bis in idem* principles and Schengen Agreement 264
- policies as prejudicial to EU rules 14–16, 17, 28–9
- preliminary ruling references 269, 273
- Rules of Procedure amendments 268–9
- social security systems and social protection 136
- unfavourable outcomes, dealing with 272–3
- unfavourable outcomes, secondary legislation 276–8
- national government strategies to interact with ECJ, coordination within a Member State (Netherlands) 265–8
 - compliance role with ECJ decisions 266–7
 - coordination process 266
 - intervention decisions 266, 273–4
 - intervention requests 267
 - and principle of subsidiarity 268
- national interests, sensitive *see* sensitive national interests, duty to respect
- Neergard, U 113
- Nehl, H 150, 151
- Neill, P 222, 223, 224, 226
- neoliberal bias in labor cases,
 - allegations of 56–75
 - allocative efficiency 62
 - company mobility 70
 - ‘conventional wisdom’ trap 68
 - economic assumptions 66–7
 - economic bias, causes of 58
 - economic dissent in law, dealing with 67–9
 - economic integration dynamics 64–5, 67
 - freedom to relocate 71–3, 74
 - growth theory 62–3, 67
 - heterodox and neoclassical analysis of *Viking*, contrasting 71–4
 - income levels and growth 62–3, 67
 - institutionalist economics 63, 64
 - internal market provisions, heterodox reading of 69–71
 - Keynesian influence 60, 61, 62–4, 67, 68, 70
 - market freedoms and economic dissent 61–5
 - market power distribution 70
 - market power distribution and labor union actions 72–4
 - neoclassical economic theory and market/social dichotomy 60, 61, 62, 63, 64, 67, 68, 70–71
 - new trade theory (NTT) and returns to scale 64–5, 67
 - proportionality test and economic regulatory conflicts 59–61
 - right to strike 66–7, 71–4
- Netherlands, coordination within *see* national government strategies to interact with ECJ, coordination within a Member State (Netherlands)
- Neustadt, R 52
- Neyer, J 52
- Nic Shuibhne, N 3, 22, 25, 98
- Nicol, D 232
- Nölke, A 61
- Norman, V 64, 67
- Novitz, T 16, 17
- Obermaier, A 110–11
- Oberndorfer, L 56
- Ohlin, B 64
- O’Neill, A 87, 237, 239
- Palm, W 126
- Paris, M 84
- Payandeh, M 228

- Pederzoli, P 32
 Peers, S 234
 Perju, V 20, 204
 Pescatore, P 176, 179, 218
 Petkova, Bilyana 233–63
 Petrakos, G 64–5
 Pierson, P 34, 49
 Planzer, S 186
 Pochet, P 138
 Poland 176, 194, 198, 200, 203, 205
 National Broadcasting Council
 201–2
 political asylum *see* asylum and
 external border law
 political institutions, court dialogue
 with 102–41
 academic writing on activism 103–5
 ‘Almunia’ package 115
 Bologna process and education
 127–8
 citizenship law 117–18, 123
 concession contracts legislation 132
 contra legem intervention, and legal
 basis in Treaty 124–8
 controversial judgements, effects of
 110
 corruption and misuse of power,
 lack of claims of 109
 court expansion on will of political
 institutions 129–33
 court members, selection of 109
 court moving against will of political
 institutions 133
 court’s alignment with other
 institutions 105–6
 custodian of other institutions,
 court’s role as 108
 de minimis communication 132
 ‘default clause’ rule 115–17
 education and vocational training
 126–8, 169–70, 186
 efficiency and legitimacy of court
 109–10, 111
 employment law, forthcoming
 adjustments 137–9
 European Credit and Accumulation
 System (ECTS) 128
 expressed will of political
 institutions, court adjusting to
 133–9
 facilitator of actions by political
 institutions 112–28
 fundamental rights protection 108,
 123
 General Systems Directive 117,
 127–8, 130–32
 healthcare 124–5, 128, 133, 180–81
 institutional isolation of court 106
 interaction evidence 111–12
 ‘invention’ of legal basis to uphold
 legal measure 129–30
 judicial activism and responsiveness,
 arguments against 107–12
 judicial independence and
 impartiality 109
 Monti-Kroes package 114–15
 national jurisdictions, activism
 claims 110–11
 national social security systems and
 social protection 136
 Patients’ Rights Directive 126, 135–6
 political institutions, court acting
 within will of 129–32
 posting of workers and services’ case
 law 118–22, 123, 133, 135, 137
 preater legem intervention, and legal
 basis in Treaty 112–18
 private litigation invitations 35–6,
 113–14
 professional qualifications, general
 system for recognition of
 116–17, 127–8, 130–31
 Public Procurement Directives
 122–3, 131
 public procurement (transparency)
 principles 131, 133–5
 quality test for secondary legislation
 122–3
 refugees and stateless people, social
 rights for 129–30
 responsiveness and judicial activism
 103–7
 secondary legislation, enhancing
 effectiveness of 130–32
 separation of powers principle 107–8
 Social Open Method of
 Coordination (OMC) 138–9
 Stability and Growth Pact, failure to
 act 132
 state aid rules 114–15

- substitutio legis* intervention, legal basis in Treaty 118–23
- political neutrality, advantages of 47–8
- politicization
- EU law and sensitive national interests 183–6
 - fundamental rights questions 78, 86, 92, 95–6
- politics/law imbalance *see* Europe's law-politics imbalance
- Pollack, J 258
- Pollack, M 33
- Posner, R 62, 68
- Potvin-Solis, L 113
- Prechal, S 107, 171
- preliminary rulings
- academic response to judicial activism 226–7
 - limited access, and third-party intervention 245–6
 - national government strategies 269, 273
 - restrictive approach to, national experience 199
- Prévost, D 162
- private litigation cases 35–6, 113–14
- proportionality test 26–7, 59–61, 170, 181, 186
- Raess, D 72
- Raffaelli, R 89
- Rasmussen, H 103, 213, 222–3, 224, 238
- Razzaque, J 243
- refugees and stateless people 129–30
- see also* asylum and external border law
- Reich, N 26
- residency and work-permit rights 21–2, 23–4, 97–8, 99–100
- see also* labor law
- Rijpma, J 258
- Ripley, S 110
- Ritleng, D 185
- Roach, K 229
- Roberts, J 32
- Robertson, D 198, 203
- Rödl, F 26, 28, 56, 58
- Rodriguez, S 113
- Romania 195
- Rossi, L 85
- Ryan, B 244
- Sabel, C 14
- Sadurski, W 194, 207
- Sajo, A 207
- Samuelson, P 62, 64
- Sandholtz, W 34
- Sarmiento, D 172, 178, 179
- Scallen, E 164, 165, 166
- Schäfer, A 61
- Scharpf, F 3, 12, 13, 15, 39, 57, 58, 106
- Schengen Agreement 258, 264
- Schepel, H 222
- Scheppele, K 190
- Schill, S 172, 175
- Schutze, R 116
- Schwarze, J 193
- scientific uncertainty and complexity, dealing with 142–66
- antibiotics in animal feedstuffs 152–7
 - beef hormones controversies 144, 146–9, 161–2
 - court as informational catalyst 149–61, 162, 163, 164
 - court as super-expert 157–60, 162, 164–5
 - courts, science and experts, re-thinking roles of 163–5
 - deferential approach 143–4, 145–9, 163
 - expert groups, choice of 151, 155, 165
 - food safety regulation 142–3
 - precautionary principle and risk assessment 155–8, 159–60
 - proceduralist standard of review 151–2
 - public concern 148–9, 161–2
 - re-conceptualizing roles of courts and science 161–5
 - risk assessment obligations by institutions 154–6, 158–9, 162–3
 - scientific information review 144–5, 146–9, 151, 154–7, 165
 - uncertainty paradox 159–60
- Scott, J 143, 144, 146, 147, 148, 149, 150, 152, 154, 155, 157, 162, 163, 165–6
- Screpanti, E 68

- Sedley, S 220, 223
- sensitive national interests, duty to respect 167–87
- argument in favour of 171–4
 - communitarian value 173
 - court intervention, limiting scope of 178
 - definition of sensitive national interest 171–2
 - disconnection of rules in inherent breach of EU law 176–7
 - distinct categorization question 173
 - duty to respect argument 174–5
 - EU law as desensitization process 168–71
 - exclusion from scope of EU law 177–9
 - gambling 176–7, 186, 187
 - health protection 180–81
 - higher education access 169–70, 186
 - individual public law rights' 169, 170
 - interpretive decentralization 181–3
 - legal integration process 169
 - legitimate interests question 173
 - moral issues 172, 174, 177–8, 181–3, 187
 - national identity argument 174, 175
 - politicization of EU law 183–6
 - proceduralization 172, 185–6
 - proportionality test 170, 181, 186
 - re-partialization of legal integration 176–9
 - reevaluation of EU law 180–83
 - social or economic consequences of assessing state legislation 196
 - statism 183–5
 - total conflict argument 177
 - totalization effect on legal integration 170–71
 - value-claims and decentralization 180–81, 183
- Shapiro, M 46, 99, 101, 104, 237
- Sharpston, E 4, 231
- Shaw, J 238
- Sibony, A 143, 165
- Simon, D 111
- Singer, J 72
- Skidelsky, R 63
- Skocpol, T 34
- Slaughter, A 33
- Slominski, P 258
- Slootboom, M 148, 162
- Slovenia 202
- Solanke, I 105, 106
- Solow, R 62
- Somek, A 57, 174
- Souter, D 29–30, 31
- Spain 136, 203, 274, 275
- Spaventa, E 3, 70–71
- Stein, E 33, 103, 213
- Stiglitz, J 61
- Stokes, E 144, 145, 157
- Stone Sweet, A 19, 32, 33, 34–5, 36, 40, 41, 42, 43, 44, 59, 104, 208, 237
- Storey, A 56
- Strauss, P 107
- Sturm, S 144, 150, 152, 154, 155, 157, 163, 165–6
- Sudre, F 111
- Sumption, J 220, 223
- Sunley, P 64
- supranationalism effects 35–6, 38–9, 42–4, 50–53
- see also* checks and balances doctrine
- Sweden 27–8
- Syrpis, P 16, 17
- Tai, S 143
- Tallberg, J 37
- Tarrow, S 57
- Tarullo, D 69
- Tate, N 32
- Taylor, P 36
- TEU (Treaty on European Union)
- Articles 2, 3, 4, 6 and 7 (fundamental rights protection) 25–6, 60, 77, 83, 97, 175
 - Article 35 (preliminary ruling procedure) 226–7
 - Article 48 (treaty amendment procedures) 17
- Teubner, G 69
- TFEU (Treaty on the Functioning of the European Union)
- Article 3–6 (competence catalogue) 14
 - Article 16 (personal data) 93
 - Article 19 (age and sex discrimination) 93, 228

- Article 20 (citizen status) 21–2
 Articles 49 and 56 (non-discrimination and transparency) 131–2
 Articles 56 and 57 (posting of workers) 118–19
 Article 106 (services of general economic interest) 113, 114–15
 Article 114 (patients' rights) 126
 Article 157 (pensionable age and private pensions) 42–3
 Article 168 (healthcare) 124
 Article 218 (ECHR accession) 82
 Article 255 (approval of court members) 108
 Article 260 (infringement procedures) 270
 Article 263 (*locus standi* rules) 199
 Article 267 (preliminary ruling procedure) 226
 and Open Method of Coordination 138–9
 Thelen, K 61
 third-party intervention and civil society and human rights organizations, potential of 233–63
 absolute rights 239–40
 access restrictions 244–5
 accountability gaps 244
amici briefs 243–4
 Area of Freedom, Security and Justice (AFSJ) 233, 234, 236, 256, 262
 Area of Freedom, Security and Justice (AFSJ), international organizations 247–8, 249
 asylum and external border law *see* asylum and external border law
 disclosure restrictions 247
 Dublin II system and asylum law 248–57
 EU Charter of Fundamental Rights 234, 240–41, 246, 254–5, 262
 European Court of Human Rights *see* European Court of Human Rights
 European Court of Justice 244–7
 Frontex control, concerns over 257–60
 fundamental rights monitoring 235–6, 240–41
 fundamental rights violations by EU agencies 245
 future developments and external border control law 257–62
 judicial activism, understanding of 237–9
 judicial legitimacy 241–2
 judicial restraint claims 236–41
non-refoulement principle 248–9, 252, 261
 preliminary rulings, limited access 245–6
 'push backs' control 259–60
 Qualification Directive 130–31, 248, 255, 257
 RABITs (Rapid Border Intervention Teams) 259
 Schengen Borders Code 258
 third-party intervention role 241–8
 Thornton, A 18–19
 Thym, D 3, 228
 Tomkins, A 239
 Toner, H 90
 Toth, A 222
 Tridimas, T 23, 83, 84, 85, 96, 210, 222, 238
 Trubek, L 126
 Tryfonidou, A 71, 118
 Tushnet, M 207, 216, 223, 224–5, 241
 Twining, W 212
 Uitz, R 196
 US
 checks and balances doctrine 46–7, 52
 constitutional dialogue 18
General Elec. Co. v Joiner 166
 human rights and third-party intervention 241
 interdisciplinary scholarship 213
 judicial activism 29–31, 46–7, 194, 219
 judicial dispute resolution 45–6
Marbury v Madison 194
 scientific complexity, dealing with 166
 separation of powers 52
 Utzinger, A 118

- Vajic, N 242
 Valentine, D 103
 Vallinder, T 32
 Van Asselt, M 69, 152, 157, 158, 159,
 160, 165
 Van den Bogaert, S 186
 Van Den Eynde, L 263
 Van der Mei, A 99, 124
 Vercheueren, H 26
 Verhoeven, M 2–3
 Vesterdorf, B 192
 Vliegenthart, A 61
 Vogenauer, S 212
 Von Beymne, K 208
 Von Bogdandy, A 172, 175
 Vos, Ellen 69, 142–66

 Waddington, L 21
 Waldron, J 18, 202, 237
 Walker, N 29
 Wallace, H 45
 Wallace, W 47

 Wasserfallen, F 34, 37–8, 105
 Weber, M 44
 Weber, R 195
 Weiler, J 19, 27, 35, 50, 83, 86, 100,
 103, 104, 105, 106, 109, 213, 222,
 231
 Weingast, B 34
 Wernicke, S 168–9
 Wesseling, R 222
 Wessels, W 50
 Wiethoff, W 164, 165, 166
 Williams, A 111, 232
 Wincott, D 35
 Wind, M 215–16
 Winickoff, D 69
 Wissels, Corinna 264–78
 Woolfson, C 27–8

 Zamagni, S 68
 Zeitlin, J 14, 138
 Zifcak, S 190
 Zweigert, K 212

