

Index

- Al-Kateb v. Godwin* (Aust, 2004)
198–201, 216
- Australia
- constitutional law, generally
 - administration of common justice
 - principle 172, 178
 - checks and balances 171–4, 177–8
 - crisis, executive powers in time of 196–8
 - federal judicial powers 157–62, 165–70
 - fundamental rights protection 149, 153–6, 182–3
 - historical development 149–51
 - international convention
 - obligations, and 207–9, 211–12
 - judicial independence and impartiality 156–8, 169, 172
 - judicial involvement 149–51, 169–70, 184–5
 - jury trials 154–5, 182
 - legal realism vs. positivism 188
 - legalism, and 184–5, 209, 216–17
 - legislative interference, and 155–6
 - Momcilovic* case influences on 149–50, 166–9, 173–7, 179
 - parliamentary sovereignty, and 173–4, 178–9, 187, 192–4
 - political vs. legal constitutionalism 187–90, 192, 215–17
 - principles 149–50
 - religion, regulation of 154
 - rule of law, and 156, 186, 194–8, 201–3
 - separation of powers 149–50, 152–3, 155, 157–62, 164–79, 188–9
 - trends 92
 - constitutional review hybrid model
 - benefits 149, 162–3
 - limitations 164–6, 170
 - principles 162–3
 - US/UK influences on 150–54, 165
 - fundamental rights protection
 - acts of incorporation 1–2, 6, 11
 - administrative justice, and 216
 - constitutional influences on 149, 153–6, 182–3
 - constitutional law vs. rights law
 - conflicts 181, 192–4, 209
 - crisis, exclusions in time of 196–8
 - declarations of incompatibility 162–3, 165–70, 173–4, 178–9
 - detention of non-citizens 198–201
 - excision of refugees 204
 - exclusions and limitations 182–4, 192–4, 196–8, 201–2
 - international convention
 - obligations, and 207–9, 211–12
 - judicial law-making 166–79, 184–7, 194–8, 210–15
 - jurisdictional errors vs. facts 185, 203, 206–16
 - legalism vs. constitutionalism 209, 216–17
 - Malaysian Solution 210–15
 - Migration Act 192–4, 204, 207–13
 - natural justice, and 208
 - no consideration clauses 204
 - non-compliance penalties 163
 - Pacific Solution 203, 205–7
 - presumption of innocence 166
 - principle of legality 185, 209
 - principles, generally 180–81
 - refugee control mechanisms 204–15

- refugee rights cases 190–94, 204–17
- right to liberty 198–201, 215–16
- rule of law, and 194–8, 201–3, 206–9, 211–15
- separation of powers, and 169–79
- statutory interpretation 163–5, 167–9, 172–7
- statutory principles 162–3, 182–3
- strict liberalism, and 201–3
- Australian Capital Television v. Commonwealth* (Aust, 1992) 153
- Australian Communist Party v. Commonwealth* (Aust, 1951) 195–6, 198
- Baehr v. Lewin* (US, 1993) 56
- BBC v. Johns* (UK, 1965) 195
- Bederev v. Ireland* (Ireland, 2015) 136
- Belgium
 - Constitutional Court
 - abstract case hearings 353–4
 - appeals 352
 - case trends 357
 - CJEU, references to 361–2, 365
 - coincidence of fundamental rights doctrine 367–8
 - composition 351–533
 - creative interpretation approach 359–62
 - declarations of unconstitutionality 353–5
 - equality and non-discrimination interpretation 359–62
 - establishment 347
 - EU law influences on 12, 361–2, 364–5, 369–70
 - European Court of Human Rights, and 346, 371–3
 - ex post concrete review 354–5
 - international law conflicts, interpretation 15–16, 362–7
 - judicial appointment and qualifications 351–2
 - legislative annulments 353–4
 - limitations 356–8
 - ordinary courts, relationship with 356, 367–8
 - powers 2, 353, 356–7
 - proceedings 352–533
 - purpose 7, 347, 350–51, 413
 - references to 367–8
 - time limits 353
- constitutional law
 - 1831 Constitution 357
 - 2009 priority rule 368–71
 - 2014 reforms 357
 - characteristics 348
 - common rights under 357–8
 - contemporary influences on 424–5
 - federal structure, and 348–50
 - historical development 347, 423–5
 - interpretation, contextual basis 416–17
- constitutional review
 - combination method 359–62
 - EU law obligations, and 369–70
 - historical development 347–8
 - internet access 353–4
 - reconciliation method 362–71
 - supranational and international law obligations 358–9
 - treaties, influences on 346
- constitutional review model
 - characteristics 351
 - development 346
 - scope of jurisdiction 356–7
- fundamental rights
 - coincidence of 366–8
 - Constitutional Court jurisdiction 357–8
 - constitutional law, established under 357–8
 - constitutional review challenges 356–7
 - domestic protection limitations 360–61
 - equality and non-discrimination 359–62
 - EU Charter of 364–5
 - European Convention of Human Rights, and 360–61, 364, 367–8, 371–3, 416–17
 - international law conflicts, primacy in 363–8
 - labour law protections 360–61

- legitimate aims, and 363–4
- marriage restrictions 355–6
- medical students nationality case 365–6
- personal freedoms 354, 364
- primacy of law interpretations 365–7
- priority rule 366–71
- proportionality, and 361
- right to vote 361
- rights of the child 363–4
- national structure
 - legislative competence 349
 - political and governmental 349–50
 - social conflicts 349–50
- Bellinger v. Bellinger* (UK, 2003) 80–81, 135
- Bosphorus v. Ireland* (ECtHR, 2005) 334
- Bowers v. Hardwick* (US, 1986) 55
- Brown v. Board of Education* (US, 1954) 50–51
- Buckley v. AG* (Ireland, 1950) 100–101
- Burden v. UK* (ECtHR, 2008) 338
- Bush v. Gore* (US, 2000) 52–4, 61
- Calder v. Bull* (US, 1798) 49
- Canada
 - constitutional review, checks and balances 34
 - fundamental rights protection 48
- Carmody v. Minister for Justice* (Ireland, 2009) 142, 144
- CC v. Ireland* (Ireland, 2006) 136
- Chartry case* (CJEU, 2011) 369–70
- China
 - constitutional review, attitudes to 7
- Chu Kheng Lim v. Minister for Immigration* (Aust, 1992) 160–61
- Citizens United v. Federal Election Commission* (US, 2010) 52–5, 61
- civil law regimes *see also* Belgium; Finland; France; Hungary; Italy; Spain
 - constitutional law models 5–8
 - institutions, integration of legal norms by 417–18
 - rights protection processes 419–20
- collaborative constitutionalism *see also* Ireland
 - benefits 115–18
 - limitations 118–19
- common law regimes *see also* Australia; Ireland; UK; US
 - constitutional law models 5–8
 - institutions, integration of legal norms by 417–18
 - rights protection processes 419–20
- Commonwealth constitutional review model 11, 63–4 *see also* Finland; Ireland
 - accountability, and 117
 - benefits 108, 117–18
 - features 115–19
 - override clauses 111–14
 - rulings, finality of 108–9
- comparative law, generally
 - constitutional cultures 429
 - definition 409–10
 - development of 410
- constitutions
 - contemporary influences on 424–5
 - external influences on 425–8
 - historical influences on 421–4
 - fundamental rights protection hierarchies 415
 - identification 415–16, 420
 - interpretation 416–17
 - pluralism 419–20
 - process variations 419–20, 429
 - role and benefits 16, 18, 428
- constitutional courts, generally
 - fundamental rights, and 9–10
 - influences on 10–12
 - justifications for 3–4
 - politicization 10
 - purpose and functions 3–4, 9–10
 - trends 9–10
- constitutional review, generally
 - adaptability 12–16
 - benefits 8–9
 - challenges for 8–9
 - common trends 13–14
 - contradictory influences on 409
 - criticisms of 4–5
 - decentralization, and 14

- definition 2–3
- endurance of 12–16
- evolutionary nature of 421–8
- functions 411–13
- global trends 2–3
- negative legislator *vs.* natural rights 41–4, 47–8
- principles 3, 12–13
- purpose 9
- supremacy, debates over 14–16
- constitutional review models, generally
 - adoption
 - adaptation, and 6
 - influences on 5–8
 - collaborative constitutionalism 115–19
 - limitations 118–19
 - Commonwealth model 11, 63–4
 - accountability, and 117
 - benefits 108, 117–18
 - features 115–19
 - Ireland, in 127–41
 - override clauses 111–14
 - rulings, finality of 108–9
 - design
 - influences on 6–7
 - European model
 - adoption trends 5
 - historical development 5
 - influences on
 - international human rights 11–12
 - politics 10–11
 - systemic tensions 10–11
 - purpose 7
 - US model
 - adoption trends 5
 - historical development 5
 - politicization 11
 - weak form 11
- countermajoritarian difficulty 4–5, 33–5, 42–3
- declarations of incompatibility
 - Australia, in 162–3, 165–70, 173–4, 178–9
 - Finland, in 239
 - France, QPC preliminary rulings 303–4, 313–25
 - Ireland, in 128, 131–8, 142–4, 338
 - Italy, in 267–70
 - UK, in 65, 71, 79–91, 132, 338
- Digital Rights Ireland and Seitlinger* (CJEU, 2012) 239–40
- DPP v. Gormley* (Ireland, 2014) 145
- Dred Scott v. Sanford* (US, 1857) 46–7, 200
- Dublin City Council v. Donegan* (Ireland, 2012) 137
- Dyzenhaus, David 200–201, 216
- East Donegal Co-op v. AG* (Ireland, 1970) 103–4
- European Convention on Human Rights
 - acts of incorporation, generally 1, 6, 13–14
 - Belgium, primacy in 360–61, 364, 367–8
 - constitutional development trends, influences on 426–7
 - decentralization, and 14
 - Finland, incorporation in 222
 - Hungarian law incompatibility rulings 3939
 - Ireland, incorporation in 13–14, 122–3, 122–8, 147
 - Italy, primacy in 264–8
 - limitations 48
 - UK parliamentary sovereignty, and 68–9
- experimentalism, role of 410–11
- Factortame* case (UK, 1990) 68
- Finland
 - constitutional law, generally
 - civil law tradition, and 242–3
 - constitutional supremacy, and 223
 - culture of authority *vs.* culture of jurisdiction 219
 - ECHR incorporation, and 222
 - EU membership, and 222, 237–43
 - exceptive enactments 220–21
 - fundamental rights reforms 222–3, 225
 - historical development 218–25, 242
 - influences on 218, 222

- legislative supremacy, and 15, 218–19, 228–30, 237
- constitutional model, generally
 - characteristics 220, 223–5, 242–3
 - codification of rights 225
 - implementation difficulties 219–20
 - intermediate constitutionalism, as 222–9
 - limitations 230, 243
- constitutional review
 - Committee review thresholds 226–7
 - concurrent criminal and civil proceedings 233–7
 - Constitutional Law Committee
 - role 221, 223, 225–7, 230–35, 238–43
 - declarations of incompatibility 239
 - dialogue, need for effectiveness in 233–7
 - ex ante review characteristics 225–7, 231–2
 - ex ante review difficulties 230–33, 243
 - intermediate constitutionalism, practical issues 229–37
 - judicial interpretative obligations 222–3
 - judicial review case trends 241–3
 - judicial review limitations 221–2, 227–8, 233, 243
 - ne bis in idem* principle 233–7
 - permissible limitations 231–2
 - references to CJEU 237–8, 241
 - strict legal positivism, and 220
 - supranational influences on 237–42
 - supremacy, debates over 15, 218–19
- fundamental rights
 - anti-terrorism limitations 231–2
 - constitutional law reforms 222–3, 225
 - EU law influences on 237–8, 241–3
 - judicial decision trends 225, 228, 241–2
 - legislative compatibility trends 241
 - permissible limitations test 231
 - privacy and electronic data retention 239–41
 - same sex marriages 232–3
- Foy v. An t-Ard Chláraitheoir* (Ireland, 2007) 134–5
- France
 - Constitutional Council
 - case time limits 319
 - case trends 303–4, 329
 - civil law judicial review, and 312
 - composition 307, 324–5
 - constitutionalism trends, influences on 342–5
 - criticism 324–5
 - EU law, and 12, 312–13, 321–3, 327–8, 330–31, 333–7, 370–71
 - European Court of Human Rights, and 337–9
 - ex post concrete review 303–4, 316–25, 341–2
 - historical development 306–7, 423
 - interpretation, margin of appreciation 341–2
 - judicial appointment and qualifications 324–6
 - jurisdictionalization 325–7, 344–5
 - jurisdictional conflicts 311–12
 - ordinary courts, relationship with 311–19, 324, 328–33, 338–9
 - Parliament, relationship with 339–42
 - political influences on 30
 - powers 2, 271, 303–4, 310–15
 - purpose 7, 306–7, 310, 324–5
 - QPC proceedings 303–4, 313–25, 329–30, 338–9, 341–3
 - referrals to 311, 314, 319, 328–9, 338–9
 - supranational courts, relationship with 327–8, 333–9
 - treaties, compatibility interpretation 306, 312–13, 321
 - US Supreme Court, compared 29–30, 34–5

- constitutional law
 - 1789 Declaration 310, 339, 423
 - 1946 Constitution Preamble
 - 310–11, 423
 - 1958 Constitution 423
 - 1974 constitutional revision 311
 - 2008 constitutional revision
 - 315–16, 324
 - constitutional culture 410
 - contemporary influences on 425
 - external influences on 425
 - historical development 304–9, 423, 425
 - reforms 303, 310–11
 - separation of powers, and 332–3
 - sovereignty of law, and 308–9
 - state secularism, and 312–13
- constitutional review
 - attitudes to law, and 308–9
 - Constitutional Council influences
 - on change in 342–5
 - decentralization 344–5
 - efficiency of 323–4
 - EU law, and 312–13, 321–3, 333–7, 370–71
 - European Court of Human Rights, and 337–9
 - ex ante abstract review 306–7, 314, 317, 340
 - ex post concrete review 303–4, 313–14, 316–25, 341–2
 - exceptions and limitations 321–2
 - historical development 13, 302–3, 305–6, 308–9
 - influences on 39, 308–9
 - limitations on 307–9
 - loi-écran* doctrine 308–9
 - pluralism, and 344–5
 - purpose 332–3
 - QPC procedures 303–4, 313–25
 - reforms, generally 310–15
 - soft constitutional review trends
 - 331–2, 344
 - strike-down powers 314
 - supranational and international law
 - conflicts 312–13, 327–8
 - supremacy, debates over 15–16, 313, 321
- constitutional review model
 - characteristics 302–5
 - influences on 307–10
 - principles 306–9
- fundamental rights
 - abortion cases 311–13
 - constitutionality vs.
 - conventionality 333
 - freedom of association cases
 - 310–11
 - freedom of expression 331–2
 - Holocaust denial case 331–2
 - individual rights to bring claims
 - 316
 - ordinary courts role 314–15, 324
 - referral to European Court of Human Rights 337
 - right to fair trial 326–7
 - same sex marriage 341
 - scope of protection, definition
 - 322–3
 - supranational law, and 313
 - Fromagerie Franco-Suisse “Le Ski”* case (Belgium, 1971) 358–9, 367
- fundamental rights protection, generally *see also under* individual countries
 - contextual influences on 416–17, 424–5
 - experimentalism, and 410–11
 - hierarchies of rights 415
 - identification of rights 415–16, 420
 - interpretation of rights 416–17
 - judicial role 409, 413
 - process variations 419–20, 429
 - legal certainty, and 417–18
 - negative legislator vs. natural rights
 - 41–4, 47–8
 - pluralism, challenges of 418–19
 - public bodies and officials, and constitutional culture, and 428–9
 - hierarchical conflicts 418–19
 - implementation role 411–13, 420–21
 - institutions, importance of 417–19
 - norms, establishment of 414–15
 - obligations 412–13, 428–9

- G v. District Judge Murphy* (Ireland, 2011) 102
- Germany
 constitution, historical influences on 422, 424
 constitutional court and US Supreme Court, compared 29–30, 34
 constitutional culture 410
- Ghaidan v. Mendoza* (UK, 2004) 75–6, 79
- Goodridge v. Department of Public Health* (US, 2003) 56
- Goodwin v. UK* (Ireland, 2002) 134
- Griswold v. Connecticut* (US, 1965) 43–4, 46
- Hamdi v. Rumsfeld* (Aust, 2004) 161
- Heaney v. Ireland* (Ireland, 1994) 106
- Hollingsworth v. Perry* (US, 2013) 57–8
- Howard v. Commission for Public Works* (Ireland, 1994) 113–14
- Hungary
 Constitutional Court
 case trends 385, 392–3
 challenges for 380, 385–6, 405
 composition 380, 383–5
 constitutional amendments,
 impacts of 375–8, 381–5,
 389–90, 402–3
 constitutional complaints cases 391–3
 European Court of Human Rights
 jurisprudence, and 398–401,
 403–4
 Fourth Amendment, interpretation
 of 389–90, 396–7, 402–3
 Fundamental Law impacts on
 383–5, 387–9, 393–4, 405
 historical development 374–5, 381
 international law obligations, and
 398–402
 judicial appointment and
 qualifications 381–5
 jurisdictional restrictions 382–8,
 392–3
 old constitutional jurisprudence,
 continuing validity of 394–7,
 405
 ordinary courts, relationship with
 391–2, 401, 405
pacta sunt servanda principle, and
 398–9
 politicization 10, 375, 380, 382,
 385–6
 powers 381, 385–8, 390
 purpose 377–8, 381, 395, 405
 rule of law interpretation 392
 time limits 388
 transitional provisions
 interpretation 388–90
 Venice Commission, responses to
 396–7, 402–3
- constitutional law
 1949 Constitution, ongoing
 jurisprudential validity 393–7,
 405
 amendments 375–8, 381–5, 389–
 90, 402–3
 EU law, relationship with 378–9,
 399, 403–4
 European Court of Human Rights,
 and 393, 397, 398–401, 403–4
 Fourth Amendment 389–90,
 396–7, 402–3
 invisible constitution concept 381
 political power restraints 377–8
 referendum initiatives, and 386
 reform 380–81
 rights, sources of 398
 special retroactive taxes, and
 382–3
- constitutional review
 constitutional complaints *vs. actio
 popularis* applications 391–3
 Fundamental Law impacts on
 387–9, 393–4, 405
 historical development 380–81,
 391
 living law concept, and 391
 Ombudsman, role of 393–4
 procedural scope and limitations
 387–90
 transitional provisions 388–9
- fundamental rights
actio popularis applications, and
 392

- attitudes to 378
 - freedom of religion 400
 - international law obligations, and 398–402
 - interpretation, political influences on 378–9
 - life imprisonment without parole 401–2
 - national sovereignty, and 401–4
 - red star emblem, constitutional validity of 400, 403–4
- intermediate constitutionalism *see also*
- Finland
 - limitations 229–30
 - necessary features 229
- Ireland
- constitutional court
 - proposal for 125
 - constitutional law
 - classification challenges 95
 - declarations of incompatibility 132–4, 142–4, 338
 - declarations of unconstitutionality 133, 142
 - equivalence with Northern Ireland 126
 - fundamental rights conflicts 106, 122–3
 - historical development 95, 120
 - influences on 95–6, 425
 - judicial supremacy, and 15–16, 96–7
 - marriage cases 134–5
 - organ of state, definition 139
 - substantive principles 105
 - constitutional review
 - breach of administrative action by organ of state, remedies for 138–9
 - collaborative constitutionalism 115–19
 - Commonwealth model 8, 95–7, 108–9
 - constitutional avoidance doctrine 142–4
 - constitutional incompatibility, responses to 133–4, 136–8
 - Constitutional Review Group role 123–4
 - development trends 13–14
 - interpretative obligations 144–5
 - judicial power restrictions 125–6
 - options for 125–6
 - political review powers 139–41
 - pre-legislative opportunities 140
 - referendum, by 109–11
 - strike-down powers 96–8, 106–7, 128, 132
- ECHR Act
- applicability 139
 - background 120–21
 - claimant understanding of review mechanisms 145–6
 - Commonwealth constitutionalism, and 127–41
 - constitutional avoidance doctrine, and 142–4
 - constitutional relationship with 121, 123–6, 141–6
 - constitutional synergy 143–4, 147
 - declarations of incompatibility 128, 131–8, 142–4
 - double construction rule, and 129–31
 - equivalence with Northern Ireland 126
 - incorporation of ECHR 13–14, 122–8, 147
 - interpretative obligations 127–31, 144–5
 - legal impact 121
 - limitations of 147
 - misuse of drugs cases 136
 - purpose 120–21, 143
 - same sex marriages 134–5
 - statutory rape cases 136
 - UK Human Rights Act, compared 128–32, 141
 - ultra vires acts, remedies for 138–9
- judicial supremacy
- burden of proof 101–2
 - determination on
 - non-constitutional grounds 99–100
 - difficulties with 97–8

- doctrine of severability 106–7
- double construction rule 102–4, 129–31
- final word illusion 108, 110–14
- generally 15–16, 96–7, 107–8
- posterior responses 108–11
- presumption of constitutional conduct 104–5
- presumption of constitutionality 100–102, 144–5
- public interest or social policy 106
- referendum, judicial overruling by 109–11
- structural barriers 98–108
- substantive principles applicable for review 105–6
- organ of state, definition 139
- Italy
 - Constitutional Court
 - acte clair* doctrine 265
 - case trends 272–4
 - changing role of 255–62, 270–73
 - CJEU, and 258–9, 264–5
 - concrete review 253
 - counter-limits doctrine 264–5
 - declarations of incompatibility 267–70
 - establishment, influences on 248
 - EU law/ ECHR primacy interpretation 264–8
 - EU law influences on 12, 258–9, 262–8
 - exclusions and limitations 272–4
 - fundamental rights, and 258–62
 - historical development 247–8, 270
 - ordinary courts, relationship with 253–4, 259–66, 268–9, 271–2
 - political conflicts 257–8, 270
 - powers of 251–6, 258–9, 270–73
 - reform, need for 273–5
 - right to justice, and 273–4
 - rule of law, and 270–71
 - submission to, criteria for 253–4
 - subordinate legislation, and 255
 - supranational law influences on 264–5
 - systemic difficulties 273–4
 - unique features 247
 - constitutional law
 - coalition governments, and 256–7
 - corruption, and 258
 - definition of constitution 249–50
 - democracy, and 249–50, 256–7, 270
 - EU human rights law, and 258–9, 265–8
 - EU law supremacy, and 263–8
 - fascism, and 255–6
 - historical development 247–50
 - judiciary, political conflicts with 258
 - limitations on 249–51
 - living law doctrine, and 260–61
 - plurality-proportional electoral system 256–7
 - referendums 252
 - reforms 257–8
 - regional vs. State conflicts 257–8
 - Republican Constitution 1947 248
 - rule of law, and 270–71
 - source of law, as 271
 - tradition vs. liberalism 249
 - constitutional review model 8
 - features 247, 251
 - historical development 251–2, 255–62
 - political influences on 249–50, 255–6
 - power, distribution of 252
 - social influences on 248–9, 255–6
 - constitutional review procedures
 - abstract review 252, 269–70
 - case law development 268–70
 - centralization vs. decentralization 253–4
 - concrete review 253
 - EU conflicts with 262–5
 - EU influences on 258–9
 - historical development 251–5
 - hybrid features 253–5
 - judicial interpretation conflicts 259–61
 - legislature, relationship with 258
 - ordinary courts, role of 253–4, 259–66, 268–9, 271–2
 - preliminary rulings 265

- strike-down powers 251, 254
- supranational law influences on 262–8
- fundamental rights
 - adoption 250–51
 - Constitutional Court role 258–62, 265–8
 - ECHR primacy of 264–8
 - recognition 249–50
 - UK Human Rights Act, compared 269
- Jussila v. Finland* (ECHR, 2006) 234
- Latin America
 - constitutional law models 7–8
- Lawrence v. Texas* (US, 2003) 55
- legal constitutionalism
 - vs. political constitutionalism 4
 - Australia, in 187–90, 192, 215–17
- liberalism 4, 7
 - influences on 409
- McDonald v. Bordna gCon* (Ireland, 1965) 102–3
- Maher v. AG* (Ireland, 1973) 107
- Makumbi v. Minister for Justice* (Ireland, 2005) 144–5
- MD (A Minor) v. Ireland* (Ireland, 2012) 146–7
- Mecanarte* case (CJEU, 1991) 369
- Melki* case (CJEU, 2010) 334–5, 370–71
- Melki* case (France, 2009) 318–19, 330, 332
- Momcilovic v. The Queen* (Aust, 2011) 149–50, 166–9, 173–7, 179
- national identity
 - constitutional identity, and 39–41
- natural rights
 - judicial protector concept 41–4
 - principles of 54–5
 - vs. positivism 46–9
- negative legislator metaphor 41–2
- Netherlands
 - constitutional review model 6, 307
- New Zealand
 - constitutional review model 6
- Obergefell v. Hodges* (US, 2015) 56
- Pape v. Federal Commissioner of Taxation* (Aust, 2009) 196–7
- Pasicrisie* case (Belgium, 2004) 367–8
- Pigs Marketing Board v. Donnelly* (Ireland, 1939) 100–101
- Plaintiff M61* (Aust, 2010) 204–9, 215–16
- Plaintiff M70* (Aust, 2011) 204–6, 210–16
- Plessy v. Ferguson* (US, 1896) 50–51
- political constitutionalism
 - vs. legal constitutionalism 4
 - Australia, in 187–90, 192, 215–17
- R (Hammond) v. Home Secretary* (UK, 2005) 77–8
- R (Nicklinson) v. Ministry of Justice* (UK, 2014) 89–90
- R (Thompson) v. SSHD* (UK, 2011) 85
- Re Ó Laighléis* (Ireland, 1960) 122
- Re Woolley* (Aust, 2004) 199, 216
- Roach v. Electoral Commissioner* (Aust, 2007) 151
- Roe v. Wade* (US, 1973) 51–2, 61, 114
- Romer v. Evans* (US, 1996) 55–6
- rule of law 44, 51, 60–61, 90, 128, 130, 133, 142, 144, 156, 161, 186, 196, 201–3, 205, 209, 211, 215, 249, 270, 298, 327, 339, 348, 361, 375, 384, 392
- Ruotsalainen v. Finland* (ECHR, 2009) 234
- S v. Minister for Justice* (Ireland, 2010) 143
- Salduz v. Turkey* (Ireland, 2009) 145
- Satakunnan Markkinapörssi* (CJEU, 2007) 242
- separation of powers
 - Australia, in 149–50, 152–3, 155, 157–62, 164–79, 188–9
 - final word illusion, and 112–13
 - France, in 332–3

- general principles 111–13
- override clauses 111–14
- US Supreme Court, and 31–2
- Simmenthal* case (CJEU, 1977) 369
- Slaughter-House* cases (US, 1873) 49
- Solange* case (Germany, 1983) 334
- Spain
 - Constitutional Court
 - appeals 286–7, 289, 296–7
 - Autonomous Communities,
 - conflicts with 287–9, 299–300
 - Autonomous Communities,
 - statutory references to 285–6
 - case trends 287, 289, 294, 297–8
 - collaborative role 283–7
 - composition 277–83
 - criticism of 298–9
 - declarations of unconstitutionality 283–7, 301
 - foreign governments, actions by 295
 - functions 278–9, 283–93, 297–8
 - historical development 277–8, 297
 - influence of 298
 - inter-court conflicts 294–5
 - judicial appointment 279–83, 298
 - judicial interpretation 277, 279–80
 - jurisdiction conflicts 287–9
 - local self-government conflicts, and 290–91, 299–300
 - private access to 288–9
 - state body power conflicts 290
 - treaties, interpretations of primacy 291–3, 299
 - constitutional law
 - external influences on 426
 - government challenges to 287–9
 - historical development 276–8, 426
 - institutional body power conflicts 290–91, 299–300
 - judicial controls over
 - constitutionality 283–7
 - local autonomy powers 290–91
 - political influences on 299–300
 - principle of legality 277
 - purpose of constitution 276–8
 - reforms 287, 299–300
 - state sovereignty and right to self-determination 289, 299–300
 - treaties, conflicts with 291–3, 299
- constitutional review model
 - collaborative features 283–7
 - constitutionality blocking 285–6, 288
 - historical development 278–9, 283
 - influences on 288
- fundamental rights
 - appeal procedures 296–7
 - constitutional enforcement
 - difficulties 294
 - constitutional enforcement trends 294–5
 - constitutional remedies 293–5
 - individual rights to bring claims 296
 - inter-court conflicts 294–5
 - interruption of prescription, and 294–5
 - ordinary courts, role and duties 293
- State (Quinn) v. Ryan* (Ireland, 1965) 104–5
- Tampa* decision (*Ruddock v. Vadarlis*) (Aust, 2001) 190–94, 197, 199–200, 215–16
- TCL Air Conditioner (Zhongshan) v. Federal Court of Australia* (Aust, 2013) 161
- Troxel v. Granville* (US, 2000) 48–9
- Tuohy v. Courtney* (Ireland, 1994) 105–6
- United Kingdom
 - constitutional court
 - EU law influences 12
 - Supreme Court role as 73–4
 - constitutional law
 - devolution of powers 69
 - historical development 65–6, 69, 422–3
 - international law, and 68–9
 - principles 65–6
 - constitutional review
 - development trends 13–14, 63, 92

- dialogue model, benefits 148–9
- House of Lords, judicial reform 72–3
- Italian interpretation, compared 269
- judicial powers 63–5
- pre-legislative developments 92–3
- statements of compatibility 72, 91–2
- European Convention on Human Rights
 - constitutional law impacts 68–70
- fundamental rights, generally
 - acts of incorporation 1, 6, 13–14, 63
 - compatibility compliance 84–6
 - incompatibility, international remedies 82–4
 - incompatibility, political impacts 86–7
 - protection model 64
 - public sector equality duty 412
 - restrictions, statutory interpretation 66–7
- Human Rights Act
 - constitutional law impacts 63–5, 70–71, 84–5
 - criticism of 93
 - declarations of incompatibility 65, 71, 79–82, 132, 338
 - Italian interpretation, compared 269
 - judicial duties 71
 - judicial rectification 79–82
 - public authority duties 71–2
 - rights protection mechanisms 71
 - statutory intention 91
- parliamentary sovereignty 63–6
 - compatibility compliance 84–6
 - declarations of incompatibility, and 90–91
 - EU membership, and 68
 - judicial restrictions 66–7
 - mirror principle, and 83–4
 - principle of legality 66–8, 70
 - transnational law influences on 68–9, 82–3
- Supreme Court
 - assisted suicide cases 89–90
 - compatibility rulings, incentives for 88–91
 - compatibility rulings, Parliamentary responses to 78–9, 91
 - constitutional court role 72–4
 - convention-compatible interpretations 74–9
 - declarations of incompatibility 65, 71, 79–91
 - fair trial cases 77–8
 - floodgates argument 85
 - international law obligations 82–3
 - interpretation challenges 73–4
 - judicial rectification 79–82
 - mirror principle 83–4
 - prisoners' right to vote 86
 - same sex marriages cases 75–7, 80–81
 - strike-down powers 88–90
- United States
 - Bill of Rights
 - 5th Amendment 46–7
 - 9th Amendment 43–4
 - 14th Amendment 44, 56–8
 - adoption 38
 - applicability 38–9, 49
 - due process 44, 46–7, 56–8
 - equal protection 56–8
 - free speech 45, 53–5
 - interpretation, plasticity of 43–4
 - negative characteristics 38–9, 47–8
 - privacy 43–4, 55
 - constitutional review model
 - adoption 5–8
 - distinctiveness, reasons for 30–41
 - features 7–8, 39–40
 - national identity, and 39–41
 - politicization 11, 41
 - role model, as 7–8
 - constitutional review procedure
 - amendment controls 31–4
 - case or controversy requirement 34–6, 62
 - checks and balances 31–3
 - common law adjudication 36–7

- countermajoritarian difficulty 4–5, 33–5, 42–3
- fundamental rights, and 30, 32, 37–9
- historical context 37–41
- institutional context 30–41
- judicial rulings 30, 36–7, 51–60
- paradoxes 29–30, 41–5
- politicization 29–30, 35–6
- unchecker checker problem 4–5, 33–5, 42–3
- fundamental rights, generally
 - constitutional review conflicts 30, 32, 37–9, 46–9
 - federalism, and 49
 - judicial philosophy vs. politics 52–5
 - natural rights vs. negative legislator 41–4
 - negative nature 37–8, 47–8
 - political influences on 41–2
 - protection limitations 47–9
 - supremacy debate, and 61–2
- Supreme Court
 - abortion cases 51–2, 59–60
 - choice of cases by 35–6
 - constraints on 32–6
 - due process clause interpretation 46–7
 - federalism, and 49
 - free speech cases 52–5
 - fundamental vs. constitutional rights 46–9
 - German/ French constitutional courts, compared 29–30, 34–5
 - judicial exceptionalism 29, 45–9, 60
 - judicial law-making 30, 36–7
 - legitimacy conflicts 60–62
 - natural law vs. positivism 46–9
 - non-governmental influences 35–6
 - originalism vs. adaptalism 45, 47, 61
 - political conflicts 52–5, 60–61
 - racial rights cases 43–4, 46, 50–51
 - rights limitations interpretation 48–9
 - same sex marriage cases 50, 55–61
 - separation of powers 31–2
 - United States v. Windsor* (US, 2013) 58–9
 - Vajnai* case (Hungary, 2013) 400, 403–4
 - Vinter v. UK* (ECtHR, 2013) 401–2
 - Williams v. Commonwealth* (Aust, 2014) 197–8
 - Zolotukhin v. Russia* (ECHR, 2009) 234

