

Index

- abolition and abolitionists
 border-state, 235
 constitutional amendments, 197–8
 and constitutional relationships, 226–7
 and due process clause, 62
 and free speech, 231
 and majoritarianism, 132
 national vs. sectional power, 131
 and political action, 8
 pre-Revolution, 107
 repression of antislavery advocacy, 130, 178
 and republicanism, 233
 slavery in the territories, 34
 in the South, 128
See also Douglass, Frederick
- abortion rights, 7, 11, 87–8. *See also* *Roe v. Wade*
- Adams, John, 232
 Adams, John Quincy, 117, 123, 131
 affirmative action, 11
 Allen, William, 130
 Amar, Akhil, 209
American Insurance Co. v. 356 Bales of Cotton, 70–1, 76
 Ames, Fisher, 194
 Anthony, Susan B., 33
 Arkansas Territory, 120
 Articles of Confederation, 117
 Atticus, 193
- balance rule, 140–4
 Baldwin, George, 104
 Ball, Milner, 27
 banks and banking, 192, 193, 197
 Barber, Sotirios, 27–8
 Barnett, Randy, 210, 246
 Bates, Edward, 49
- Bayly, Thomas, 141
 Beerman, Jack, 222
 Bell, John
 bisectionalism, 5, 166, 250
 constitutional order, 236
 electoral rules, 91
 peace-seeking constitutionalism, 247–8
 platform, 240–1
 racism, 241
- Bensel, Richard, 235
 Benton, Thomas Hart, 143
 Berger, Raoul, 63, 87
 Berrien, John, 151
 Bestor, Arthur, 24, 42
 Bickel, Alexander, 24, 30
 Billings, Homer, 63
 Bill of Rights
 lack of slavery ban, 104
 Madison on, 168
 omission of, 112–13
 and the territories, 59–60, 61, 65
- bisectionalism
 and Bell, 250
 collapse of, 5, 159
 compromises, 9–10
 framers' intentions, 96
 national political parties, 92
 political elites, 3
 population movements, 114
 and U.S. Supreme Court, 13
- Black, Jeremiah, 31
 Blair, Frank, 80
Bloomer v. McQuewan, 64, 65
 Bobbitt, Philip, 175
 Bork, Robert, 10, 21, 24, 25, 88
 Brandon, Mark, 82, 91
 Breckenridge, John, 166, 238

- Brown, Albert, 135
 Brown, John, 8, 178
Brown v. Board of Education, 11, 15, 87, 88
 Buchanan, James, 31, 34, 45, 146, 159
 Burt, Robert, 24–5
 Butler, Pierce, 52, 101, 102
- Calabresi, Guido, 88
 Calhoun, John C.
 consensus democracy, 190
 constitutional demands, 137, 138
 on Mexico, 151
 as nationalist, 117
 on new slave states, 127
 on Northern power, 135
 Seward on, 134
 on slavery, 129
- California, 136, 142, 152
 Carens, Joseph, 205–6
 Chase, Salmon, 62, 162
 citizenship, black
 Currie on, 25–6
 dissenting opinions, 55
 and federal power, 54–6, 96
 framers' intentions, 52–3, 57
 in free states, 54
 and Jacksonians, 33
 Jefferson on, 78
 judicial consensus, 28–9
 Kentucky, 51
 Massachusetts, 47
 post-Civil War amendments, 198
 preconstitutional, 48, 52
 and racism, 31
 state laws, 29, 32
 Taney on, 19, 20
- Civil War
 constitutional origins, 167
 and *Dred Scott* case, 250
 Lincoln's justification, 234
 uncertainty of Northern victory, 242–3
 and voting interference, 235
- Clarke, Charles, 130
 Clay, Henry, 31–2, 34, 117, 137, 148
 Clayton, John, 142, 143–4
 Clingman, Thomas, 140
 Cobb, Howell, 153
 Collamer, Jacob, 150
 colonization, 79, 80
Commentaries on American Law (Kent), 29
Commonwealth v. Aves, 77
 Compromise of 1850, 153, 157, 201, 207
 Compromise of 1876, 9
- Confederate Constitution, 169, 180
 Conrad, Charles, 164
 consensus democracy, 188–90, 191, 192
 consent theory, 177, 205, 215. *See also* contract theory, relational contracts
 constitutional authority, 5, 174, 184, 213–14, 248
 constitutional compromises
 bisectionalism, 169
 and evil, 252
 framers' intentions, 176–7, 208
 Garrison on, 227
 and immorality, 177–8
 Lincoln and, 201, 204
 positive effects of, 206–7
 sectional power, 224–5
 slavery in the early republic, 115–16
 U.S. Supreme Court rulings, 17–18
 See also consent theory; contract theory
- constitutional convention
 and emancipation, 95
 framers' attitudes, 1–2
 framers' intentions, 171
 government powers, 97, 98–9
 government structure, 192–3
 North–South bargaining, 93, 114
 slaveholders at, 94, 101–2
 South Carolina, 108
- Constitutional Faith* (Levinson), 247
 constitutional interpretation
 and constitutional evil, 4
 and contemporary scene, 252
 contract theory, 209–10, 211
 dispute resolution, 244
 and elites' power, 218
 neoclassical theory, 199
 and political order, 3
- constitutionality vs. justice, 13–14
 constitutional politics
 constitutional evil, 4, 18
 framers' intentions, 89
 Missouri Compromise, 125–6
 originalism, 6–7
 territorial slavery bans, 75–6
 constitutional theory, and evil, 253
The Constitution Is a Pro-Slavery Compact (Phillips), 209
The Constitution in the Supreme Court (Currie), 15
- constitutions
 and contingencies, 213, 218
 as contracts, 199–200, 207
 frustration of, 216, 217, 218
 and political and social evolution, 218, 219

Index

257

- state, 209
See also Confederate Constitution; consent theory; contract theory; U.S. Constitution
- Continental Congress, 104
- contract theory
 and business relationships, 222
 and consent, 210, 212
 constitutional compromises, 199
 contract language, 211–12, 213, 214, 220, 222
 and frustration, 217, 220
 good-faith bargaining, 216
 metaphor and analogy, 200
 relational contracts, 177, 220–2
 spirit vs. letter, 205
See also Lincoln, and contract theory
- Corbin, Francis, 113
- Coxe, Tench, 100, 112
- Crevecoeur, Michel-Guillaume-Jean de (J. Hector), 224
- Crittenden Compromise, 248
- Crittenden, John, 142
- Crittenden proposal, 169
- Cuba, 148, 170, 240, 241
- Currie, David P., 25–6
- Curtis, Benjamin R., 27, 47, 48, 54, 55–6, 66–7, 77–8
- Dahl, Robert, 185
- Dalton, James Bowdoin, 98
- Daniel, Peter V., 82
- Dartmouth College v. Woodward*, 69
- Davie, William, 102
- Davis, Garrett, 79
- Davis, Jefferson, 34, 40, 135–6, 140–1, 189
- Dean, Ezra, 150
- death penalty, 89
- Declaration of Independence
 Lincoln and, 205
 natural rights principles, 28
 and noncitizen rights, 50
 slaveholders and, 78
 Taney's reading of, 57
 unity of citizens, 219, 223
- Delaware, 130, 143, 235
- democracy. *See* consensus democracy
- Democratic Party
 bisectionalism, 144–5
 defeat of antislavery proposals, 186
 effects of *Dred Scott* on, 40
 and free blacks, 31
 Kansas–Nebraska Act, 155
 majority status of, 39
 national parties, 225
 platform of 1856, 30
 slavery in the territories, 35, 44, 45
 Southern policies, 148
 territorial slave codes, 156
 and Van Buren, 157
See also Buchanan, James
- demographics. *See* population movements
- Dew, Thomas, 129
- Diamond, Martin, 196
- District of Columbia, 137, 139, 149, 180
- Dixon, Thomas, 163
- Douglass, Frederick, 85, 135, 237, 240
- Douglas, Stephen
 black citizenship, 54
 consensus democracy, 189, 191
 contemporary constitutionalists, 237
 debates with Lincoln, 46
 electoral rules, 91
 electoral statistics, 166
 Kansas statehood, 35, 41, 44–5, 155
 Lecompton constitution, 40
 national party system, 145
 noncitizen suffrage, 49
 as presidential candidate, 239
 on U.S. Supreme Court authority, 34
- Downes v. Bidwell*, 63
- Dred Scott* case. *See* *Scott v. Sandford*
- Dromgoole, George, 141–2
- due process
 Bork on, 25
 due process clause, 58, 60, 61, 62, 64
 property rights in territories, 30, 65, 67
 state power, 63–4
 and unequal laws, 69
See also U.S. Constitution, amendments, Fifth Amendment
- Dutch legal code, 216
- Dworkin, Ronald, 27, 88
- Early, Peter, 129
- Easterbrook, Frank, 210
- Eisgruber, Christopher, 21, 27, 28, 241, 243
- electoral college
 and free-state parties, 6
 Lincoln election, 187
 and majoritarianism, 187
 and Northern power, 127
 and population movements, 161
 presidential election of 1860, 5
 and sectional power, 92, 103
- electoral rules
 and the Civil War, 167–8
 framers' intentions, 96–7

- electoral rules (*cont.*)
 local elections, 161–2
 proportional representation, 166, 168
 Republican victories, 91–3
 runoffs, 165–6
 sectional veto power, 226
 separation of powers, 98
 state interests, 100
- elitism, 191, 196
- Ellsworth, Oliver, 104, 106, 107
- Ely, James, 61, 63
- Ely, John Hart, 10
- emancipation
 congressional power, 95
 fears surrounding, 106–7
 First Congress on, 116
 free-state objections, 130
 history of, 104
 Northern priorities, 230
 and sectional veto, 105
- The Emancipator*, 227
- Emerson, John, 18
- evil
 and citizenry, 8, 9, 10, 245–6
 constitutional accommodations, 9–10
 constitutional compromises, 252
 constitutional mistakes, 246
 constitutional theory, 18, 246–7, 253
 eradication of, 18
 and human diversity, 250
 majority rule and majoritarianism, 185–6
 in pluralistic societies, 185
 temporary evil, 228
See also contract theory, relational
 contracts
- Ex parte Merryman*, 184
- federal circuit courts, 147
- Federalist Papers*, 97
- Fehrenbacher, Don
 on Curtis dissent, 26
 on Freeport doctrine, 41
 majoritarianism, 31–2
 on Republican Party, 40
 state bans of slavery, 71
 on the Warren Court, 21
- Fillmore, Millard, 145, 154, 164–5
- Finkelman, Paul, 22
- Fisher, Sidney George, 69, 75
- Florida, 119
- Foner, Eric, 126–7
- Fort Sumter, 204
- Frankfurter, Felix, 10
- Franklin, Benjamin, 106, 208, 232
- Freeport doctrine, 41
- Free-Soilers, 147, 150, 162, 163–4, 229
- free speech, 233
- free-state parties, 133
- Fugitive Slave Acts and laws
 amendments, 120
 institutionalism, 83–4
 jury nullification, 86
 Justices' support of, 66, 77, 149
 nationalism, 105, 163
 New Englanders, 130
 North–South bargaining, 93
 rewriting of, 101
 vagueness, 96, 170
See also Prigg v. Pennsylvania
- Garrison, William Lloyd, 12, 226–7, 231, 233
- Georgia, 127
- Georgia Platform, 137, 139
- Georgia Supreme Court, on slaves, 81
- Gerry, Elbridge, 104
- Giddings, Joshua, 132–3
- good-faith bargaining, 216
- Graglia, Lino, 23
- Grayson, William, 72–3, 95
- Greene, Albert, 151
- Hamilton, Alexander, 207–8
- Hammond, James, 146
- Hand, Learned, 211
- Hardin, Benjamin, 123, 124
- Harper's Ferry, 178
- Hartford Convention, 116
- Heath, William, 112
- Helper, Hinton, 79, 130, 233
- Henry, Patrick, 72–3, 95
- Hill, Alfred, 65
- Hilliard, Henry, 142
- Hotchkiss v. National City Bank of New York*,
 211
- Howard, A. E. Dick, 213
- Hughes, Charles Evans, 16
- Hunt, Washington, 31–2
- Illinois, 43, 85
- Industrial Revolution, 128
- Insular Cases*, 59–60
- interstate commerce clause, 170, 212
- Iredell, James, 108
- Jackson, Francis, 233
- Jacksonian Democrats. *See* Democratic Party

Index

259

- Jacksonian era
 Civil War causation, 45
 political collapse, 153, 156
 two-party system, 158, 196
- Jackson, Robert, 23
- Jacobsohn, Gary, 27, 28
- Jay, John, 224
- Jefferson, Thomas
 on acquisition of territories, 74
 criticism of, 22
 natural rights principles, 28, 56
 and republicanism, 233
 territorial expansion, 73
 unity of citizens, 224
 and white citizenship, 78
- Jim Crow laws, 9
- Johnson, Andrew, 138
- Johnson, Reverdy, 139
- Johnson, Richard, 122
- judges, personal beliefs of, 25, 28
- judicial restraint, 23–4, 84
- judicial supremacy, 182, 212, 249
- jury nullification, 86
- justice-seeking constitutionalism
 and Bell voters, 248
 and constitutional interpretation, 244
 and Lincoln, 252
 morality, 175, 176, 243
 peace-seeking constitutionalism, 241
- Kansas–Nebraska Act
 and the Civil War, 45
 and Democrats, 155
 and Jacksonians, 40, 158
 Lincoln on, 180
 Northern attitudes, 43
 Seward on, 134
 and Whig Party, 154, 164, 236
- Kansas statehood
 and Democrats, 44
 and Douglas, 41
 free blacks, 81
 and Jacksonians, 155
 and partisanship, 158–9
 proslavery measures, 143
 and republicanism, 230
 and sectionalism, 164
 statehood defeat, 35
- Kent, James, 29
- Kentucky, and black citizenship, 51
- Keyssar, Alexander, 49
- King, Rufus, 102, 123, 124, 126
- Kuffik, Arthur, 206
- labor competition
 and economics, 138
 Ellsworth on, 107
 and emancipation, 130
 and federal power, 118
 Industrial Revolution, 128
 Randall on, 42
 and Republicans, 80
 in territories, 124
- law of nations, 67
- Lecompton constitution
 Buchanan support of, 159
 and Democrats, 40
 and Douglas candidacy, 41, 44, 45
 and Kansas statehood, 155, 164
 Southern support for, 170
- legal vs. constitutional rights, 49–51, 113
- legislative supremacy, 193
- legislatures, Southern, 129
- Levinson, Sanford, 247
- Lijphart, Arend, 188–9, 191
- Lincoln, Abraham
 and black suffrage, 32
 as candidate, 174
 and consensus democracy, 190
 and consent theory, 217
 constitutional compromises, 201, 204
 and contemporary constitutionalists, 5, 237
 and contract theory, 200, 217
 and Douglas candidacy, 41
 and due process, 62, 63, 66
 election of 1860, 161, 166, 167
 errors of, 238–9, 251
 justice-seeking constitutionalism, 252
 majority rule and majoritarianism, 176, 180–1, 245
 and noncitizen suffrage, 49
 and North–South compromise, 202
 and notion of slavery’s eventual decline, 228
 and Southern antirepublicanism, 234
- Lincoln, Abraham: public speaking
 Cooper Institute address, 230
 debates with Douglas, 46
 first inaugural address, 176, 179, 190, 204, 219–20, 237
 pre–Civil War speeches, 173
- Lincoln, Abraham: views and opinions
 the Civil War, 234
 Dred Scott, 182–3, 186
 emancipation, 228
 judicial supremacy, 182
 Kansas–Nebraska Act, 180

- Lincoln, Abraham: views and opinions (*cont.*)
McCulloch, 72
 Missouri Compromise, 75
 slavery, 42, 134, 160, 202–3, 211
 three-fifths clause, 181, 187
- Lochner v. New York*, 15
- Louisiana Purchase
 and citizenship, 78
 Curtis dissent, 74
 and federal power, 116
 guarantee of slavery's legality, 122
 and Missouri Compromise, 75
 and sectionalism, 118–20, 123
- Lundy, Benjamin, 233
- Macauley, Stewart, 221, 222
- Madison, James: views and opinions
 bills of rights, 168
 checks and balances, 99
 colonization, 79
 constitutional compact, 207
 constitutional interpretation, 209–10
 contingencies, 213
 factions, 244
 federal power, 94, 97
 Georgia and South Carolina, 108
 judicial appointments, 103
 majoritarianism, 194
McCulloch, 71
 political parties, 193
 population movements, 102
 slavery, 93, 106, 110, 111
 transport of slaves into territories, 69–70, 121
 zealotry, 249
- mail, and antislavery tracts, 231
- majority rule and majoritarianism
 consensus democracy, 188–9
 constitutional authority, 174–5
 electoral college, 187
 elitism, 191
 Federalists, 194–5
 framers' intentions, 192–3
 free states, 134–5
 government structure, 187
 institutionalist critique, 23–4, 30, 31–2, 33
 judicial review, 34
 Lincoln, 176, 179, 245
 Northern power, 132
 pluralistic society, 185
 racism, 85–6
 sectional majorities, 195
 two-party system, 193
- Manifest Destiny, 240
 manumission, 81, 84, 128, 130
- Marshall, John, 29–30, 60, 70, 71, 76. *See also*
American Insurance Co. v. 356 Bales of
Cotton
- Maryland, 104, 143, 231, 234, 235
- Mason, George, 95, 102, 104, 108
- McClelland, Robert, 130
- McCleskey v. Kemp*, 89
- McCloskey, Robert, 23
- McConnell, Michael, 87
- McCulloch v. Maryland*, 70, 71, 72
- McLean, John, 47, 48, 55, 59, 61–2, 66–7
- McNeil, Ian, 221, 222
- McPherson, James, 242–3
- media, contemporary, 218
- Mexican Cession, 152
- Mexico, 136, 148, 151, 240, 241
- Missouri Compromise
 and Bell, 248
 black citizenship, 53
 constitutionality of, 19, 23, 75
 and contract theory, 201, 202
 Crittenden proposal, 169
 and federal power, 120–6
 and free states, 207
 historicists on, 24
 Northern support for, 125–6
 repeal of, 154, 163
 and Republicans, 227
 and slave states, 139
 Southern support for, 123
 territorial slavery bans, 12, 44
- Moore v. Illinois*, 53
- Morgan, Edmund, 81
- Morgan, J. P., 1
- Mormons, persecution of, 235
- Morril, Thomas, 120
- Morrison, Michael, 91
- multiparty systems, 192
- Nashville Convention, 137, 139, 189–90
- national political parties. *See* Democratic Party;
 Republican Party
- natural rights principles, 28
- Nebraska, 43. *See also* Kansas–Nebraska Act
- Nelson, William, 198
- New Hampshire, 50, 64, 110, 111
- New Hampshire Patriot*, 33
- New Mexico, 127, 142, 202
- New York, 51, 127
- Nicholas, George, 111, 113

Index

261

- Noonan, John, 88
- Northwest Ordinance
 and framers' intentions, 72
 and Illinois, 43
 and *McCulloch*, 70
 McLean on, 76
 slaveholders on, 122
 Southern support for, 75, 117–18
- Northwest Territories, 117–18
- Otis, Harrison Gray, 123, 124
- The Oxford Companion to the Supreme Court*, 15
- Paine, Thomas, 73
- Panic of 1837, 156
- Parrish, Isaac, 151
- partisanship, 150–1. *See also* Democratic Party; Republican Party
- peace-seeking constitutionalism
 Bell voters, 241, 247–8
 contemporary scene, 253, 254
 and extremism, 249, 250
- Petticoat Affair, 156
- Phillips, Wendell, 150, 209, 226–7
- Pinckney, Charles Cotesworth
 on black citizenship, 53
 Missouri and Arkansas statehood, 123
 on Missouri Compromise, 124
 and nationalism, 94
 state ratification, 105, 110
- Planned Parenthood v. Casey*, 209
- Plessy v. Ferguson*, 87
- policy disputes
 and constitutional law, 86–7
 and the courts, 23–4, 35, 41–2, 44
 defining issues for debate, 45–6
- political regimes and constitutional theories, 248, 249, 251
- Polk, James K., 34, 148, 157, 171
- population movements
 and bisectionalism, 114, 160
 and the Civil War, 167
 and constitutional framers, 109
 free-state power, 12, 42
 and Northern power, 126–7, 135, 143
 postratification, 115
 and proportional representation, 102–3
 ratification process, 111
 and Southern control, 5, 92
- Posner, Eric, 221
- Powell, Lewis, 38
- presidency
 and the Civil War, 166–7
 elections, 148
 Jacksonian era, 156
 nominees, 148, 154
 presidential appointments, 143, 149
 presidential vs. judicial authority, 183
 Virginians' control of, 115–16
See also electoral college; electoral rules
- Prigg v. Pennsylvania*, 18, 149, 208–9
- Progressive Era, 7
- property rights, 7, 68. *See also* slaves as property
- Publius, 208
- Quincy, Josiah, 118–19
- racism
 Bell, 241
 Douglas, 239, 240
 and economics, 81
 and emancipation, 130
 Jefferson, 78
 national prevalence of, 31–2, 85–6
 Republicans, 80
 Taney, 76, 247
See also segregation of schools
- Ramsay, David, 110
- Randall, Alexander, 42
- Randolph, Edmund, 97
- Randolph, John, 116, 140
- Rathbun, George, 130
- ratification process
 and consensus democracy, 196
 and the constitution as contract, 213
 free-state conventions, 230
 legal vs. constitutional rights, 113
 and sectionalism, 109–10, 169
 Washington on, 223
See also constitutional compromises
- Rehnquist, William, 23–4
- Republican Party
 and black citizenship, 33
 and constitutional protections for slavery, 227–8
 effects of *Dred Scott* on, 40, 41
 formation, 154–5
 and Missouri Compromise, 227
 and national policy, 197
 and Northern power, 183–4, 190, 197
 and racism, 32, 80
 relationship with the South, 116

- Republican Party (*cont.*)
 and republicanism, 230–1
 on sectional veto, 229
 and slaveholders' national power, 131–2
 and Southern antirepublicanism, 232
 and substantive due process, 62–3
See also elitism
- Rhett, Barnwell, 150
- Roche, John, 235
- Roe v. Wade*, 21, 44, 88, 89
- Rusticus, Civic, 98
- Rutledge, Edward, 110
- Scalia, Antonin, 21, 175
- Scott, Dred, 18
- Scott, John, 122
- Scott v. Sandford*
 authority for reversal, 198
 black citizenship, 53–4
 and the Civil War, 39, 250
 as constitutional mistake, 6
 contemporary commentaries, 15–16, 17
 Douglas's interpretation, 239, 240
 and Lincoln, 171, 181, 182–3, 186, 239
 and neoclassical theory, 216
 slaveholders' interpretations, 138
 and stabilization, 39
 summary of ruling, 19
 theoretical basis, 22
- Scott v. Sandford* dissents
 Curtis, 26, 27, 47, 48, 54, 55–6, 66–7, 77–8
 McLean, 47, 48, 55, 59, 61–2, 66–7
- Scott, Winfield, 154, 157
- secession
 and constitutional frustration, 217
 Maryland, 234
 New England, 116
 and republicanism, 234
 and sectional power, 225, 226
 Southern, 39, 91, 122, 125, 137, 162
- segregation of schools, 87
- separation of powers, 98, 99
- Sevier, A. H., 141
- Seward, William, 32–3, 82, 132, 134
- Sherman, John, 112
- Sherman, Roger, 98, 104, 107
- Slave Power, 131, 133–4, 163
- slavery
 and creation of the Constitution, 93
 as evil, 175–6
 Federalists and, 107–8
 federal power to regulate, 94
 framers' intentions, 12, 22, 24, 204–5, 229
 in free states, 107
 legality, 66
 in Northern states, 107
 notion of eventual decline, 178, 228, 230, 239, 242, 253
 ordained of God, 151
 post–Civil War amendments, 197–8, 231–2
 and sectional veto, 229
 as a societal good, 128–9
- slavery in the territories
 Article IV, 57
 Bork on, 25
 and constitutional rights, 58
 and federal power, 30–1, 34, 66
 federal power to ban, 75–6, 96, 139, 212
 First Congress ban of, 70, 72, 75, 117–18
 framers' intentions, 73–4
 judicial review, 33–4
 Madison on, 47
 North–South bargaining, 201–2
 slave states vs. free states, 19–20, 43
 statistics, 43–4
 Taney on, 19
 transport of property, 122
 Wilson on, 112
See also Missouri Compromise; Northwest Ordinance; slaves as property; three-fifths clause
- slaves as property
 Daniel on, 82
Downes v. Bidwell, 63
 Jefferson on, 116
 law of nations, 67
 legality, 101
 McLean on, 62
 Taney on, 66
See also due process
- slaves and suffrage, 32, 33. *See also* suffrage
- slave trade
 abolition of, 111
 bans, 93, 149–50, 211
 Federalists and, 112
 and labor competition, 118
 legal protections, 96, 104–5
 Lincoln on, 202–3
 Southern disagreements on, 144
- Smith, Rogers, 31–2, 51, 78, 175
- Smith v. Turner*, 170–1
- Smith, William, 122, 123
- South Carolina
 constitutional accommodation of, 108
 and nationalism, 117

Index

263

- ratification process, 105, 110, 114, 169
 - and sectionalism, 229
- Southwest Ordinance, 75
- Spooner, Lysander, 209, 237, 246
- Stamp, Kenneth, 91
- statehood
 - balance rule, 142
 - New Englanders on, 118–19, 120
 - Northern power, 127, 134
 - Southern support for, 123–4
 - See also* Kansas–Nebraska Act
- state militias, 50
- Stephens, Alexander, 136
- Stewart, William, 42
- Storing, Herbert, 50, 100
- Strange, Robert, 137, 138
- Subramanian, Sandhya, 21
- suffrage, 48–9, 103
- Sumner, Charles, 162
- Sunstein, Cass, 23, 61
- Sweatt v. Painter*, 87

- Tallmadge, James, 120–6
- Taney court, political characteristics, 37–9
- Taney, Roger B.
 - on black citizenship, 19, 20, 54–5
 - on black suffrage, 48–9
 - on constitutional interpretation, 47
 - on due process, 60–1
 - factual errors, 47
 - on federal power in the territories, 58–9, 73–4
 - personal beliefs, 28
 - Prigg v. Pennsylvania*, 208–9
 - and property rights, 64
 - and racism, 82, 247
 - rationale, 46
 - on slaves as property, 68
- Taylor, John, 116, 120
- Taylor, Zachary, 142
- territorial expansion
 - and Bell, 241
 - and Douglas, 240
 - and partisanship, 147–8, 151
 - popular support for, 158
 - and slaveholders, 170
 - See also* population movements
- territorial slave codes, 40, 41, 137, 138, 156
- Texas
 - annexation of, 148, 201
 - and balance rule, 141
 - division of, 144
 - and John Bell, 241
 - sectionalism, 150
 - and Southern power, 135, 136
- theorists, discrediting of rivals, 17, 20–1
- Thoreau, Henry David, 227
- three-fifths clause
 - accommodation of evil, 246
 - and Article I, 161
 - and bisectionalism, 114
 - and constitutional compromises, 208
 - Davie on, 102
 - erroneous assumptions of, 170
 - Federalist Papers*, 111
 - Hartford Convention, 116
 - Lincoln on, 181, 187
 - and Louisiana Territories, 119
 - and slave-state power, 92, 93
 - Tallmadge on, 120
 - and Virginia, 115–16
- Tocqueville, Alexis de, 31–2
- Toombs, Robert, 136, 152, 154, 157–8
- Tracy, Uriah, 118
- Treaty of Guadalupe Hidalgo, 152
- Troup, George, 162
- Turner, Nat, 231
- two-party system, 193, 196

- U.S. Congress
 - and Article I, 161
 - and black citizenship, 54–5
 - Congress of 1857, 38
 - and Northern power, 127
 - pre–Civil War, 109
 - proportional representation, 101, 102
 - structure, 96, 100, 103, 177
 - See also* balance rule
- U.S. Constitution
 - adjudication of disputes, 2–3
 - amendment process, 196, 226
 - consensus democracy, 192
 - constitution-perfecting theory, 2
 - as relational contract, 223–6
 - See also* constitutions; ratification process
- U.S. Constitution, amendments
 - First Amendment, 218, 233
 - Fifth Amendment, 25, 61
 - Twelfth Amendment, 196
 - Thirteenth Amendment, 21
 - Fourteenth Amendment, 9, 21, 198
 - Fifteenth Amendment, 9
- U.S. Constitution, Article I
 - federal power in the territories, 65
 - and Kansas–Nebraska Act, 163
 - local elections, 154, 161

- U.S. Constitution, Article I (*cont.*)
 power to ban slavery, 58
 Section 8, 54, 55
 sectionalism, 160
- U.S. Constitution, Article II
 electoral college, 166
 failings of, 187
 and Fillmore, 164–5
 presidential elections, 153–4, 161
 sectionalism, 160, 167
- U.S. Constitution, Article III, 19, 212
- U.S. Constitution, Article IV
 citizenship, 52
 Curtis on, 57, 77
 federal power in the territories, 58
 fugitive slave clause, 84
 scope, 73
 Section 3, 74
See also Fugitive Slave Acts and laws
- U.S. Constitution, Article V, 13, 104, 196
- U.S. Constitution, Article VII, 79
- U.S. Senate, 100. *See also* balance rule
- U.S. Supreme Court
 constitutional misinterpretation, 89
 federal policies, 182
 judicial selection, 36–7, 250
 judicial supremacy, 182
 justices, 116, 149
 and Northern power, 184
 rulings of national significance, 36
 unpopular decisions, 251
 and values, 245
- Utah, 202
- Van Buren, Martin, 144–5, 148, 156, 197
- VanderVelde, Lea, 21
- Virginia
 and emancipation, 104, 129
 and national policy, 131
 population, 127
 ratification process, 110–11
 slaveholders, 229
 and slavery, 81, 108
 Virginia Declaration of Rights, 52–3
 Virginia Plan, 94
 voting, 235. *See also* suffrage
 voting rights. *See* suffrage
- Wade, Benjamin, 132, 162
- Waldron, Jeremy, 191
- Washington, George, 108, 193–4, 195, 208, 224
- Webster, Daniel, 60, 65, 69, 152–3
- Webster, Noah, 106–7, 194, 195
- Weingast, Barry, 141
- Whig Party
 collapse of, 155, 156
 convention of 1850, 154
 defeats, 158
 and Fillmore, 164–5
 and free speech, 236
 and judicial power, 184
 and national parties, 197, 225
 and sectionalism, 157
See also Bell, John
- white supremacy, 9, 77, 79
- Whittington, Keith, 26, 209
- Wiecek, William, 27
- Williamson, Hugh, 101, 103
- Williston, Samuel, 211–12
- Wilmot, David, 80, 151–2
- Wilmot Proviso, 143–4, 151–2, 154, 157, 170
- Wilson, James, 72, 112, 113, 195
- Wisconsin, 127
- Wise, Henry, 140, 141
- women's rights, 51
- Woodbridge, W., 141
- Wood, Gordon, 195
- Workman, Tunis, 232
- Yancey, William, 82–3
- Yeates, Jasper, 97