Contents

List of Figures		xiii
List of Tables		XV
1	Introduction	1
1.	The Book's Argument	4
	A Skewed Balance of Powers	6
	Understanding Case-Law Development	7
	Case-Law Constraints on Policymaking	10
	Case Selection and Methodology	13
	The Book's Structure	17
2.	The European Court of Justice as a Political Actor	23
	Courts as Political Actors	24
	The ECJ as a Motor of Integration	26
	The Court, its Judges, and its Professional Environment	28
	The Commission	34
	The ECJ's Supporting Coalition: Member-State Courts	
	and Private Litigants	36
	The Court and the Masters of the Treaty	39
	Conclusion: Shortcomings in the Literature	47
3.	Case-Law Development between Path Dependence and Legal	
	Uncertainty	50
	The Distinctive Approach towards Integration in the EU	52
	Legal Uncertainty	54
	Legal Texts as a Source of Legal Uncertainty	55
	Adjudication as a Source of Legal Uncertainty	56
	The Multilevel System as a Source of Legal Uncertainty	59
	Applying the Concept of Path Dependency to Case Law	60
	Path-Dependent Jurisprudence on the Fundamental Freedoms	63
	The Transfer of Logic to Other Freedoms	69
	Services	70
	Establishment	72
	The Free Movement of Workers	74 77
	Capital	77
	Citizenship	82
	A Unified Restrictions Approach The Evelving Intermetation of Case Law	85
	The Evolving Interpretation of Case Law	89
	Conclusion	
4.	The Interaction of Judicial and Legislative Policymaking	93
	Negotiating Legislation in the Shadow of the Court	95
	Pressurizing the Legislative Process: Strategies of the Commission	100

x Contents

	Making an Offer that Can't be Refused: The Lesser-Evil Strategy	100
	Breaking the Resistance in the Council: Divide and Conquer	103
	The Services Directive	106
	The Content of the Directive	107
	Negotiating the Services Directive	109
	What we can Learn from the Directive	113
	The Regulation for Goods	114
	The Content of the Regulation	117
	The Burden of Proof in the Case Law	118
	Explaining Member States' Consent	120
	Summarizing the Argument	122
	Conclusion: Is the Judiciary Overshadowing the Legislature?	123
5.	Reaching Beyond the Market into State Responsibilities	126
	The Citizenship Directive	127
	The Historical Origins of Citizenship Rights	128
	Case-Law Development	131
	Negotiating the Citizenship Directive (2004/38/EC)	132
	Case-Law Development After the Directive	136
	Conclusion	139
	The Patient Mobility Directive	141
	Existing Case Law on Patient Mobility	142
	Negotiating the Patient Mobility Directive	145
	Conclusion	148
	Failed Codification	150
	The Failed Monti II Regulation	151
	Integrating Member States' Tax Policies	153
	Litigating Direct Domestic Taxes at the ECJ	154
	An Impossible Quest?	158
	The Court's Response—Switching to a Lower Gear	161
	Legislative Responses at the EU Level	163
	Conclusion: No Exit from the Joint-Decision Trap	165
	Conclusion	166
6.	Europeanization With and Against the Odds: The Cases of	
	Meilicke and Zambrano	169
	Research on Europeanization	171
	The Meilicke cases	175
	Meilicke	175
	The Facts Concerning Meilicke I	176
	The Court's Ruling	178
	Meilicke II	178
	Assessing Meilicke	179
	The Court's Activism on Citizenship Rights	180 181
	The Zambrano Case	181
	Fine-Tuning Zambrano Member States' Reactions	185
	Member States' Reactions	103

Contents	xi

The Irish Reaction	186
Citizenship Law in Ireland	186
Explaining Proactivity	188
The Reaction in Other Member States	190
Conclusion	194
7. The Europeanization Effects of Case Law	197
Explaining Member States' Reactions to Case Law	199
The Cognitive Dimension of Responses to Case Law	201
Actors' Reactions	201
Executive Reactions	202
Administrative Accommodation	202
Executive Resistance	206
Executive Compensation	209
Legislative Accommodation	212
The Reform of Limited Companies	212
The Posting of Workers	214
The Laval Quartet	215
Reform of Social Benefits in the United Kingdom	216
Judicial Reactions	219
Domestic Judicial Activism	220
Domestic Judicial Restraint	222
Societal Actors	224
Conclusion	226
8. Conclusion	231
Activism?	236
Time	240
Legitimacy	241
The Rule of Law beyond the Nation State	246
Where Should Political Science Go from Here?	248
Bibliography	253
Index	