

Giorgio Bongiovanni
Giovanni Sartor
Chiara Valentini
Editors

Law and Philosophy Library 86

Reasonableness and Law



Springer

for the protection of constitutional rights in Europe reflects the constitutional duty of judges to protect “constitutional justice”; it should serve as a model for similar cooperation among national and international courts with overlapping jurisdictions in other field of international law,⁷⁵ notably if the intergovernmental rules protect cooperation among citizens across national frontiers, such as the settlement of transnational trade, investment and environmental disputes. Especially in those areas of intergovernmental regulation where states remain reluctant to submit to review by international courts (e.g., as in the second and third pillars of the EU Treaty), *national courts* must remain vigilant guardians so as to protect citizens and their constitutional rights from inadequate judicial remedies at the international level of multilevel governance for the collective supply of international public goods demanded by citizens.

7 Judicial Protection of “Principles of Justice” as Constitutional Limitation on Intergovernmental Power Politics

The prevailing perception of the “international law among states” as a foreign policy instrument for advancing *national* interests in an anarchic world prompts many international lawyers and diplomats to argue that effective international tribunals must remain “dependent” tribunals staffed by ad hoc judges closely controlled by governments, for example through their power of reappointment and threats of retaliation. Independent international courts are perceived with suspicion because independent judges risk allowing moral ideals and interests of third parties to influence their judgments; the domestic ideal of rule of law is seen as inappropriate for the reality of international power politics: “Dependent tribunals” are more likely to “render judgments that reflect the interests of the states at the time that they submit the dispute to the tribunal.”⁷⁶ In support of such power-oriented conceptions of international judges as agents of the governments which appoint them, reference is also made to the empirical voting patterns of ad hoc judges (e.g., in the ICJ and arbitral tribunals) who side much more often with the legal claims of the government nominating the judge than with the legal claims of the other party to the dispute (see Posner and de Figueiredo 2005). From such state-centered rather than citizen-oriented perspectives, intergovernmental trade and economic rules should be interpreted and applied as intergovernmental commitments about reciprocal market access without private rights of action (see Sykes 2005).

⁷⁵ “[I]f the *Solange*-method would be applied by all international courts and tribunals in case of jurisdictional overlap, the risk of diverging or conflicting judgments could be effectively minimized, thus reducing the danger of a fragmentation of the international legal order [. . .]. One could argue that the *Solange*-method, and for that matter judicial comity in general, is part of the legal duty of each and every court to deliver justice” (Lavranos 2008, 235).

⁷⁶ See Posner and Yoo (2005, 6), who define the function of international tribunals as providing states with neutral information about the facts and the law in a particular dispute.

Citizen-oriented constitutional approaches, by contrast, emphasize the “constitutional functions” of international law for correcting governance failures at national levels and for enabling citizens to collectively supply private and public goods that are ever more important for individual and democratic self-development in a globally interdependent world. The more citizens live and cooperate not only in local and national, but also in transnational communities (e.g., as EC citizen, migrant worker protected by ILO conventions, refugees protected by UN human rights and humanitarian assistance, researchers protected by UNESCO and WIPO conventions), the more the universal recognition of inalienable human rights calls for providing citizens with effective legal and judicial remedies across national frontiers. As empirical evidence confirms that most national parliaments no longer effectively control intergovernmental rule-making in worldwide organizations,⁷⁷ parliamentary democracy must be supplemented by more decentralized forms of participatory, rights-based democracy empowering self-interested individuals by more effective legal and judicial remedies. The ideal of “deliberative democracy”—i.e., that all rules and governance powers be justified through a fully inclusive, informed discourse among all persons affected by the rules—remains utopian in view of the rational ignorance of individuals, their limited cognitive capacities, and the inevitable “discourse failures” (e.g., due to asymmetries of power and knowledge; see Teson and Pincione 2006; Kuper 2004). Rights-based “cosmopolitan justice” and independent, impartial courts settling disputes “in conformity with principles of justice and international law” offer horizontal and vertical “checks and balances” that limit abuses of public and private power without relying on unrealistic idealization of citizens, civil society, organizations and rulers.

The *jus cogens* core of inalienable human rights, the ever increasing number of international “treaty constitutions” limiting national policy discretion by collective rule-making and international adjudication, the proliferation of and cooperation among international courts, their judicial protection of rule of law and judicial clarification of “constitutional principles” continue to transform the intergovernmental structures of international law (notably in Europe) by procedural as well as substantive “constitutional restraints.” Multilevel constitutionalism and rights-based “constitutional justice” have become a reality for ever more European citizens thanks to the multilevel cooperation of judges in European integration. Disputes among European states have become rare not only in the EC Court, the EFTA Court and in the ECtHR; they are also decreasing in worldwide courts (e.g., the ICJ) and in other dispute settlement bodies (such as the WTO). The ever closer networks of independent regulatory agencies and other multilevel governance institutions in Europe, and the rare recourse to the “horizontal” enforcement mechanisms of international law (such as inter-state sanctions) in relations among European democra-

⁷⁷ On the inadequate parliamentary control of intergovernmental rule-making in the WTO see, e.g., the following two publications by the European Parliament: *Role of Parliaments in Scrutinising and Influencing Trade Policy* (European Parliament Study December 2005, DV/603690.doc); *The Parliamentary Dimension of the WTO* (2006).

cies, confirm that “state sovereignty” is “disaggregating” in Europe.⁷⁸ Constitutional rights and principles of justice have been protected more effectively by means of the “*Solange*-method” of multilevel judicial cooperation in transnational relations among European states than at any previous time during the centuries of intergovernmental power politics depending on national majorities and interest group support for periodically elected governments.

In Europe, the “public reasoning” and multilevel cooperation of independent and impartial judges has become an important constitutional constraint on intergovernmental power politics and on one-sided governmental definitions of *opinio juris* in international law. Multilevel judicial governance has become one of the most dynamic and “principled” parts of constitutional democracy in Europe. Yet, the limited role of European courts in the second and third “pillars” of the European Union as well as the limited cooperation among European and worldwide courts (like the ICJ and the WTO’s Appellate Body) illustrate the political limits of international courts also in Europe, notably in areas of national security and foreign policy disputes over the distribution of power or the legitimacy of international law rules. Beyond Europe, international relations remain dominated by power politics, refusal by most UN member states to submit to the compulsory jurisdiction of the ICJ, insistence on state sovereignty and introverted “constitutional nationalism” impeding collective supply of global public goods.⁷⁹ Proposals for extending European “multilevel constitutionalism” to worldwide organizations (such as the UN and the WTO) are opposed by most states outside Europe (including the United States) in view of their different constitutional and democratic traditions and power-oriented foreign policies. The more intergovernmental networks and worldwide organizations evade parliamentary and democratic control, and the more legislators fail to correct the ubiquitous “market failures” and “governance failures” in international relations, the more citizens—as legal subjects of international law and “democratic principals” of government agents—have reason to appeal to the “public reasoning” of independent and impartial courts mandated to protect constitutional rights and rule of law “in conformity with principles of justice.”

If democratic institutions are perceived as instruments for protecting the constitutional rights of citizens without which individual and democratic self-development in dignity is not sustainable (e.g., due to public and private abuses of power, including majoritarian abuses of parliamentary powers), then multilevel judicial protection of fundamental freedoms of citizens can be justified as a necessary precondition for constitutional democracy in a globally integrated world. The risk of paternalist abuses of judicial powers must be countered by “deliberative democracy” and “public reasoning.” Rights-based “judicial discourses” focusing on “principles of justice” tend to be more precise and more rational than political promises to protect

⁷⁸ More generally on “disaggregated sovereignty” see Slaughter 2004, 266ff.

⁷⁹ On this “globalization paradox” (i.e., needing multilevel governance for the collective supply of international public goods, but fearing and opposing such governance) see Slaughter 2004, at 8ff. On the need for “multilevel constitutionalism” as a necessary legal framework for collective, democratic supply of international public goods see Petersmann (2006b).

vaguely defined “public interests.” Similar to European courts, national constitutional judges and international courts outside Europe increasingly argue that constitutional democracies must be premised on “active liberty”; hence, the exercise of rights to individual and democratic self-government (in citizen-driven “political markets” no less than in consumer-driven economic markets) may serve as a “source of judicial authority and an interpretative aid to more effective protection of ancient and modern liberty alike.”⁸⁰ Judicial determination of the international *opinio juris sive necessitatis* must insist today that legitimacy no longer derives from (inter)governmental *fiat*, but from democratic and judicial justification of the relevant rules as being reasonable and *just*.⁸¹ The independence, impartiality and constitutional function of judges to protect constitutional rights against abuses of power legitimize adjudication as a necessary component of constitutional democracy. Citizens must hold judges more accountable for meeting their constitutional obligation to protect “constitutional justice” in terms of justifying legal interpretations and judicial decisions in conformity with the human rights obligations of government institutions and the constitutional rights of citizens. The increasing cross-references in ECJ and EFTA judgments to their respective case-law, as well as to other European and international courts (such as the ECtHR, WTO dispute settlement rulings, the ICJ), should serve as models for cooperation also among other international courts in order to better coordinate their respective jurisprudence on the basis of common legal principles (Rosas 2006).

Civil society and their democratic representatives rightly challenge traditional conceptions of international justice shielding an authoritarian “international law among states” as being inconsistent with the universal recognition of inalienable human rights, which call for constitutional conceptions of justice as a shield of the individual and of her human rights against abuses of power. As long as world governance for the collective supply of the ever more needed “global public goods” (such as international “democratic peace,” respect for universal human rights, poverty reduction, protection of the global environment) remains so deficient as it is, legal and judicial protection of constitutional rights in transnational relations “in conformity with principles of justice and international law” remain essential for protecting human rights through pragmatic piecemeal reforms of international legal practices. It is to be welcomed that ever more international dispute settlement bodies (e.g., in the WTO and investor-state arbitration)—by admitting *amicus curiae* briefs—are willing to listen to the public reasoning of citizens, whose *opinio juris*—as the “democratic principals” of government agents—may be relevant for judicial limitations of abuses of government powers (e.g., if concession contracts with non-

⁸⁰ See US Supreme Court justice S. Breyer (2005).

⁸¹ On the diverse (e.g., rational Kantian, contractarian Rawlsian and discursive Habermasian) methodological approaches to identifying just rules see, e.g., Nino (1994, 275, 286ff). On “justice as fairness” and “first virtue of social institutions” see Rawls (1973, 3). See also Forst (2007), who infers from the Kantian idea of reason based on universalizable principles that individuals can reasonably claim moral and legal rights to participation in decision-making affecting them, as well as to receive a justification of restrictions of individual freedoms.

democratic rulers are influenced by corruption). Just as multilevel constitutionalism in Europe was rendered possible by the intergovernmental creation and judicial protection of common markets and of rights-based, transnational communities (rather than by “Wilsonian liberalism” projecting national democratic institutions to the worldwide level), so will the needed “constitutionalization” of intergovernmental power politics and “cosmopolitan peace” depend crucially on the vigilance of democratic citizens and on the wisdom and courage of judges supporting citizen-oriented reforms of international economic law and judicial protection of constitutional rights in the peaceful cooperation among citizens across national frontiers.

References

- Allan, T.R.S. 2001. *Constitutional Justice. A Liberal Theory of the Rule of Law*. Oxford: Oxford University Press.
- Baudenbacher, C. 2005. The EFTA Court Ten Years On. In *The EFTA Court. Ten Years On*. Ed. C. Baudenbacher, P. Tresselt, and T. Orlygsson, 13–51. Oxford: Hart.
- Breyer, S. 2005. *Active Liberty: Interpreting Our Democratic Constitution*. New York, N.Y.: Knopf.
- Coban, A.R. 2004. *Protection of Property Rights Within the European Convention on Human Rights*. Aldershot: Ashgate.
- Davey, W.J. 2006. Dispute Settlement in the WTO and RTAs: A Comment. In *Regional Trade Agreements and the WTO Legal System*. Ed. L. Bartels and F. Ortino, 343–57. New York, N.Y.: Oxford University Press.
- Davies, A. 2007. Connecting or Compartmentalizing the WTO and United States Legal Systems? The Role of the Charming Betsy Canon. *Journal of International Economic Law* 10: 117–49.
- de Mestral, A. 2006. NAFTA Dispute Settlement: Creative Experiment or Confusion? In *Regional Trade Agreements and the WTO Legal System*. Ed. L. Bartels and F. Ortino, 359–81. New York, N.Y.: Oxford University Press.
- Dicke, K. 2002. The Founding Function of Human Dignity in the Universal Declaration of Human Rights. In *The Concept of Human Dignity in Human Rights Discourse*. Ed. D. Kretzmer and E. Klein, 111–19. The Hague: Kluwer.
- Dugard, J. 2000. First Report on Diplomatic Protection. *International Law Commission UN Doc. A/CN.4/506*.
- Emberland, M. 2006. *The Human Rights of Companies. Exploring the Structure of ECHR Protection*. Oxford: Oxford University Press.
- Francioni, F., ed. 2007. *Access to Justice as a Human Right*. Oxford: Oxford University Press.
- Forst, R. 2007. *Das Recht auf Rechtfertigung*. Frankfurt: Suhrkamp.
- Franck, T. 1997. *Fairness in International Law and Institutions*. Oxford: Oxford University Press.
- Graver, H.P. 2005. The Effects of EFTA Court Jurisprudence on the Legal Orders of the EFTA States. In *The EFTA Court. Ten Years On*. Ed. C. Baudenbacher, P. Tresselt, and T. Orlygsson, 79–99. Oxford: Hart.
- Guarnieri, C., and P. Pederzoli. 2002. *The Power of Judges*. Oxford: Oxford University Press.
- Hamilton, A. 1961. The Judiciary Department, The Federalist Papers No. 78. In A. Hamilton, J. Madison and J. Jay, *The Federalist Papers*, 521–30. Middletown, Conn: Wesleyan University Press. (1st ed. 1789.)
- Kuijper, P.J. 2005. WTO Law in the European Court of Justice. *Common Market Law Review* 5: 1313–55.
- Kuper, A. 2004. *Democracy Beyond Borders. Justice and Representation in Global Institutions*. Oxford: Oxford University Press.

- Kwak, K., and G. Marceau. 2006. Overlaps and Conflicts of Jurisdiction between the WTO and Regional Trade Agreements. In *Regional Trade Agreements and the WTO Legal System*. Ed. L. Bartels and F. Ortino, 465–85. New York, N.Y.: Oxford University Press.
- Lavranos, N. 2006. The MOX Plant and IJzeren Rijn Disputes: Which Court is the Supreme Arbitrator? *Leiden Journal of International Law* 19: 1–24.
- Lavranos, N. 2008. Towards a *Solange*-Method between International Courts and Tribunals? In *The Shifting Allocation of Authority in International Law*. Ed. T. Broude and Y. Shany, 217–35. Oxford: Hart.
- Mähner, T. 2005. *Der Europäische Gerichtshof als Gericht*. Berlin: Duncker & Humblot.
- Mayer, F.C. 2006. The European Constitution and the Courts. In *Principles of European Constitutional Law*. Ed. A. von Bogdandy and J. Bast, 281–334. Oxford: Hart.
- McDorman, T.L. 2004. Access to Information under Article 9 OSPAR Convention (Ireland v. UK), Final Award. *American Journal of International Law* 2: 330–38.
- Montesquieu, C.d.S.d. 1950. De l’Esprit des Loix. In *Œuvres de Monsieur De Montesquieu*. Ed. M.A. Masson. Paris: Garnier. (1st ed. 1748.)
- Nino, C.S. 1994. Can there be Law-abiding Judges? In *1789 et l’invention de la constitution*. Ed. M. Troper and L. Jaume, 275–94. Paris: Bruylant.
- Paulsson, J. 2006. *Denial of Justice in International Law*. Cambridge: Cambridge University Press.
- Pescatore, P. 1983. The Doctrine of Direct Effect. *European Law Review* 8: 155–77.
- Petersmann, E.U. 1997. *The GATT/WTO Dispute Settlement System*. The Hague: Kluwer.
- Petersmann, E.U. 2002. Taking Human Dignity, Poverty and Empowerment of Individuals More Seriously: Rejoinder to Alston. *European Journal of International Law* 4: 845–51.
- Petersmann, E.U. 2005. Human Rights and International Trade Law: Defining and Connecting the Two Fields. In *Human Rights and International Trade*. Ed. T. Cottier, J. Pauwelyn, and E. Burgi Bonanomi, 29–94. Oxford: Oxford University Press.
- Petersmann, E.U. 2006a. Human Rights, Markets and Economic Welfare: Constitutional Functions of the Emerging UN Human Rights Constitution. In *International Trade and Human Rights*. Ed. F.M. Abbott, C. Breining-Kaufmann and T. Cottier, 29–67. Ann Arbor, Mich.: University of Michigan Press.
- Petersmann, E.U. 2006b. Multilevel Trade Governance Requires Multilevel Constitutionalism. In *Constitutionalism, Multilevel Trade Governance and Social Regulation*. Ed. C. Joerges and E.U. Petersmann, 5–57. Oxford: Hart.
- Posner, E., and F.P. de Figueiredo. 2005. Is the International Court of Justice Politically Biased? *Journal of Legal Studies* 34: 599–630.
- Posner, E., and J.C. Yoo. 2005. Judicial Independence in International Tribunals. *California Law Review* 93: 1–74.
- Rawls, J. 1973. *A Theory of Justice*. Oxford: Oxford University Press.
- Rawls, J. 1993. *Political Liberalism*. New York, N.Y.: Columbia University Press.
- Rawls, J. 1999. *The Law of Peoples*. Cambridge, Mass.: Harvard University Press.
- Restani, J.A., and I. Bloom. 2001. Interpreting International Trade Statutes: Is The Charming Betsy Sinking? *Fordham International Law Journal* 5: 1533–47.
- Rosas, A. 2005. Fundamental Rights in the Luxembourg and Strasbourg Courts. In *The EFTA Court. Ten Years On*. Ed. C. Baudenbacher, P. Tresselt, and T. Orlygsson, 163–75. Oxford: Hart.
- Rosas, A. 2006. With a Little Help from My Friends: International Case-Law as a Source of Reference for the EU Courts. In *The Global Community Yearbook of International Law and Jurisprudence 2005*. Ed. G. Ziccardi Capaldo, vol. 1, 201–30. Dobbs Ferry, N.Y.: Oceana.
- Sajo, A., ed. 2004. *Judicial Integrity*. Leiden: Brill Academic Publishers.
- Schokkenbrock, J. 1998. The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights. *Human Rights Law Journal* 19: 30–6.
- Shany, Y. 2004. The First MOX Plant Award: The Need to Harmonize Competing Environmental Regimes and Dispute Settlement Procedures. *Leiden Journal of International Law* 17: 815–28.

- Shelton, D. 2005. *Remedies in International Human Rights Law*. 2nd ed. Oxford: Oxford University Press.
- Slaughter, A.M. 2004. *A New World Order*. Princeton, NJ: Princeton University Press.
- Skouris, V. 2005. The ECJ and the EFTA Court under the EEA Agreement: A Paradigm for International Cooperation between Judicial Institutions. In *The EFTA Court. Ten Years On*. Ed. C. Baudenbacher, P. Tresselt, and T. Orlygsson, 123–29. Oxford: Hart.
- Stone Sweet, A. 2000. *Governing with Judges. Constitutional Politics in Europe*. Oxford: Oxford University Press.
- Stone Sweet, A. 2004. *The Judicial Construction of Europe*. Oxford: Oxford University Press.
- Sykes, A.O. 2005. Public versus Private Enforcement of International Economic Law: Standing and Remedy. *Journal of Legal Studies* 34: 631–66.
- Teson, F., and G. Pincione. 2006. *Rational Choice and Democratic Deliberation: A Theory of Discourse Failure*. Cambridge: Cambridge University Press.
- Wildhaber, L. 2002. A Constitutional Future for the European Court of Human Rights? *Human Rights Law Journal* 23: 161–65.
- Zurn, C.F. 2007. *Deliberative Democracy and the Institutions of Judicial Review*. New York, N.Y.: Cambridge University Press.

Index of Names

A

Aarnio, A., 19
Abicca, R., 329
Ackerman, B., 245
Adinolfi, A., 383–403
Aleinikoff, T., 66, 174
Alexander, L., 273
Alexy, R., 5–15, 41, 43, 57, 82, 93, 100, 174,
175, 176, 185, 186, 192, 193, 208, 244,
245, 324, 351
Alkema, E.A., 173
Allan, T.R.S., 427
Alvisi, C., 283–292
Andersen, C., 179
Annan, K., 426
Appadurai, A., 148
Aquinas, T., 69
Aristotle, 21, 22, 25, 69, 77, 115
Artosi, A., 69–78
Ashworth, A., 370

B

Baba, I.K., 148
Bacelli, L., 163–169
Bagnoli, C., 83, 85, 87
Baldassarre, A., 233
Barak, A., 198, 199
Barbera, A., 233
Bast, J., 388, 402
Battaglia, L., 331
Baudenbacher, C., 438, 446
Bayertz, K., 354
Beatty, D.M., 175, 244, 245
Beauchamp, T.L., 341, 353
Bebr, G., 396
Beccaria, C., 168
Bell, J., 77, 312
Benson, P., 264

Bentham, J., 49, 109, 110, 111–112, 113, 115,
118, 126
Berg, G.H. von, 188
Berlin, I., 75, 110, 166, 317
Bernard, N., 358
Bernstein, J., 77
Besson, S., 127
Beyleveld, D., 359
Bickel, A.M., 249
Biondi, A., 401
Bishop, P., 356
Blackburn, S., 30
Blackstone, W., 115
Blasius, B., 338
Bloom, I., 441
Bobek, M., 295, 311–325
Boettcher, J.W., 82, 90, 93, 94
Bohman, J., 123
Bohr, N., 77
Bongiovanni, G., 81–106
Borgmann-Prebil, Y., 387
Borsellino, P., 330
Botha, H., 197
Braibant, G., 322
Braithwaite, J., 118, 163, 165
Bratman, M., 22
Brennan, G., 167
Brentano, F., 22
Breyer, S., 455
Brownswold, R., 355, 359

C

Calabresi, G., 312
Canestrari, S., 363–378
Cappelletti, A., 226
Carter, I., 109
Casgrain, L.-M., 315
Casonato, C., 330, 338
Cass, D., 173

Cassese, S., 295, 304
 Cassin, R., 306
 Cayla, O., 357, 358
 Cerri, A., 215
 Chang, R., 11
 Chapman, B., 246, 268
 Chapus, R., 322
 Chaskalson, A., 135, 138, 195, 196
 Childress, J.F., 353
 Christie, G., 275
 Clayton, R., 325
 Cleveland, S., 206
 Coban, A.R., 435
 Cohen-Eliya, M., 247
 Cohen, G.A., 258
 Cohen, J., 124
 Cohen-Tanugi, L., 358
 Coke, E., 339
 Collier, J.F., 177
 Colt, L.B.B., 312
 Constant, B., 295, 309
 Copernicus, N., 75
 Cornacchia, L., 370, 371
 Craig, P., 132, 133, 297, 304, 308, 314
 Cross, R., 312
 Cruz, J., 20
 Curzon, S.J., 391, 405–419

D

D'Agostino, F., 330
 D'Andrea, L., 216
 Davey, W.J., 439
 Davies, A., 441
 Davis, K.C., 296
 de Búrca, G., 388, 390
 de Figueiredo, F.P., 452
 Delacourt, J.T., 407
 Delany, H., 314
 de Laubadère, A., 322
 della Cananea, G., 132, 295–310
 de Mestral, A., 439
 Denning, A. (Lord), 272, 296
 Denninger, E., 318
 de Sousa Santos, B., 352
 Devlin, P., 313
 Di Bella, L., 237
 Dicey, A.W., 295, 308
 Dicke, K., 424
 Dickson, B., 194
 Dijk, P. van, 135
 Diplock, K., 297
 Dolcini, E., 375
 Doolin, J.L., 338, 364

Donini, M., 369
 Dugard, J., 425
 Dürig, G., 192
 Dworkin, R., 142

E

Edward II (King), 312
 Einstein, A., 77
 Ellickson, R.C., 177
 Elliott, M., 297
 Ellis, E., 388
 Elster, J., 123
 Ely, J.H., 305
 Emberland, M., 433, 434, 445
 Engelhardt, H.T., 353, 355
 Engle, G., 312
 Eser, A., 369
 Esposito, C., 221
 Estrich, S., 276

F

Facchi, A., 167
 Faden, R., 341
 Faenza, F., 329, 363–378
 Faralli, C., 329–336, 351, 356
 Feinberg, J., 280, 367
 Feldman, D., 352, 359
 Ferguson, A., 167
 Ferrajoli, L., 168
 Ferrarese, M.R., 166
 Feyerabend, P.K., 69, 75, 76, 77
 Finnis, J., 69
 Firth, R., 11
 Flauss, J.-F., 173
 Fletcher, G.P., 266, 324
 Flis Trèves, M., 354
 Fodor, J., 21
 Forst, R., 455
 Forzatti, E., 342
 Foucault, M., 149
 Francioni, F., 425
 Franck, T., 427
 Franklin, B., 354
 Freund, G.K., 316
 Fuller, L., 223, 299

G

Gale, W.S., 325
 Galgano, F., 332
 Galileo, G., 75
 Gardbaum, S., 197
 Garrison, M., 338
 Geertz, C., 72, 76, 77
 Gerapetritis, G., 324

Giannini, M.S., 303
 Girard, C., 355
 Giraudoux, J., 337
 Gohin, O., 322
 Goldberg, D.B., 347
 Goldman, A., 21
 Gordon, B.J., 77
 Gormley, L.W., 390
 Graver, H.P., 437, 446
 Greene, W., 314
 Greer, S., 358
 Grey, J.H., 315
 Grimm, D., 191, 211, 246, 248
 Grossrieder-Tissot, S., 389
 Gross, T., 338
 Guarnieri, C., 427
 Günther, F., 188, 190
 Gutmann, A., 123

H

Haack, S., 340
 Habermas, J., 8, 57, 81–106, 110, 124, 151,
 174, 357, 358, 359, 455
 Hamilton, A., 427
 Hare, R.M., 93
 Harlan, J.M., 316
 Harrington, J., 115, 117, 119, 126
 Hart, H.L.A., 49, 95, 96, 98, 178, 261
 Hayek, F.A., 119
 Heinsohn, S., 189
 Heller, K.J., 347
 Henham, R., 168
 Henkin, L., 245
 Hennette-Vauchez, S., 351–359
 Herzog, D., 259
 Hiebert, J.L., 194
 Hill, B., 119
 Hirschberg, L., 189
 Hirschl, R., 245
 Hobbes, T., 111
 Hoffman, S., 149
 Holmes, O.W., 339
 Holmes, S., 110
 Howse, R., 206
 Hoyle, F., 76
 Huber, E.R., 189
 Hudec, R.E., 205

I

Iles, K., 196
 Insolera, G., 363, 366

J

Jackson, E., 370

Jackson, V.C., 249
 Jacqué, J.-P., 386
 Jasanoff, S., 354
 Jeffrey, R., 33
 Jotterand, F., 356

K

Kant, I., 6, 13, 50, 81, 154, 421
 Keeney, R., 39
 Keller, H., 203
 Kelly, E., 77
 Kelly, J.M., 295
 Kelsen, H., 50, 176, 184
 Kerse, C., 418
 Khan, N., 418
 Klein, F., 318
 Klíma, K., 320
 Knapp, V., 320
 Kommers, D., 192
 Kramer, M.H., 109
 Krauss, R., 190
 Krüger, H., 190
 Kuijper, P.J., 440
 Kukathas, C., 122
 Kumm, M., 66, 174, 244
 Künnecke, M., 314
 Kuper, A., 453
 Kutscher, H., 201
 Kwak, K., 439

L

Lakatos, I., 75
 Landfried, C., 192
 Langdell, C.C., 245
 Lavranos, N., 450, 451, 452
 Law, D., 243
 Leibholz, G., 190
 Lerche, P., 190, 191
 Letourner, M., 305
 L'Heureux-Dubé, C., 315
 Lind, J., 111
 Livy (Titus Livius), 115
 Locke, J., 115, 156, 259
 Lolli, A., 295
 Lollini, A., 169
 Long, O., 205
 Loughlin, M., 295
 Luhmann, N., 37, 44
 Luther, J., 366, 369, 373, 374, 377

M

McCauley, T.B., 279
 McCormick, N., 8, 9, 11, 13, 14, 44, 69, 77,
 178, 364

McDorman, T.L., 448
 Machiavelli, N., 163, 167
 McLean, J., 198
 MacMillan, H. (Lord), 44
 MacPherson, L., 76
 Maffettone, S., 69, 71, 76, 147–160
 Magro, M.B., 369
 Mähner, T., 429
 Maimonides, M., 198
 Majone, G., 180
 Manes, V., 224, 240, 363, 364, 366, 369,
 374, 377
 Manzini, P., 391
 Marceau, G., 439
 Marquis, M., 391
 Martí, J.L., 109
 Mashaw, J., 296
 Mathews, J., 57, 137, 173–212, 243, 303
 Mayer, F.C., 442
 Mbembe, A., 148
 Michel, V., 149, 402
 Miller, D., 111, 272
 Mill, J.S., 25, 154
 Mirate, S., 301
 Montesquieu, C.d.S.d, 164, 309, 427
 Moon, J.D., 124
 Moran, M., 77
 Moreno, J., 353
 Morrone, A., 82, 215–240, 402
 Mortelmans, K., 416
 Mowbray, A., 135
 Mulkay, M., 354

N

Newman, J.H., 73
 Newton, I., 75
 Nicolaidis, P., 208
 Nimmer, M., 66
 Nino, C.S., 455
 Nolte, G., 174
 Nozick, R., 30
 Nyssen, H., 354

O

Oakeshott, M., 77
 Odudu, O., 391
 Oedipus, 262
 Oliver, P., 384
 Omi, 198
 Ortino, F., 385

P

Pagliaro, A., 368
 Paladin, L., 218, 221

Palazzani, L., 330
 Palazzo, F., 363, 366, 369, 374
 Paley, W., 110, 111, 126
 Palombella, G., 295
 Pareto, V., 38, 39, 40, 53, 54, 58, 59, 60, 62,
 63, 64, 186, 208
 Paulson, S.L., 5
 Paulsson, J., 425
 Pavone, I.R., 343
 Pederzoli, P., 427
 Pellegrino, E., 355
 Pennicino, S., 215
 Perelman, C., 364
 Perry, E.L., 264, 280, 347
 Perry, S., 264, 347
 Pescatore, P., 201, 207, 429
 Petersmann, E.U., 173, 421–456
 Pettit, P., 28, 109–127, 163, 164, 165, 166,
 167, 168
 Pincione, G., 453
 Pinker, S., 21
 Poiares Maduro, L.M., 416
 Pollock, J.L., 20, 21,
 22, 28
 Porat, I., 243–249
 Posner, E., 452
 Postema, G., 17, 27
 Pretty, D., 144, 343, 344, 345, 346, 348,
 368, 372
 Price, R., 113

R

Radin, M.J., 268
 Raiffa, H., 39
 Ramangkura, V., 206
 Ranney, F.J., 347
 Rawls, J., 6, 7, 69, 70, 71, 74, 76, 77, 81–106,
 123, 124, 141, 142, 148, 149, 150, 151,
 152, 153, 154, 155, 156, 158, 159, 256,
 257, 258, 259, 331, 337, 357, 359, 422,
 428, 455
 Raz, J., 71
 Rehg, W., 123
 Reid, J.P., 115, 272
 Re, L., 168
 Restani, J.A., 441
 Richardson, H.S., 337
 Ricoeur, P., 13
 Ripstein, A., 19, 255–280
 Risicato, L., 376
 Rivers, J., 202, 243
 Rodotà, S., 330, 333
 Romano, M., 376

Rosas, A., 443, 455
 Rosenberg, M., 359
 Rossi, L.S., 391, 405–419
 Rothstein, M.A., 346
 Rousseau, J.J., 120, 144
 Roxin, C., 371

S

Sachs, A.L., 196
 Sadurski, W., 19, 129–146, 193
 Said, E.W., 148
 Saja, F., 221, 222
 Sajo, A., 427
 Sandulli, A., 303
 Santosuosso, A., 330, 337–348
 Sartor, G., 5, 17–67, 182
 Sartre, J.P., 42
 Scaccia, G., 216
 Scanlon, T.M., 127, 256
 Schauer, F., 66, 136, 245
 Schmidt-Bleibtreu, B., 318
 Schmitt, C., 149, 189, 234
 Schneider, C.E., 338, 371
 Schoch, F., 319
 Schokkenbrock, J., 433
 Schwartz, A., 271
 Schwarze, J., 200, 318, 322, 386
 Šotková, A., 321
 Scott, J., 205, 358
 Seidman, A., 46
 Seidman, R., 46
 Sen, A., 28, 50
 Shaffer, G., 300
 Shakespeare, W., 339
 Shany, Y., 449
 Shapiro, M., 176, 305
 Shelton, D., 425, 426
 Shepherd, L.L., 338
 Shuibhne, N., 410
 Sibley, W.M., 69
 Simon, H.A., 18, 28, 36
 Skinner, Q., 110, 112, 116, 163
 Skouris, V., 437
 Slaughter, A.M., 454
 Smend, R., 189, 190
 Smith, A., 12, 69, 204
 Snell, J., 410
 Soper, P., 56
 Sossin, L., 315
 Spaventa, E., 410
 Spivak, G.C., 148
 Stein, E., 173
 Steiner, H., 109

Stelkens, P., 318, 319
 Stern, K., 191, 318
 Stirn, B., 322
 Stolleis, M., 189, 190
 Stone Sweet, A., 57, 137, 140, 173–212, 243,
 272, 295, 303, 358, 429
 Svarez, C.G., 188, 189, 191
 Sykes, A.O., 452

T

Tao, J., 355
 Tassinari, D., 370
 Tega, D., 227, 231
 Teson, F., 453
 Thagard, P., 30, 37
 Thomas, Y., 359
 Thompson, D., 123
 Tocqueville, A.de, 295
 Tordini Cagli, S., 367
 Toulmin, S., 74, 75
 Trachtman, J., 173
 Triantafyllou, D., 411
 Tridimas, T., 388
 Triepel, H., 189, 190
 Trotter, G., 355, 358
 Trubek, D., 358
 Trubek, L., 358
 Tuerk, E., 206
 Tuomela, R., 27

U

Ulysses, 115, 116, 119, 126
 Usher, J.A., 303, 305

V

Valente, F., 329
 Valentini, C., 81–106, 329
 Van de Gronden, J.W., 416
 van Hoof, G.J.H., 135
 Vender Elst, R., 364
 von Bogdandy, A., 388, 402

W

Waldron, J., 45, 125, 142, 212
 Waldrop, M.M., 338
 Walker, D.M., 283
 Walker, N., 200, 358
 Walton, D.N., 25
 Walzer, M., 259
 Walz, R., 397
 Weatherill, S., 388
 Weber, M., 5, 166, 167
 Weiler, J.H., 173, 358
 Weinrib, E., 265, 268

Weinrib, L., 243, 246
Wesseling, R., 391, 416
Wharam, A., 323
White, I., 205
Wierzbicka, A., 340
Wildhaber, L., 202, 432, 433
Williams, B., 150
Wils, W., 418
Wind, M., 358
Wrenbury, H.B., 315
Wright, G.H. von, 5, 6, 7
Wright, R.G., 73

Würtenberger, T., 188

Y

Yoo, J.C., 452

Z

Zamir, I., 197, 198

Zanobini, G., 296

Zolo, D., 168

Zurn, C.F., 428

Zywicki, T.J., 407