gagement with formulas of coordination sheds light on the structural nature of the Court's case-law; and the examination of 'fundamental' formulas helps us understand the hierarchy the Court injected into the law and its constitutional nature.

V Why is this book useful and novel?

The book for the first time gathers *all* the case-law of the Court on workers, citizens, establishment, services, diplomas, and social security. It does not just assemble the 'important' decisions, but *all of them*.[1] This completeness is useful for the practitioner who is relieved of the worry that a relevant judgment escapes attention. The usefulness is not limited to this practical aspect though. The Union's law of social security has so far been a technical domain that has been left to the specialists. Consequently, there are mainly handbooks that are confined to explaining the basics of the Union's law of social security.[2] Such handbooks sometimes also include international social security law; and they deal with the implications of international and Union law for a specific (member) state.[3] Other items address just one aspect of social security.[4] Shorter pieces regularly discuss the latest social security case-law of the Court.[5] More profound contributions remain the exception.[6] In scholarship the market freedoms of workers, service providers, and established persons exist entirely apart from social security.[7] In

1 The book avoids drawing a distinction from the outset between 'important' and 'unimportant' decisions. Such a distinction would typically be drawn on the basis of the number of judges assigned to a case, thus distinguishing between grand and small chamber cases. However, the size of the chamber is plain data which is accessible through the Court's decision database. Given that, it seems exaggerated to add a further layer of complication to an already quite complex analysis. Quite apart from that, though, a distinction between 'important' and 'unimportant' decisions would be at odds with the aim of this book, which is to trace fully the evolution of certain interpretive formulas in the whole case-law examined. This aim basically implies that all cases are treated on an equal footing from the outset. An interpretive formula can then play a key role in a decision that is 'unimportant' in the greater scheme of things (and was e. g. assigned to a small chamber). In other words, from the perspective of interpretive formulas such a decision is indeed truly 'important', although it was decided by a small chamber. In brief, whether a decision is important or not for the evolution of interpretive formulas is to be decided in the light of the role an interpretive formula plays in this decision; 'importance' is an output of the investigation this book undertakes, rather than an input to it.

2 Robin C. A. White, *EC Social Security Law* (Harlow: Longman, 1999); Frans Pennings, *European Social Security Law* (Antwerpen: Intersentia, 2010); Eberhard Eichenhofer, *Sozialrecht der Europäischen Union*, 5. ed. (Berlin: Schmidt, 2013).

3 Bettina Kahil-Wolff and Pierre-Yves Greber, *Sécurité sociale: aspects de droit national, international et européen* (Basel: Helbing, 2006).

4 Yves Jorens and Bernd Schulte (eds), *European Social Security Law and Third Country Nationals* (Bruxelles: La Charte, 1998).

5 Vicki Paskalia, 'Co-ordination of Social Security in the European Union: An Overview of Recent Case Law', 46 *Common Market Law Review* (4) (2009), pp. 1177-1218.

6 One early exception was R. Lecourt, *L'Europe des Juges* (Brussels: Bruylant, 1976); later on, Robin C. A. White, *Workers, Establishment, and Services in the European Union* (Oxford: Oxford University Press, 2004); and Robin C. A. White, 'Social Solidarity and Social Security', in Anthony Arnull, Catherine Barnard, Michael Dougan and Eleanor Spaventa (eds), *A Constitutional Order of States?* (Oxford: Hart, 2011), pp. 301-319, are to be noted.

7 Take the edited volume Henry G. Schermers, Cees Flinterman, Alfred E. Kellermann, Johan C. von Haersolte and Gert-Wim A. van de Meent (eds), *Free Movement of Persons in Europe* (Dordrecht: Ni-

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contrast to social security, scholarship has very actively engaged with those freedoms and dealt extensively with them.[8] Union citizenship has drawn most of the attention in recent years.[9] There is thus a gap in scholarship between social security and the market freedoms. This book bridges this gap and for the first time

jhoff, 1993), as an example. Joseph Weiler's well-known article "Thou Shalt Not Oppress A Stranger (Ex. 23 : 9): On the Judicial Protection of the Human Rights of Non-EC Nationals" (pp. 248-271) is in it. It is often quoted. The volume does not contain a section on the coordination of social security, although the Court by the time the book was published had handed down more than 200 judgments on social security, while hardly half as many on the free movement of workers. A more recent example is Anne Pieter Van der Mei, *Free Movement of Persons Within the European Community – Cross-border Access to Public Benefits* (Oxford: Hart, 2003). Despite the impression created by the title, the book only briefly deals with social security. Anthony Arnull, *The European Union and its Court of Justice* (Oxford: OUP, 2006), strongly relies on free movement of workers, establishment, services, and citizens, but does not address social security. Further back, the 'Integration Through Law'-series contained a section about migrant workers, but the author of the section notes: 'In part my purpose is to avoid repeating a story that is now very familiar and, especially with regard to social security, [footnote omitted] full of technical details that would overwhelm a comparative discussion.' (Bryan G. Garth, 'Migrant Workers and Rights of Mobility in the European Community and the United States: A Study of Law, Community, and Citizenship in the Welfare State', in Mauro Cappelletti, Monica Seccombe and Joseph Weiler (eds), *Integration Through Law: Europe and the American Federal Experience*, vol. 3 (Berlin: De Gruyter, 1985), pp. 85-163, p. 98.).

8 Nicola Rogers and Rick Scannell, *Free Movement of Persons in the Enlarged European Union* (London: Sweet & Maxwell, 2005); Andrea Biondi, 'Recurring Cycles in the Internal Market: Some Reflections on the Free Movement of Services', in Anthony Arnull, Piet Eeckhout and Takis Tridimas (eds), *Continuity and Change in EU Law* (Oxford: OUP, 2006), pp. 228-259; Friedl Weiss and Frank Wooldridge, *Free Movement of Persons within the European Community*, 2. ed. (Kluwer: Alphenn aan den Rijn, 2007); Eleanor Spaventa, *Free Movement of Persons in the European Union – Barriers to Movement in their Constitutional Context* (Kluwer: Alphenn aan den Rijn, 2007); Alina Tryfonidou, 'In Search of the Aim of the EC Free Movement of Persons Provisions: Has the Court of Justice Missed the Point?', 46 *Common Market Law Review* (5) (2009), pp. 1591-1620; Siofra O'Leary, 'Free Movement of Persons and Services', in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law*, 2nd. ed. (Oxford: Oxford University Press, 2011), pp. 499-545. Much work has also been invested in non-discrimination: Astrid Epiney, *Umgekehrte Diskriminierungen* (Köln: Heymanns, 1995); Christa Tobler, *Indirect Discrimination: A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law* (Antwerpen: Intersentia, 2005).

9 The earliest item on this topic (the market citizen) was Hans Peter Ipsen and Gert Nicolaysen, 'Haager Kongress für Europarecht und Bericht über die aktuelle Entwicklung des Gemeinschaftsrechts', 17 *Neue Juristische Wochenschrift* (8) (1964), pp. 339-344. Newer pieces include Michelle Everson, 'The Legacy of the Market Citizen', in Jo Shaw and Gillian More (eds), *New Legal Dynamics of European Union* (Oxford: Clarendon, 1995), pp. 73-90; Joseph Weiler, *The Constitution of Europe* (Cambridge: Cambridge University Press, 1999), in particular pp. 324-357; Dominik Hanf, 'Le développement de la citoyenneté de l'Union européenne', in Dominik Hanf and Rodolphe Muñoz (eds), *La libre circulation des personnes – Etats des lieux et perspectives* (Brussels: Peter Lang, 2007), pp. 15-28; Ferdinand Wollenschläger, *Grundfreiheit ohne Markt* (Tübingen: Mohr Siebeck, 2007); Helmut Philipp Aust, 'Von Unionsbürgern und anderen Wählern – Der Europäische Gerichtshof und das Wahlrecht zum Europäischen Parlament', 11 *Zeitschrift für europarechtliche Studien* (2) (2008), pp. 221-242; Jo Shaw, 'A View of the Citizenship Classics: Martínez Sala and Subsequent Cases on Citizenship of the Union', in Miguel Poiares Maduro and Loïc Azoulai (eds), *The Past and Future of EU Law – The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Oxford: Hart, 2010), pp. 356-362; Ulrich Hufeld, 'Vom Wesen der Verfassung Europas – die Freiheit der Unionsbürger als europäisches Legitimationsfundament', 59 *Jahrbuch des öffentlichen Rechts der Gegenwart* (2011), pp. 457-475; Jürgen Habermas, 'Bringing the Integration of Citizens into Line with the Integration of States', 18 *European Law Journal* (4) (2012), pp. 485-488; Christian Calliess, 'The Dynamics of European Citizenship: From Bourgeois to Citoyen', in ECJ (ed.), *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law* (The Hague: Asser, 2013), pp. 425-441; Daniel Thym, 'Toward 'Real' Citizenship? The Judicial Construction of Union Citizenship and Its Limits', in Maurice Adams, Henri de Waele, Johan Meeusen and Gert Straetmans (eds), *Judging Europe's Judges* (Oxford: Hart, 2013), pp. 155-174.

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builds an argument on the basis of the whole case-law concerning natural persons in the internal market.

The study also seeks to contribute to the understanding of the Court and its decisions. The Court's methods of interpretation have been studied and debated intensely.[10] Its activism and its political nature have stirred controversy at the latest since Rasmussen's *On Law and Policy*.[11] The way the Court's decisions and its approach to interpretation have changed from the beginning up to the present is well established.[12] The nature of the Court's decisions, including whether they create precedent,[13] and the nature of the Court itself are well understood by now.[14] This book adds to this scholarship. It is a deep study of in-

10 The early authorities in this regard are Roger-Michel Chevalier, 'Methods and Reasoning of the European Court in Its Interpretations of Community Law', 2 *Common Market Law Review* (1964), pp. 21-35; C. J. Mann, *The Function of Judicial Decision in European Economic Integration* (The Hague: Nijhoff, 1972); and Hans Kutscher, 'Methods of Interpretation as Seen by a Judge at the Court of Justice', in European Court of Justice (ed.), *Judicial and Academic Conference* (Luxembourg, 1976), pp. I-1-51. Later came Anna Bredimas, *Methods of Interpretation and Community Law* (Amsterdam: North Holland, 1978); Richard Plender, 'The Interpretation of Community Acts by Reference to the Intentions of the Authors', 2 *Yearbook of European Law* (1982), pp. 57-105; J. Mertens de Wilmar, 'Reflexions sur les méthodes d'interprétation de la Cour de Justice des Communautés Européennes', 22 *Cahiers du Droit Européen* (1) (1986), pp. 5-20; Joxerramon Bengoetxea, *The Legal Reasoning of the European Court of Justice: Towards a European Jurisprudence* (Oxford: Clarendon, 1993).

11 Hjalte Rasmussen, *On Law and Policy in the European Court of Justice* (Dordrecht: Martinus Nijhoff, 1986); followed in particular by Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford: Clarendon, 1989). The discussion is not over: Lüder Gerken, Volker Rieble, Günter H. Roth, Torsten Stein and Rudolf Streinz, *"Mangold" als ausbrechender Rechtsakt* (München: Sellier, 2009); Andreas Grimmel, 'Judicial Interpretation or Judicial Activism? The Legacy of Rationalism in the Studies of the European Court of Justice', 18 *European Law Journal* (4) (2012), pp. 518-535; Ulrich Haltern and Andreas Bergmann (eds), *Der EuGH in der Kritik* (Tübingen: Mohr Siebeck, 2012); Mark Dawson, Bruno De Witte and Elise Muir (eds), *Judicial Activism at the European Court of Justice* (Cheltenham: Edward Elgar, 2013). For a broader perspective: Antoine Vauchez, 'The transnational politics of judicialization. Van Gend en Loos and the making of EU polity', 16 *European Law Journal* (1) (2010), pp. 1-28.

12 The historical groundwork was done by Jack Dawson, *The Oracles of the Law* (Ann Arbor: University of Michigan Press, 1968), though not specifically with regard to the Court; later on came Michel Waelbroeck, 'Le Rôle de la Cour de justice dans la mise en oeuvre du Traité CEE', 18 *Cahiers du Droit Européen* (4) (1982), pp. 347-380. With a broader approach: Joseph H. H. Weiler, 'The Transformation of Europe', 100 *The Yale Law Journal* (1990-1991) (1991), pp. 2403-2484; also more recently, Francis Snyder, *New Directions in European Community Law* (London: Weidenfeld, 1990); Neville March Hunnings, *The European Courts* (London: Cartermill, 1996); Miguel Poiares Maduro, *We, the Court* (Oxford: Hart, 1998); Gráinne de Búrca and Joseph Weiler (eds), *The European Court of Justice* (Oxford: Oxford University Press, 2001); Gunnar Beck, *The Legal Reasoning of the Court of Justice of the EU* (Oxford: Hart, 2012); Suvi Sankari, *European Court of Justice Legal Reasoning in Context* (Groningen: Europa Law Publishing, 2013); or from a comparative perspective, Mitchel de S.-O.-L.'E. Lasser, *Judicial Deliberations – A Comparative Analysis of Judicial Transparency and Legitimacy* (Oxford: Oxford University Press, 2009). For a history in broad strokes consider Waltraud Hakenberg, 'Der Europäische Gerichtshof – 59 Jahre Gestaltung von Europa durch Recht', in Werner Meng, Georg Ress and Torsten Stein (eds), *Europäische Integration und Globalisierung* (Baden-Baden: Nomos, 2011), pp. 233-247.

13 The authority in this regard is John J. Barceló, 'Precedent in European Community Law', in Neil Maccormick and Robert Summers (eds), *Interpreting Precedents – A Comparative Study* (Aldershot: Dartmouth, 1997), pp. 407-422. More recently: Maurice Adams, Henri de Waele, Johan Meeusen and Gert Straetmans (eds), *Judging Europe's Judges – The Legitimacy of the Case Law of the European Court of Justice* (Oxford: Hart, 2013).

14 Alec Stone Sweet, *Governing with Judges – Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000); Alec Stone Sweet, 'The European Court of Justice', in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law*, 2nd ed. (Oxford: Oxford University Press, 2011), pp. 121-153; Ninon Colneric, 'Entwicklungslinien in der Rechtsprechung des Gerichtshofes der Europäischen Gemeinschaften zum Status von Ausländern', in Klaus Barwig, Stephan Beichel-Benedetti and

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terpretation in a specific, though large, body of case-law. It thereby tries to make up for the deficiencies of previous methodological works, which were typically over-arching, focussing on what they identified as the 'most important' cases in the entire case-law. Those studies could therefore only reach very broad conclusions, such as that the Court relies on *effet utile*, uses the four or five traditional methods of interpretation, or applies other interpretive approaches such as *lex specialis* or *e contrario* arguments. In contrast, this book pinpoints certain interpretive formulas in the case-law, traces them through the entire story of the case-law under scrutiny, and assesses their power. These interpretive formulas have so far not received sufficient attention.

VI An illustration of how this book is different from other works

As an illustration of the usefulness and novelty of this book, let us consider four examples of scholarship discussing broad and restrictive interpretation, an interpretation that is, among other interpretations, dealt with in the part of this book on 'the evolution of interpretive formulas'. A classic passage in Hans Kutscher's influential contribution of 1976 notes: The 'Community Treaties, as the constitution of the Community, are to be interpreted broadly rather than restrictively, according to the methods of interpretation applicable to constitutional jurisdiction, and thus like national constitutional law'[15]. It continues: 'The exception which the Treaty makes to the basic rules of equality of treatment, freedom of movement and freedom to provide services have been consistently given a narrow interpretation by the Court' (p. I-37), citing as examples *Van Duyn*, *1974*, and *Rutili*, *1975*.[16] A passage from a book of 1978 by another prominent author, Anna Bredimas, reads: '[T]he Court has adopted the principle that exceptions to general Community rules and derogations to Treaty obligations must be restrictively interpreted. This is the case where a narrow construction has been applied in order to promote the purposes of the Treaty and reinforce Community efficacy. Its application is so consistent that the case law bristles with examples of it.'[17] This statement is supported with passages from seven judgments stemming from the whole spectrum of the Court's case-law. In 1993, a third leading author, Joxerramon Bengoetxea, in his book quotes the above passage

Gisbert Brinkmann (eds), *Perspektivwechsel im Ausländerrecht* (Baden-Baden: Nomos, 2007), pp. 49-60, in particular p. 60. On the way scholarship has changed: Anthony Arnull, 'The Americanization of EU Law Scholarship', in Anthony Arnull, Piet Eeckhout and Takis Tridimas (eds), *Continuity and Change in EU Law* (Oxford: OUP, 2006), pp. 415-431; and more broadly on judges: Daniel Thürer, 'Die Worte des Richters – Gedanken rund um die Verfassungsgerichtsbarkeit', in Stefan Hammer, Alexander Somek, Manfred Stelzer and Barbara Weichselbaum (eds), *Demokratie und sozialer Rechtsstaat in Europa – Festschrift für Theo Öhlinger* (Wien: WUV, 2004), pp. 272-297.

15 Kutscher, 'Methods of Interpretation as Seen by a Judge at the Court of Justice', p. I-31.

16 That Kutscher does not cite any services cases to support this statement is not surprising given that the three cases with a services dimension which had been decided up to that point – *Sacchi*, *1974*; *Van Binsbergen*, *1974*; and *Coenen*, *1975* – did not contain any evident passage to that effect.

17 Anna Bredimas, *Methods of Interpretation and Community Law*, p. 109-110 (footnote omitted).

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