INDEX

abolitionist movement, 117, 190–191
abortion rights, 14–23. See also Roe v. Wade
Aquinas on, 105
under constitutional originalism, 60
gender hierarchy and, 21
late-term, Supreme Court decision, 227
moral arguments against, 20–21
under new natural law, 111, 120–122
Protestant fundamentalism and, 191
Roman Catholic influence on, 227–228
sexism and, 121–122
Adams, John, 58
The Aeneid (Virgil), 32, 143
affirmative action, 223–224
Thomas on, 223–224
African Americans
antimiscegenation laws and, 40
lyching of, 39–40
under Reconstruction Amendments, 36
sexuality of, 39–40
Ali, Ayaan Hirsi, 267
Alien and Sedition Acts of 1798, 58
Alito, Samuel (Justice), 1
Ambrose of Milan, 139, 154, 180
Amendment 2 (Colorado state constitution), 29, 67–68, 69–70
“American dilemma,” 277
American Fascists (Hedges), 270
American Protestantism, 159–160, 185–190
anti-intellectualism and, 188–189
cultural panic and, 186–187, 189
feminism and, 185–186
feminization of male’s roles under, 186
preachers of, 187
resistance movements and, 189
resistance to patriarchy as part of, 185–186
right to conscience and, 193
American Revolution, right to intimate life during, 16
The Anatomy of Fascism (Paxton), 270
antiabortion laws
foundations for, 19–20
Sreekumar argument against, 120–121
anti-intellectualism
American Protestantism and, 188–189
same-sex marriage rights and, 188–189
violence and, 188–189
antimiscegenation laws, 40
anti-Semitism, 31–35
of Aquinas, 101
Augustinian foundations for, 31–32, 175
Christian resistance to, 183
within Christianity, 176–177
Freud and, 46
Gilligan-Richards thesis and, 32, 33
of Hitler, 33, 181, 182
homophobia as analogous to, 33–34, 70, 71–72
as irrational, 177
as moral evil, 31
paradox of intolerance and, 176
political, 181, 182
repression of sexual voice and, 32
during Roman Empire, as patriarchy-based, 32–33
in theory of faction, 259
antiwar movement, 44
Apuleius, 35, 132, 145–146
influence on Augustine of Hippo, 145–146
Aquinas, Thomas, 90, 91–92, 155. See also historical Thomism
on abortion, 105
anti-Semitism of, 101
basic goods for, 111–112
belief from revelation for, 104
Aquinas, Thomas (cont.)
on celibacy, 113–114
on conversion of Jews, 99–100
ethical naturalism of, 106
ethical perfectionism of, 95–96
existence of God for, 94–95, 103–104, 112
female stereotyping by, 101–102
heresy for, 98–99
human ethics for, 95
moral theory for, 103–112
new natural law and, 102–103
on non-Christian believers, 100
nonprocreative sex for, 19, 96–97
on power of medieval church, 104
on sex in marriage, 130
on universal rights, 105
Arendt, Hannah, 182
on violence as part of totalitarianism,
268–269
Aristotle, 92
ethical naturalism for, 93
existence of God for, 92
historical Thomism and, 90, 91–92, 93–94
perfectionism for, 97–98
practical reasonableness for, 92
relevant excellences for, 93–94
Arkès, Hadley, 53–54, 60
Augustine of Hippo, 101, 131, 133, 147, 154–155
Adam and Eve narrative, interpretation of,
133
anti-Semitism and, 31–32, 175
Apuleius as influence on, 145–146
background for, 128
celibacy for, 113–114, 149
as celibate, 144–145
Christianity influenced by, 155–156
criticism of, 148
on gender stereotyping, 149
Luther influenced by, 150–151
misogyny of, 135–137
parental history of, 136–139
on patriarchy, 142–143
Protestant fundamentalism and, 175–184
Protestantism influenced by, 156
on sexuality, 133–135, 140
theory of persecution for, 132
Baker v. State of Vermont, 127
Baldwin, James, 42
Bamforth, Nicholas, 8
Baptists, 159–160
basic goods, in new natural law, 103–112
Aquinas and, 111–112
for Finnis, 110
identification of, 109–110
Bayle, Pierre, 132, 156, 157
ethics for, 157
right to conscience for, 156–157
Beecher, Catharine, 25, 115, 185
abolitionist feminism for, 117
concept of gender for, 117
on maternal relationships, 115–116
Bendroth, Margaret, 187
Benedict XVI (Pope), 88
Bentham, Jeremy, 58
Berger, Ranul, 53, 54
The Bible, interpretation of
female interpretations of, 184
Protestant fundamentalism and, textual support for, 174
in Roman Catholicism, 84
Blackmun, Harry (Justice), 26
Bloom, Harold, 163, 204, 208
Boas, Franz, 37, 41
Boggs, Lilburne, 200
Bonhoeffer, Dietrich, 183
The Book of Mormon (Smith, J.), 10, 193, 196, 201
Bork, Robert, 48, 218
as constitutional originalist, 53, 54–55
Bouyeri, Mohammed, 267
Bowers v. Hardwick, 15, 23, 28, 29, 30, 74
Boy Scouts of America v. Dale, 253
Bradwell v. State, 25
Brennan, William (Justice), 25–26
race and gender analogies for, 25–26, 27
Breyer, Stephen (Justice), 229
Brodie, Fawn M., 194. See also Smith, Joseph
Brown, Peter, 137
Brown v. Board of Education, 41
as unconstitutional, 53
Bryant, Anita, 215
Buber, Martin, 165–166, 178
Burger, Warren (Chief Justice), 24, 26
Buruma, Ian, 267
Bush, George H.W., 1
originalism as factor for judicial appointees,
225, 227
Bush, George W., 1, 48, 215, 245
patriarchal psychology of, 239
Supreme Court nominees of, 221
Bushnell, Horace, 115, 185
abolitionist feminism for, 117
concept of gender for, 117
on maternal relationships, 115–116
Calvin, John, 155
Carroll, James, 44
Castellio, Sebastian, 103
The Catechism of the Catholic Church, 125
Catholicism. See Roman Catholicism

polygamy under, 203, 205
restrictions on government establishment of religion under, 5–6

constitutional democracy, Protestantism and, 153–160

constitutional fundamentalism, 62–79
originalism and, 213–214, 218
patrician roots of, 213–230
religious fundamentalism and, 218–230
unreasonableness of, 226

constitutional law, politics and, 246–255
gender exclusion under, 247–248
patrician and, 246–247
Reconstruction Amendments and, 246–247
religion clauses and, 247

constitutional originalism, 51–61
abortion rights under, 60
Bork and, 53, 54–55
criticism of, 54–61
doctrine of stare decisis and, 56
First Amendment and, 254
Fourteenth Amendment and, 53, 55, 56,
224–225
freedom of speech and, 56
judicial review and, 59–60
Madison and, 57–58
motivations of, 62
right to privacy under, 54
Roe v. Wade and, 54, 64
Scalia and, 53, 55, 56, 218–219, 224–225,
254
as source-based fundamentalism, 52
textual interpretation as part of, 52–53
Thomas and, 53
constructionism, Supreme Court and strict, 1

contraception, rights to, 14–15

Finnis on, 119–120
Grisez on, 87

moral absolutes and, under new natural law, 115
under new natural law, 119–120
patrician and, 21
for women, 17

Cossman, Brenda, 264

Craig v. Boren, 26–27

drinking age discrimination in, 26–27
Cranzno, Vincent, 4, 162

on fundamentalism, 231–235
on originalism, 232

Cruzan v. Missouri Department of Health,
15
cultural panic, American Protestantism and,
186–187, 189
cultural sexism, 129
culture war, Scalia role in, 76–78
Index

Danforth, John, 224
Daube, David, 170
DeBerg, Betty, 187
*The Deepening Darkness* (Richards/Gilligan), 4, 13
democracy
  as “American dilemma,” 277
  constitutional, Protestantism and, 153–160
  fascism and, 271
  patriarchal values as threat to, 3, 5, 7
  democratic constitutionalism, Obama and, 237–240
Sunstein on, 237–238
deontological theory, 108–109
Kant and, 109
  moral absolutes in, 115
Descartes, René, 139, 156
dignity, under new natural law, 109
  disassociation, violence as result of, 150
  discrimination, under First Amendment, 231
  See also right to free speech, sexism and
  *District of Columbia v. Heller*, 228–229
*Doctrine and Covenants* (Smith, J.), 10, 194, 201
document of stare decisis, 50
Dodds, E. R., 147
Dostoevsky, Fyodor, 152
Douglas, Ann, 185
Douglas, Mary, 179
Douglas, Stephen, 220, 275
*Dreams from My Father* (Obama), 240
*Dred Scott v. Sanford*, 59, 64
drinking age discrimination, by gender, 26–27
DuBois, W. E. B., 45–46
Dworkin, Ronald, 188–189, 227
Eisgruber, Christopher, 247
*Employment Division v. Smith*, 55
Epstein, Richard, 128
Equal Protection Clause, 24
  segregation under, 36–37, 58
ethics, 109
  for Bayle, 157
  political liberalism and, 109
  ethical naturalism, 93, 106
  ethical perfectionism, 93–94, 95–96
  celibacy and, 98
Europe, religious fundamentalism in, 264
fascism
  democracy and, 271
  patriarchal roots of, 272–273
  religious fundamentalism as, 270
  violence and, 270
*The Federalist No. 10* (Madison), 257–260
*The Federalist No. 78* (Hamilton), 260
Feldman, Noah, 251
  feminism
  abolitionism, 35–36
  American Fundamentalism and, 185–186
  cultural embrace of, in U.S., 216
  second-wave, 43–44
Ferenczi, Sándor, 32
Festinger, Leon, 260
Fetner, Tina, 215–216
Filmer, Robert, 57, 62, 224
Finney, Charles, 195
Finnis, John, 87, 88–89, 104, 114, 119
  basic goods for, 110
  on contraception, 110–120
  on gay rights, 123, 124
  on good of marriage, 130–131
  human goods for, 88–89
  on nonprocreative sex of homosexuals, 124–127
  practical reasonableness for, 89–90
  on sexuality and gender, Aquinas
  interpretation of, 105
First Amendment
  constitutional originalism and, 254
  discrimination against gay men under, 250, 251
  religious freedom under, 250–251, 252
First Jewish Revolt, 173
Fitzhugh, George, 189
Fourteenth Amendment
  constitutional originalism and, 53, 55, 56, 224–225
  Equal Protection Clause under, 24, 36–37, 38
  right to intimate life under, 17
  freedom of religion, in U.S., 5–6, 71
  freedom of speech, constitutional originalism and, 56
Freud, Anna, 138
Freud, Sigmund, 46
  on political anti-Semitism, 222
Fried, Charles, 234
Frontiero v. Richardson, 24–25, 75
  gender distinctions and, 27
fundamentalism, religious. See also constitutional fundamentalism; source-based fundamentalism
  academic studies on, 3–4
Bush, George W., influence on presidency of, 1, 48
  conservative movement and, 48
  constitutional, 62–70, 213–230
  Crapanzano on, 231–235
  democratization patterns and, 263
  in Europe, 264
  as fascism, 270
Index

gay rights movement and, 215–217
gender and, 10, 11
gender hierarchy within, 20–21
global rise of violence with, 266
human rights and, 7
in India, 263–264
internal inconsistencies within, 11
interpretive claims for, 9
irrationalism and, 8, 236
Islamic, 266–268
Mormonism and, 193–209
natural law and, 8
Niagara Creed of 1878 and, 161–162
norm-based, 10–11
originalism and, 9, 51–54, 61
patriarchy and, 8, 11
political capital of, 75, 214–218
populist foundations of, 273–274
progressive politics under, 48
Protestant, 153–192
as reactionary, 7–8
Roe v. Wade and, 217
Roman Catholicism and, 83–152
same-sex marriage and, political battle against, 215–216
secular arguments for, 271–272
sexuality and, 10
source-based, 10
Sunstein on, 233–235
Supreme Court and, influence on, 1
unreasonableness of, 226
Virgin Birth and, role in, 162
war on reason and, 234–235
gay rights
antidiscrimination statutes for, 75
Finnis on, 123, 124
fundamentalism’s influence on, 215–217
judicial appointments and, 217
for marriage, 127–128
new natural law and, 122–124
gay rights movement, 25–29, 30–31, 44. See also homosexuality
political capital after, 75
gender. See also sexism, as moral slavery
Augustine of Hippo on stereotyping of, 149
Beecher on, 117
Bushnell on, 117
under constitutional law, exclusion of women and, 247–248
drinking age discrimination by, 26–27
Finnis on, for Aquinas, 105
fundamentalism and, 10, 11
Grisez on, 114
heightened scrutiny of, for classification of, 28
hierarchy for, under fundamentalism, 20–21
homosexuality and, stereotyping of, 22
Jesus of Nazareth and, relationship with women, 166–169
new natural law and, 114, 118
patriarchy and, 5
race and, analogies between, 25–26, 27
in Reed v. Reed, 67–68
during Roman Empire, 140–142
gender roles
normative theory of, 24–26
right to intimate life and, 23
George, Robert, 114, 119
on criminalization of homosexuality, 124
Gilligan, Carol, 4, 12–13, 102, 120, 142, 215
See also Gilligan-Richards thesis
Gilligan-Richards thesis, 4–5, 260
anti-Semitism and, 32, 33
love laws in, 34
patriarchal voice in, 46
role of sexuality in Roman Empire, 146
Gingrich, Newt, 243
Ginsburg, Ruth Bader (Justice), 65
Go Tell It on the Mountain (Baldwin), 42
God
Aquinas on existence of, 94–95, 103–104, 112
in Aristotelian philosophy, 92
The God of Small Things (Roy), 34
Goesaert v. Cleary, 23
The Golden Ass (Apuleius), 35
Goldman, Emma, 15, 110, 185
Goodridge v. Department of Public Health, 127
Gordon, Sarah, 200, 202–203
Greenawalt, Kent, 120, 252
Grímké, Sarah, 184, 185, 187
Grisez, Germain, 87, 105, 125
on Benedict XVI, 58
on gender, 114
on homosexuality, 123–124
on impermissibility of contraception, 87
on John Paul II, 88
moral theology for, 110
on papal authority, 88
on procreational sex, 110–111
Grissom v. Connecticut, 14, 23, 62, 123
Grutter v. Bollinger, 223
Hamilton, Alexander, 16
Hawthorne, Nathaniel, 36
Hedges, Christopher, 270
Henry, Patrick, 16, 157
hersesy
for Aquinas, 98–99
Christianity and, 98–99
homosexuality as, 72, 73
Herzl, Theodore, 182–183
Hill, Anita, 220
Himmler, Heinrich, 35
Hindu fundamentalism, 263–264
patriarchal foundations of, 263–264
historical Thomism, 90–106, 115
Aristotelian philosophy as part of, 90, 91–92,
93–94
basic goods in, 103–112
belief from revelation as part of, 104
celibacy and, 90–91, 98
existence of God in, 94–95, 103–104
foundations of, 90–91
moral theology and, 103
nonprocreative sex and, 96–97
perfectionism as part of, 97–98
power of medieval church and, 104
religious tolerance and, 103
Hitler, Adolf, 33
anti-Semitism of, 33, 181, 182
Christian resistance to, 183
patriarchy as psychology for, 270
Hofstadter, Richard, 187, 188, 189
homophobia
American Protestantism and, 186
anti-Semitism as analogous to, 33–34, 70,
71–72
cultural entrenchment of, 216
as cultural sexism, 129
paradox of intolerance and, 74
patriarchy and, 78
of Scalia, 77
homosexuality. See also Bowers v. Hardwick;
Lawrence v. Texas; Romer v. Evans
conceptions of, condemnation as result of,
72–73
gender stereotyping and, 22
George on, 124
Grisez on, 123–124
as hersesy, 72, 73
Judaism and, 179
moral reasoning against, 21–22
new natural law and, 108, 122–124
nonprocreative and, 124–127
procreational model of sexuality and, 22
Protestant fundamentalism and, 191–192
right to intimate life and, 21–23
in rights cases, 15
Romer v. Evans and, 29–30, 77, 122
honor codes, for males, 140–141
Honore, Tony, 73

How the Religious Right Shaped Lesbian and
Gay Activism (Fetner), 215–216
Host v. Florida, 24
human goods, 88–89
human rights movements, 3
fundamentalism and, 7
moral slavery and, 7–8
Hume, David, 257–260
theory of faction for, 257–259
Hurley v. Irish-American Gay and
Lesbian Bicosexual Group of Boston, 250
Hutcheson, Francis, 16
India, religious fundamentalism in, 263–264,
276–277
irrationalism, 8, 236. See also war on reason,
fundamentalism and
Islamic fundamentalism, 266–268
terrorism as result of, 266–268
Jackowski, Karol, 132–133, 145
Jackson, Emily, 121
James, William, 186
Jefferson, Thomas, 12, 157
on judicial review, 58, 59
Jeremias, Joachim, 170
Jesus of Nazareth, 11
Buber on, 165–166
celibacy of, 171
nonviolent teachings of, 169–171
on patriarchy, sensitivity to, 171–172,
174–175
prophetic voice for, 172–173
Protestant fundamentalism and, 164–173
Vermes on, 164–165
women and, 166–169
Jews
cultural assimilation of, disadvantages of, 182
moral slavery of, under Christianity, 180–181
political liberalism and, response to, 181–182
John Paul II (Pope), 88, 114
John the Baptist, 171
John XXIII (Pope), 86
Johnson, Lyndon, 47, 215
Johnson, Virginia, 172
Judaism, 172–181. See also anti-Semitism
celibacy and, 177–178
family relationships and, 178–179
female roles within, 178
homosexuality and, 179
original sin and, 180
patriarchy in, 179–180
rejection of Christianity and, 176–177
as "resistance" movement, 172–179, 190
sexuality and, 180–181
judicial appointments, gay rights support as factor in, 217
judicial review, 58
constitutional originalism and, 59–60
Jefferson on, 59, 59
under Reconstruction Amendments, 59
Juergensmeyer, Mark, 266
Kant, Immanuel, 109, 158, 226
ethics for, 109
Kapur, Ratna, 227
Kennedy, Anthony (Justice), 60–70, 221, 227
Kennedy, Eugene, 151
King, Martin Luther, Jr., 3, 42, 47, 160, 215, 276
See also civil rights movement
Civil Rights Act of 1964 and, 245
nonviolent civil disobedience by, 43
Obama and, cultural parallels to, 245
Voting Rights Act of 1965 and, 245
Kinsey, Alfred, 107
Koppelman, Andrew, 105, 251
Langmuir, Gavin, 177
Lawrence v. Texas, 15, 23, 25, 122, 222, 274
Scalia opinion on, 76–78
The Laws (Plato), 21–22
Lee, Ann, 194
Lee, Richard Henry, 157
lesbians. See gay rights; gay rights movement;
homophobia; homosexuality
Letters Concerning Toleration (Locke), 159
liberal constitutionalism, 62
liberalism. See also political liberalism
antidiscrimination principles of, 249–250
ethics and, 109
Lieber, Joseph, 203
Lincoln, Abraham, 54, 250, 259
Obama and, political parallels with, 241–242,
244–245
Locke, John, 57, 58, 103, 132, 156, 158–159
hypothetical contract of justice, 158–159
liberal constitutionalism for, 62
moral obligations for, release from, 158
right to conscience for, 156–157, 158–159
right to rebel for, 158–159
Lofgren, Charles, 36
Lord Acton, on role of popes, 85
love laws, 34
in Gilligan-Richards thesis, 34
patrilineal as psychology and, 274–275
Loving v. Virginia, 111, 127
Lupu, Ian C., 55
Luther, Martin, 130–131, 155
lynching, 39–40
MacKinnon, Catherine, 248–249
Madison, James, 12, 157, 257–260
constitutional originalism and, 57–58
theory of faction for, 257–259
Marbury v. Madison, 59
marriage, new natural law and, 110
Aquinas and, 130
Finnis on, 130–131
procreative sex and, 110–111
marriage rights. See also same-sex marriage
case precedents for, 127–128
discrimination by, 127–128
racist arguments against, 17–18
among slaves, 16–17
Marsden, George M., 160
Marshall, Margaret (Chief Justice, Massachusetts), 188
Masters, William, 108
Matthias, 105
violence against women and children by, 105
McBrien, Richard, 87
McCain, John, 1
McCarthy, Maureen, 48
McCord, Louisa, 116
Meese, Ed, 119
Metamorphoses (Apuleius), 132, 145–146
Metaphysics (Aristotle), 92
Michael M. v. Superior Court, 28
Mill, John Stuart, 203
Miller, William, 104
misogyny
of Augustine of Hippo, 135–137
celibacy and, 151
of Matthias, 105
Moody, Dwight, 187
Moore, C.G., 110
moral absolutes, in new natural law, 112–113
criticism of, 112
contraception rights and, 113
in deontological theory, 113
criticism of, 112
moral evils, anti-Semitism as, 31
moral slavery, 7–8, 23–31
of Jews, under Christianity, 180–181
sexism as, 114–115
moral theology, of Roman Catholicism, 103
Mormonism, 193–209
ancient Israel as model for, 196–197
contemporary, 206, 208–209
patrarchial model for, 11, 196–197, 198–199
polygamy and, 30, 198–199
right to vote and, 30, 68
role of priesthood in, 206–209
Smith as founder of, 193–202
as source-based fundamentalism, 193–202
texts for, 193–194
unreasonable of, 202–206
Mormonism (cont.)
U.S. Constitutionalism in conflict with, 203, 205
“Mormonism lite,” 206
Murray, John Courtney, 86, 160, 250
My Grandfather’s Son: A Memoir (Thomas), 220–221
Myrdal, Gunnar, 277
NAACP. See National Association for the Advancement of Colored People
National Association for the Advancement of Colored People (NAACP), 41
natural law, 8
Natural Law and Natural Rights (Finnis), 88–89
new natural law, 85–113. See also historical
Thomism
abortion rights under, 111, 120–122
Aquinas and, 102–103
basic goods in, 103–110, 112
contraception under, 119–120
deontological theory for, 108–109
dignity under, 109
gender and, 114, 118
historical Thomism and, 90–106, 113
human nature under, 112
human goods as part of, 88–89
human nature under, 58
internal incoherence of, 90–113
marriage under, 110
moral absolutes in, 112–113
practical reasonableness as part of, 89–90
religious tolerance under, 103
same-sex marriage under, 127–128
for Scalia, 219
sexism constructed under, 114–115
sexuality under, 106–108, 118, 123–124
teleological theory for, 108, 109
unreasonable of, 113–131
Vatican II and, 85–90
Niagara Creed of 1878, 161–162
Nichol, Gene R., 55
Nicomachean Ethics (Aristotle)
Niebuhr, Reinhold, 160
Nineteenth Amendment, 41
No Man Knows My History (Brodie), 194
Noll, Mark, 188
nonprocreative sex
Aquinas on, 19, 96–97
Finnis on, 124–127
nonviolent civil disobedience, 43
norm-based fundamentalism, 10–11
Roman Catholicism as, 84
Northcott, Michael, 87
Notes from Virginia (Jefferson), 58

Index

Noves, John Humphrey, 104
Nussbaum, Martha, 124, 263–264
Obama, Barack, 231
background for, 239–240
cultural impact of, 245
democratic constitutionalism and, 237–246
economic policies of, 240–241
female appointments by, 238–239
inaugural address of, 241
King and, cultural parallels to, 245
Lincoln and, political parallels with, 241–242,
244–245
originalism and, opposition to, 2, 238,
277–278
on patriarchal psychology, 242
resistance movements and, psychology of, 246
Roberts and, opposition to appointment of,
242–243
Sotomayor appointment to Supreme Court,
238, 243–244
Supreme Court appointments by, 1–2
O’Connor, Sandra Day (Justice), 64
On the Truth of the Catholic Faith (Aquinas),
91–92
original sin, Judaism and, 186
originalism, 2–3. See also constitutional
originism
appeal of, to racialized groups, 222
Bush, G. W., judicial appointees’ support for,
225
constitutional fundamentalism and, 213–214,
218
cultural impact of, 230
Crapanzano on, 232
criticism of, 54–61
fundamentalism and, 9, 51–54, 61
Obama opposition to, 2, 238, 277–278
patriarchal psychology and, 2–3, 235
political support for, 226–227
source-based fundamentalism and, 52,
55–54
for Sunstein, 233
for Taney, 237
Pagels, Elaine, 135
paradox of intolerance, 69, 70, 176. See also
anti-Semitism; homophobia
anti-Semitism and, 33–35
homophobia and, 74
patriarchy, as psychology, 256–257
abolitionist feminism and, 35–36
American Protestantism and, 185–186
antimiscegenation laws and, 40
Index

anti-Semitism and, during Roman Empire, 32–33
Augustine on, 142–143
for Bush, G. W., 229
within Christianity, 6–7
in constitutional fundamentalism, 213–230
constitutional law and, 246–247
contraception rights and, 21
cultural confrontation of, 3
definition of, 235
democracy and, as threat to, 3, 5, 7
in fascism, 272–273
female Christian response to, 184–185
female oppression and, 66
fundamentalism and, 8, 11
gender binary within, 5, 20–21
gender exclusion in religion and, 248
hierarchy within, 5
within Hindu fundamentalism, 263–264
Hitler and, 33, 270
homophobia and, 78
human responsiveness suppressed under, 35
for Jesus of Nazareth, 171–172, 174–175
in Judaism, 179–180
love laws and, 274–275
male honor codes and, 140–141
Mormon priesthood and, 207–208
in Mormonism, 11, 196–197, 198–199
nonviolent civil disobedience and, 43
Obama on, 241
originalism and, 2–3, 235
polygamy and, 198–199, 204–205
within priesthood, 207–208, 265
within Protestant fundamentalism, 173–175, 184–192
Reagan presidency and, 3
Reconstruction Amendments and, 36, 39
religious foundation of, 4–5, 6–7
as repressive, 40–48
resistance movements against, 31–45, 46, 189–190
right to conscience and, 229
during Roman Empire, 140–142
same-sex marriage and, 275
for Scalia, 65–66
of Smith, J., 196–197, 208
Supreme Court decisions influenced by, 230
for Thomas, 220–221
threats to, 235
totalitarianism and, 268
United States v. Virginia and, 65–66
in U.S., 216–217
violence as part of, 47
violence from disassociation and, 150
war on reason and, 235
Paul VI (Pope), 87
Paxton, Robert, 270
The Pearl of Great Price (Smith, J.), 10, 194, 204
Physics (Aristotle), 92
Pius X (Pope), 221
Pius XI (Pope), 114
Planned Parenthood of Southeastern Pennsylvania v. Casey, 63
Plato, 21–22
Plessy v. Ferguson, 67
Romer v. Evans and, 29–30
plural marriage. See polygamy, Mormonism and political anti-Semitism, 181, 182
call for organized resistance to, 182–183
Freud, S., on, 222
political capital
of fundamentalist religions, 75, 214–218
of gays, after rights movement, 75
political liberalism, 109
Jewish response to, 181–182
polygamy, Mormonism and, 30, 198–199
contemporary practice of, 203
female purification from, 199–200
official repudiation of, 202, 203–204
patriarchy and, 198–199, 204–205
sexism and, 204
U.S. constitutional conflicts with, 203, 205
women’s role in, 198–199, 204–205
in written form, in religious texts, 200
popes, role in Roman Catholicism, 85
Grisez on authority of, 88
Powell, Lewis (Justice), 26
practical reasonableness, 89–90
in Aristotelian philosophy, 92
priesthood
Mormonism and, 206–209
patriarchy in, 207–208, 265
Principia Ethica (Moore), 110
privacy, rights to
under constitutional originalism, 54
for Sunstein, 233–234
procreative model of sexuality
Grisez on, 110–111
homosexuality and, 22
Protestant fundamentalism, 153–192
abortion rights and, 191
Augustine of Hippo and, 175–184
constitutional democracy and, 153–160
contemporary, 160–165
criticism of, 163–184
female response to, 184–185
historical Jesus for, 164–173
homosexuality and, 191–192
interpretive claims for, 161
Niagara Creed of 1878 and, 161–162
<table>
<thead>
<tr>
<th>Protestant fundamentalism (cont.)</th>
<th>religious tolerance. See also paradox of intolerance</th>
</tr>
</thead>
<tbody>
<tr>
<td>patriarchal foundations of, 173–175, 184–192</td>
<td>historical Thomism and, 103</td>
</tr>
<tr>
<td>reactionary appeal of, 191</td>
<td>under new natural law, 103</td>
</tr>
<tr>
<td>religious textual support for, 174, 183–184</td>
<td>under Vatican II, 85–87</td>
</tr>
<tr>
<td>resistance movements and, 189</td>
<td>resistance, psychology of, 183</td>
</tr>
<tr>
<td>role of women in, 163</td>
<td>resistance movements, 31–46</td>
</tr>
<tr>
<td>same-sex marriage and, 191</td>
<td>abolitionist movement as, 190–191</td>
</tr>
<tr>
<td>as source-based, 52, 84</td>
<td>American Protestantism and, 189</td>
</tr>
<tr>
<td>Protestant Reformation, 155–156</td>
<td>antiwar movement, 44</td>
</tr>
<tr>
<td>Protestantism. See also American Protestantism</td>
<td>civil rights movement as, 42–43</td>
</tr>
<tr>
<td>American, 159–160, 185–190</td>
<td>cultural assimilation and, 222–223</td>
</tr>
<tr>
<td>Augustinian influence on, 150</td>
<td>gay rights movement as, 44</td>
</tr>
<tr>
<td>constitutional democracy and, 153–160</td>
<td>Judaism as, 172–179, 190</td>
</tr>
<tr>
<td>Protestant Reformation and, 155–156</td>
<td>long-term impact of, 42</td>
</tr>
<tr>
<td>Roman Catholicism and, 84</td>
<td>against patriarchy, 31–45, 46, 189–190</td>
</tr>
<tr>
<td>Quakers, 159–160</td>
<td>psychology of, 246</td>
</tr>
<tr>
<td>Qutb, Sayyid, 267</td>
<td>second-wave feminism as, 43–44</td>
</tr>
<tr>
<td>race and gender, analogies between, 25–26, 27</td>
<td>Rich, Adrienne, 116</td>
</tr>
<tr>
<td>racism</td>
<td>Richards, David A.J., 4, 13. See also Gilligan-Richards thesis</td>
</tr>
<tr>
<td>as “American dilemma,” 277</td>
<td>right to conscience, 156–157, 158–159</td>
</tr>
<tr>
<td>leading critics of, 41</td>
<td>American Protestantism and, 193</td>
</tr>
<tr>
<td>sexuality and, 39–40</td>
<td>development of new religious sects and, 194</td>
</tr>
<tr>
<td>in theory of faction, 259</td>
<td>patriarchal psychology and, 229</td>
</tr>
<tr>
<td>Raushenbush, Walter, 160</td>
<td>right to contraception. See contraception, rights to</td>
</tr>
<tr>
<td>Rawls, John, 51, 109, 138, 226</td>
<td>right to die, 15</td>
</tr>
<tr>
<td>Reagan, Ronald, 3, 47, 48, 215, 218, 245</td>
<td>right to free speech, sexism and, 248–249. See also First Amendment</td>
</tr>
<tr>
<td>Reconstruction Amendments, 36, 38</td>
<td>right to intimate life, 14–23. See also contraception, rights to; privacy, rights to</td>
</tr>
<tr>
<td>African American women under, 36</td>
<td>during American Revolution, 16</td>
</tr>
<tr>
<td>constitutional law and, 246–247</td>
<td>antiabortion laws and, 19–20</td>
</tr>
<tr>
<td>judicial review under, 59</td>
<td>during Civil War, 16–17</td>
</tr>
<tr>
<td>patriarchy and, 39</td>
<td>compelling public reasons for, 19</td>
</tr>
<tr>
<td>principles of, 38–39</td>
<td>foundation of, 15</td>
</tr>
<tr>
<td>Reed v Reed, 23, 26, 67–68</td>
<td>under Fourteenth Amendment, 17</td>
</tr>
<tr>
<td>Equal Protection Clause and, 24</td>
<td>homosexuality and, 21–23</td>
</tr>
<tr>
<td>gender and race in, 25, 27</td>
<td>marriage among slaves as, 16–17</td>
</tr>
<tr>
<td>Rehnquist, William (Chief Justice), 1, 29, 244</td>
<td>normative view of gender roles and, 23</td>
</tr>
<tr>
<td>religion. See also Christianity; fundamentalism; Judaism; Mormonism</td>
<td>racist arguments against, 17–18</td>
</tr>
<tr>
<td>under antiestablishment of religion principle, 252–254</td>
<td>slavery and, 16–17</td>
</tr>
<tr>
<td>under First Amendment, 250–251, 252</td>
<td>states’ rights v., 85</td>
</tr>
<tr>
<td>freedom of, in U.S., 5–6, 71</td>
<td>right to privacy. See privacy, rights to</td>
</tr>
<tr>
<td>gender exclusion in, 247–248</td>
<td>right to self-defense, 228–229</td>
</tr>
<tr>
<td>patriarchy and, 4–5, 6–7</td>
<td>Breyer on, 229</td>
</tr>
<tr>
<td>state endorsement of, 252</td>
<td>Scalia on, 228–229</td>
</tr>
<tr>
<td>theory of faction and, 261</td>
<td>Roberts, John (Chief Justice), 1, 244</td>
</tr>
<tr>
<td>under U.S. Constitution, 5–6</td>
<td>Obama opposition to appointment of, 242–243</td>
</tr>
<tr>
<td>religious cults, 260</td>
<td>Roe v. Wade, 14, 21, 23, 191</td>
</tr>
<tr>
<td>religious fundamentalism. See fundamentalism, religious</td>
<td>constitutional originalism and, 54, 64</td>
</tr>
<tr>
<td>religious persecution. See anti-Semitism; paradox of intolerance</td>
<td>fundamentalism and, 217</td>
</tr>
<tr>
<td>Kennedy opinion on, 227</td>
<td></td>
</tr>
</tbody>
</table>
Index

public support for, 216
Scalia opinion on, 63–65
Roman Catholicism. See also new natural law; Vatican II
abortion rights and, as influence on, 227–228
authority in, 84
Bible interpretation as part of, 84
cultural roots of, 131–132
fundamentalism and, 83–132
heresy and, 98–99
moral theology for, 103
new natural law and, 85–131
as norm-based fundamentalism, 10–11, 84
political and moral change for, 87
popes’ role in, 85
Protestantism and, 84
psychological roots of, 131–132
during Roman Empire, 131–132
for Scalia, as foundation for, 218–219
sexual morality for, 132–133
Vatican II and, 85–90
Roman Empire
anti-Semitism and, as patriarchy-based, 32–33
male honor codes within, 140–141
rise of Roman Catholic Church and, 131–132
role of women during, 140–142
Romer v. Evans, 28–29, 67–68, 74
homosexuality and, constitutional rights and, 29–30, 77, 122
Plessy v. Ferguson and, 29–30
Roosevelt, Theodore, 186
Rosenblum, Nancy, 204
Rostker v. Goldberg, 28
Rousseau, Jean-Jacques, 138
Roy, Arundhati, 34, 276
on rise of religious fundamentalism in India, 276–277
Ruddick, Sara, 168–169
Sager, Lawrence, 247
St. Benedict the Moor, Thomas on nuns of, 221
same-sex marriage, 127–128
anti-intellectualism and, 188–189
fundamentalist fight against, 215–216
patriarchy and, 275
Protestant fundamentalism and, 101
public opinion on, 216–217
Sandeen, Ernest R., 160
Sanger, Margaret, 14–15, 119, 185
Santayana, George, 186
Scalia, Antonin (Justice), 9, 11, 29, 48, 218
on affirmative action, 223–224
as constitutional originalist, 53, 55, 56, 218–219, 222–225, 254
dissenting opinions of, 63–69
doctrine of stare decisis for, 56
homophobia of, 77
on Lawrence v. Texas, 76–78
new natural law for, 219
patriarchy as psychology for, 65–66
religions views as influence on judicial views, 219, 254–255
on right to self-defense, 228–229
on Roe v. Wade, 63–64, 65
role in culture war, 76–78
Roman Catholicism as foundation for, 218–219
on United States v. Virginia, 65–66
Scanlon, Thomas, 109
The Scarlet Letter (Hawthorne), 36
Second Treatise of Government (Locke), 158–159
Second Vatican Council. See Vatican II
second-wave feminism, 43–44
Segall, Eric J., 55
segregation
under Equal Protection Clause, 36–37, 38
scientific basis for, 36–37
“self-conscious manhood” (DuBois on), 46
sexism
abortion rights and, 121–122
homophobia and, as cultural, 129
as moral slavery, 114–115
polygamy and, 204
right to free speech and, 248–249
for Thomas, 221
sexual orientation, as protected classification, 28–29, 30–31
Amendment 2 and, 29, 67–68, 69–70
sexuality
African Americans of, 39–40
anthropological studies on, 134
antimiscegenation laws, 40
Augustine on, 133–135, 140
Finnis on, for Aquinas, 105
fundamentalism and, 10
in Gilligan-Richards thesis, 146
Judiasm and, 180–181
under new natural law, 106–108, 118, 123–124
racism and, 39–40
slavery. See also Dred Scott v. Sanford
martyrdom of, as result of murder, 200
Smith, Emma, 195
threats from husband, 200
Smith, Joseph, 11, 223
endorsement of violence by, 200–201
martyrdom of, as result of murder, 200–201
Mormonism and, as founder of, 193–202
patriarchal psychology of, 196–197, 208
polygamy for, 198–199
priesthood model for, 207
Index

312

Smith, Joseph (cont.)
religious revelations of, 195–196
religious visions of parents, 196
threats to wife by, 200
on unbaptized undead, 205
Sotomayor, Sonia, 1, 238, 243–244
political opposition to appointment of,
243–244
The Souls of Black Folk (DuBois), 45–46
source-based fundamentalism, 10
constitutional interpretation and, 52
Mormonism as, 193–202
originalism and, 52, 53–54
Protestantism and, 52, 54
Souter, David (Justice), 2
Spinoza, Baruch, 156
Sreekumar, Sandeep, 120
on antibortion argument, 120–121
Stanton, Elizabeth, 36, 85, 185, 187
stare decisis, 56
states’ rights, right to intimate life v., 18
Stevens, Thaddeus, 38
strict constructionism, Supreme Court and, 1
suffrage movements, 40–41
Summa Theologica (Aquinas), 92
Summer, Charles, 38
Sunday, Billy, 187, 188
Sunstein, Cass, 231
democratic constitutionalism for, 237–235
on fundamentalism, 233–235
incomplete theorization for, 234, 236
originalism for, 233
privacy rights for, 233–234
superfactions, 259
Supreme Court, U.S. See also constitutional
originalism; Scalia, Antonin; Thomas, Clarence
under Bush, G. W., 221, 227
fundamentalism influence on, 1
late-term abortion rights and, 227
Obama appointments to, 1–2
originalist judges on, 218–219, 225, 227
patrician as psychology and, judicial
decisions influenced by, 220
right to intimate life under, 14–23
Sotomayor appointment to, 238, 243–244
strict constructionism as criteria for appointment to, 1
Sweatt v. Painter, 28, 65
Taney, Roger (Chief Justice), 64
as originalist, 230
teleological theory, 108, 109
terrorism
government responses to, 276
Islamic fundamentalism and, 266–268

Index

Thayer, James, 58
theory of faction, 257–259
group psychology of, 260
religion and, 261
superfactions in, 259
Thirteenth Amendment, 37–38
Thomas, Clarence (Justice), 11, 29, 218, 219–221
on affirmative action, 223–224
as constitutional originalist, 53
patrician psychology of, 220–221
on sexism, 221
Tolstoy, Leo, 208
totalitarianism, patriarchy and, 268
violence as part of, 268–269
Tractatus adversus Judaeos (Augustine), 101
The Trinity (Augustine of Hippo), 154–155
Trocme, Andre Pascal, 137
Tumer v. Safley, 127
2008 election, McCain during, 1
Two Treatises of Government (Locke), 57
United States (U.S.)
“American dilemma” for, 277
feminism in, cultural embrace of, 216
freedom of religion in, 5–6
patrician as psychology in, 216–217
United States v. Ballard, 71
United States v. Virginia, 28
Ginsburg opinion on, 65
Scalia opinion on, 65–66
universal rights, Aquinas on, 105
van Gogh, Theo, 267
Vatican II, 85–90
political and moral change under, 87
religious tolerance under, 85–87
Verdi, Giuseppe, 141
Vermes, Geza
on historical Jesus, 164–165
violence
anti-intellectualism and, 188–189
from disassociation, 150
fascism and, 270
Islamic fundamentalism and, 266–268
of Matthias, against women and children, 195
patrician as psychology and, 47
Smith, J., and, endorsement of, 200–201
totalitarianism and, 268–269
Virgil, 32, 143
Virgin Birth, 10
fundamentalism and, role in, 162
voting rights, for Mormons, 30, 68
Voting Rights Act of 1965, 245
War on Poverty, 246
war on reason, fundamentalism and, 234–236
Wells-Barnett, Ida, 39, 41, 42
Wilde, Oscar, 186
Wilkinson, Jemima, 104
Willard, Frances, 40
Williams, Roger, 103
Wilson, A. N., 167
Winfrey, Oprah, 56
Witherspoon, John, 16
Wolff, Tobias, 251
Woman’s Bible (Stanton), 184
women. See also misogyny, celibacy and abortion rights for, as part of moral independence, 21
Aquinas’s views on, 101–102
biblical interpretations by, 184
gender hierarchy for, under fundamentalism, 20–21
Jesus of Nazareth and, 166–169
Judaism and, roles within, 178
maternal relationships for, 115–116

in Obama administration, 228–239
patriarchy and, oppression as result of, 66
polygamy and, 198–199, 204–205
Protestant fundamentalism and, 163
under Reconstruction Amendments, 36
right to contraception for, 17
during Roman Empire, 140–142
single-sex schools and, 65
in suffrage movements, 40–41
Wood, Gordon, 63
Woodhull, Victoria, 185
Woodruff, Wilford, 202, 203–204
Woolf, Virginia, 43–44
Young, Brigham, 194, 195, 201
Young-Bruehl, Elisabeth, 268
Zablocki v. Redhail, 127
Zagorin, Perez, 86–87, 98
Zionism, development of, 182–183