

Index

- A. and Others v. the UK*, 365–6
A v. UK, 343
Abdelrazik v. the Minister of Foreign Affairs and the Attorney General of Canada, 368
 Abella, Rosalie, 151
R. v. NS dissent, 141–2
 Aboriginal Canadians, 13–14. *See also*
 Indigenous peoples
 in *Constitution Act*, 1982, 7–8, 84
 Quebec and, 75–6
 rights and freedoms, 14
 Truth and Reconciliation Commission, 297
 Aboriginal rights, 307
 Manitoba Métis land grant litigation and, 206–8
 remedies, 300
 Aboriginal title, 87–8, 446
Canadian Pacific Ltd. v. Paul, 87
 in *Constitution Act*, 1982, 93
 constitutional pluralism and, 93–4
Delgamuukw v. British Columbia and, 93
 Métis, 270
R. v. Guerin, 87
R. v. Sparrow, 87
 rights and, 93–5
 abortion rights, in US, 218
Abrams v. United States, 254
 accommodation of difference, 8, 29–30.
See also respect for difference and diversity
 Supreme Court, Canada and, 30
 Ackerman, Bruce, 11
 Act of Union, 1840, 38
Adler v. Ontario, 274
 African National Congress (ANC), 167–8, 180, 432–3
 Canadian influence on, 400
 Constitutional Committee's *Bill of Rights for a New South Africa*, 402–3
 Aft, Aaron, 315–16
Ahmed and Others v. the HM Treasury, 368
Airedale NHS Trust v. Bland, 358–9
Åklagaren v. Hans Åkerberg Fransson, 334, 353
El-Al Israel Airlines Ltd. v. Danielowitz, 31
 Albert, Richard, 280
Alberta (Aboriginal Affairs and Northern Development) v. Cunningham, 266, 279
Alberta v. Hutterian Brethren of Wilson County, 137
Allan v. the UK, 366–7
 Amar, Akhil, 252
 amending formula, 18, 99
 in *Constitution*, Canada, 4–8
Constitution Act, 1982 and, 6
 democracy and, 5
 federalism and, 6–7
 Fulton-Favreau, 112
 multinationality and, legal recognition of, 4
 Parliament, Canada and, 6
 province involvement in, 7
 respect for difference and diversity and, 7–8
Statute of Westminster, 111–13
 unilateral provincial procedure and, 6–7
American Meat Institute v. US Department of Agriculture, 218
Amodu Tijani v. Secretary, Southern Nigeria, 87
Amselem, Multani and Loyola High School v. Québec, 311–12

- ANC. *See* African National Congress
Anchugov and Gladkov v. Russia, 364
Andrews v. The Law Society of British Columbia, 227–8, 447
Appleby and Others v. the UK, 362–7
 Arendt, Hannah, 9, 144–5
 Aristotelian equality, 232
 Asselin, Martial, 68
 assisted suicide cases, 358–61
 House of Lords on, 359
 asymmetrical equality approach, 227
 asymmetrical federalism, 69
 in Quebec, 76
Attorney-General (NSW) v. Brewery Employees Union of NSW, 191–2
Attorney-General v. De Keyser's Royal Hotel Ltd., 89
August and Another v. Electoral Commission and Others, 362
August v. The Electoral Commission, 329–30
 Australia, 306–7
 Canada and originalism in, 19
 Charter of Human Rights and Responsibilities Act 2006, 324, 434–5
 citizenship oath in, 133–4
 Commonwealth of Australia Constitution Act 1900, 184
 Constitution, 202
 Constitution Act 1900, 184
 constitutional interpretation in, 190–2
 constitutional provisions, 192
 constitutional rights, 261
 freedom of expression in, 260
 High Court, 203–4, 434
 Human Rights Act 1984, 324, 434–5
 originalism in, 183–4
 right to vote in, 202–3
 statutory interpretation in, 184–6, 191–2
 textualism in, 191
 automatic naturalization, 134–6

Babar Ahmad and Others v. the UK, 356, 366
Baier v. Alberta, 212, 222–4
 rights infringements and, 223–4, 426
Baker Lake v. Minister of Indian Affairs, 89
 balancing rights, 333
 proportionality and, 426
 Bale, Gordon, 272
 Barak, Aharon, 172–4, 312, 431–2
Barrett v. City of Winnipeg, 265, 278
 Basic Law of Hong Kong, 372–3, 375, 383

 Basic Laws, Israel, 171–4
 Bauman, Richard, 400–1
B.C. Motor Vehicle Act, 196–7, 206–7
 Beatty, David, 398–400, 403–4
Bedford v. Canada, 248
 Behiels, Michael, 12–14
 Bélanger-Campeau Commission, 65–6
Benkharbouche v. Embassy of the Republic of Sudan, 334
 Berger, Benjamin, 264
Bhinder v. Canadian National Railway Co., 367–8
 bilingualism, 81–2, 267. *See also* language rights
 in *British North America Act*, 1867, 66, 428
 Bill of Rights, South Africa, 246
 proportionality in, 403–4
 Bill of Rights, UK, 345–6
 Bill of Rights, US, 438–9
 Bill of Rights 1960, Canada, 196, 326–7
 Bill of Rights Act 1990, New Zealand, 324, 434–5
Bill of Rights for a New South Africa (ANC), 402–3
 Bill of Rights Ordinance, Hong Kong, 374–5, 382
Bilodeau v. Attorney General, 285
 binationality, 38. *See also* English Canada;
 French Canada
 federalism and, 39–40, 48–9, 445–6
 Binnie, Ian, 189, 208
 Blackstone, William, 143–4
Blaikie v. Attorney General of Quebec, 282–3
 Blake, Edward, 273, 275
 Blakeney, Allan, 105
Board of Trustees of the University of Alabama v. Garrett, 178
 Bork, Robert, 195
Borowski v. Attorney-General of Canada, 237
 Borrows, John, 95
B(R) v. Children's Aid Society of Metropolitan Toronto, 367–8
 Brest, Paul, 195
 “Brexit,” 437–8
 Breyer, Stephen, 418–21
British Columbia Securities Commission v. Branch, 379
British Columbia v. Tener, 89
British North America Act, 1840, 444
 Persons Case and, 189–90

- British North America Act, 1867*, 1–2, 28, 55–6, 70, 98, 107. *See also* *Constitution Act, 1867*
 amendment rules, 98
 bilingualism in, 66, 428
 constitutional amendment and, 107–8, 111
 federalism and, 34–5, 38
 provinces in, 444
 Quebec in, 428
 statutory interpretation, 184
Brophy v. Attorney General of Manitoba, 187–8, 265, 278–9, 301–2
Brown v. Bd. of Education, 105, 194–5, 233
Brown v. Stoot, 380
 Brownsey, Keith, 69–70
 Bryce, James, 190
Bush v. Gore, 18–19, 175, 177–8
 Bushell, A., 324–5
Butler v. R., 237, 242–3
- Cairns, Alain, 14–15
Calvin's Case, 132–3
Canada Act, 1867, amendment rules, 98
Canada Act, 1982, 56–7
Canada v. Bedford, 240–1
Canada v. Hislop, 238
Canadian Charter of Rights and Freedoms, 1,
 14, 19–20, 28, 264, 444–5
 advent of, 192–200
 assessments of, 331–2
 Bill of Rights, British and, 345–6
Charter for Social Justice, South Africa and,
 403–4
Charter of Fundamental Rights and, 437–41
 citizenship in, 14–15
 constitutional renewal and, 98–9
 freedom of expression under, 247
 freedoms in, 14
 gender equality rights in, 129
 global influence of, 324–7, 434–5
 HKCFA references to, 372–84, 390–5, 435–6
 HKCFA references to, by judge, 373–8
 HKCFA references to, by litigant parties,
 378–84
 HRA and, 324–9
 legislative review of, 327–9
 as “living tree,” 199
 multiculturalism and, 14–15
 multinationality, 14
 originalism in, 193
 property rights, 199
 religious freedom rights, 129, 140, 367–8
 religious minorities under, 278
 role of, 264–5
 section 2, 425
 section 7, 199
 section 27, 129–30, 425
 section 28, 129–30
 section 33, 435
 subjecthood and, 50
 Supreme Court, US and, 424
 TCC references to, 372–95, 435–6
 TCC references to, by judge, 386–8
 TCC references to, by litigant parties,
 389–90
 value underlying, 246–7
Canadian Federation for Children v. Canada,
 235–6
Canadian Newspaper Co. v. Canada, 238
Canadian Pacific Ltd. v. Paul, 87–8
 Canadian values, 1–24
 capitalism, confederation and, 39
 Careless, Anthony, 62
Caron v. Alberta, 198
Carter v. Canada, 320, 360–1
 Cartier, Georges-Etienne, 39–40, 61–2
 on two-nations view, 63–6
 case-law, Canadian, 356–8
 assisted suicide cases, 358–61
 HKCFA references to, 372–84
 prisoners’ voting rights cases, 361–5
 TCC referencing to, 372–90
 Catholic Church, 301
Public Schools Act and, 271–3
 Catholic schools, 274, 300–1. *See also* *Public Schools Act*
 Cauchon, Joseph, 280–1, 292
 central government, provincial rights and, 71
 centralisation, 38–9, 52
 Canadian, 51–2
Chahal v. the UK, 365–6
Charkaoui v. Canada, 365–6
 Charlottetown Accord, 1992, 4, 18, 99, 101,
 117–18, 441–2, 445–6
 constitutional legality and, 113–20
 failure of, 118
 multinationality and, 12–14
 patriation and, 99
 Charney, Robert, 11
 “Charter Canadians,” 13–14
Charter for Social Justice, South Africa,
 403–4

- Charter of Fundamental Rights and Freedoms, EU, 334–5, 346–7, 437–41
- Charter of Human Rights and Responsibilities Act 2006, Australia, 324, 434–5
- cheapening of rights, 214–15
- Chrétien, Jean, 71
- citizenship, 448
- access to, 134
 - in *Canadian Charter of Rights and Freedoms*, 14–15
 - multiculturalism and, 147
 - oath, 126–7
 - Strengthening Canadian Citizenship Act*, 147–8
 - in US, 125
- Citizenship Act*, 123, 145–6
- Strengthening Canadian*, 147–8
- citizenship ceremonies, 123, 130–6
- face-covering ban during, 127–8
- citizenship oaths, 130–3, 151–2
- in Australia, 133–4
 - critics of, 132–3
 - face-covering and, 145–6
- City of Boerne v. Flores*, 278–9
- Civil Rights, US, 234–5
- Civil Rights Cases*, 278–9
- “claims of culture,” 135
- Cohen, Jean, 82
- Cole v. Whitfield*, 200–1
- Colonial Laws Validity Act*, 107, 109–10
- Committee for Cth of Can. v. Canada*, 367
- common law, UK, 30–1
- commonwealth model of rights protection, 21, 326–7, 344–7
- application of, 339–44
 - constitutional protection of rights and, 331–5
 - criteria of, 330–1
 - difficulties of, 329–30
 - failure of, 344–5
 - notwithstanding clause in, 435
 - in UK, 339–44
- Commonwealth v. ACT*, 201–4
- comparative constitutionalism, 30–1, 306–7, 312, 319, 420–1
- in Constitutional Court, South Africa, 411–13
 - limits of, 320–3
 - in Taiwan, 385–6
- confederation, 38–9, 67, 107
- capitalism and, 39
 - original intent and, 42–3
 - Quebec-Canada relations and, 63–4
 - territories and, 42–4
- Confederation of 1867, provincial rights in, 70
- conflict of interests, 224
- consent
- federalism and, 46–7
 - provincial, 115
- Constitution, Australia, 202
- Constitution, Canada
- amending formula, 4–8
 - amendment, 106–7
 - amendment rules and, lack of, 100–1
 - Canadian values and, 2–4
 - constitutionalization and, 175
 - constitution-making and, 10
 - diversity managed under, 29
 - durability of, 103–4
 - enforcing, 265–7, 276–91
 - evaluating, 16–17
 - executive enforcement of, 20
 - federalism and, 17
 - freedom of expression law, 245–63
 - global influence of, 1–2, 20–1, 418–49
 - interpretation, 31–2, 186–203
 - judicial enforcement of, 20
 - lawmaking and, 11
 - legislative enforcement of, 20
 - legitimacy and, 103–5
 - as “living tree,” 22, 31–2, 160, 189–90, 205–6
 - meaning of, 15–16
 - Parliament, UK and amending, 4–5
 - politicization of, 162, 179–80
 - rights protection in, 331–5
 - territories and, 41–4
 - three branches of government in, 301–2
- Constitution, Republic of China, 385
- Constitution, South Africa, 22, 169, 301–2
- German Constitutional Court and, 404–6
 - interim, 1993, 404–6
 - limitations clause in, 401–5
 - Manitoba Language Reference* and, 433–4
 - suspended declaration of invalidity in, 266–7, 290–1
- Constitution, Taiwan, 385
- Constitution, US, 10
- Due Process Clause, 210, 217
 - First Amendment, 218, 245–6, 252, 261–2
 - Fourteenth Amendment, 252, 330
 - free speech, 218
 - Ginsburg on, 1

- lawmaking and, 11
- legitimacy and, 105
- Constitution Act, 1791*, 38, 428, 444
- Constitution Act, 1867*, 165, 428, 444
- Constitution Act, 1982*, 1, 28, 165, 307
 - Aboriginal Canadians in, 7–8, 84
 - Aboriginal title in, 93
 - amending formula and, 6
 - constitutional amendment in, 443
 - override provision, 155
 - province amendment rights in, 7
 - provinces and, 50
 - Quebec and, 57
 - section 25, 7–8
 - section 35.1, 7–8, 89–90
 - section 91, 7–8
 - treaties, Indigenous-Canadian and, 89–91
- Constitution Act 1900, Commonwealth of
 - Australia, 184
- constitutional adjudication
 - in Israel, 173–4
 - judicial politics and, 169
- constitutional amendment, 112, 442–3, 448.
 - See also amending formula
 - British North America Act* and, 107–8, 111
 - in Canada, 106–7
 - in *Constitution Act, 1982*, 443
 - constitutional legality and, 101–2, 105–6, 119
 - constitutional theory and, 53–4
 - Favreau White Paper on, 112
 - legitimacy of, 101–2, 105–6
 - negotiations, 113
 - of *Official Language Act*, 285–7
 - provinces and, 57
 - rigidity, 120–2
 - rules, 98, 100–1, 110
 - sovereign authority and, 107–8
 - UK and, 114–15
- constitutional change, 54–5
 - debates, 54–5
 - provinces and, 54–8
 - Quebec and, role of, 54–5
- constitutional collaboration, 338–9
 - notwithstanding clause and, 341
- constitutional counter-balancing, 338–9
 - declarations of incompatibility and, 340–1
- Constitutional Court, Germany
 - ECtHR and, 355
 - South African Constitution and, 404–6
- Constitutional Court, South Africa, 170–1
 - Canadian influence in, 406–9, 412–13
 - comparative law in, 411–13
 - foreign references by, 407–10
 - preemption in, 411
 - US and, 407–13
- constitutional culture, 225–6
- constitutional democracy, 75
- constitutional law
 - internationalization of, 172–3
 - judiciary and, 157–8
- constitutional legality, 104–5
 - Accords and, 113–20
 - amendment and, 101–2
 - constitutional amendment and, 105–6, 119
 - patriation and, 113–20
- constitutional moment, 444
- constitutional pluralism
 - Aboriginal title and, 93–4
 - in Indigenous-Canadian relations, 84–97
 - legal reality and, 83–4
 - treaties, Indigenous-Canadian and, 86, 90–1
- constitutional reform, 114
 - legitimacy of, 121
- constitutional renewal, 98–9
- constitutional rights, 246
 - in Australia, 261
- constitutional theory
 - constitutional amendment and, 53–4
 - federalism and, 36–7, 40, 54, 58
 - liberal, 49–50
- constitutional thought, 305–6
 - Canada as “exporter” of, 306–13, 422–3, 431–5
 - Canada as “importer” of, 313–19, 422–3
 - selective engagement and, limits of, 320–3
- constitutionalism
 - Constitutional Court, South Africa and
 - influence of Canadian, 406–9
 - immanent, 165–6
 - influence of Canadian, 398–406
 - legality, legitimacy and, 102–6
 - liberalism and, 47
 - new, 307–8
 - purposes of, 44–6
 - secession and, 160–3, 165–6, 180
 - South Africa and, 409–16, 432–3
 - “treaty constitutionalism,” 92–3
 - unitary, 36–7
 - unitary-liberal, 49, 54
 - urbanization and, 321–2
 - US, 1, 165–6

- constitutionalization, 18–19, 156–7
 constitution and, 175
 of democracy, 166
 of federalism, 166
 of international law, 348–9
 judiciary and, 155
 Quebec's secession and, 160–3
 of secession, 166
- constitutionalization of politics, 162–74, 178–82
 Israeli basic laws case, 171–4
 judicial politics and, 161–2, 174–81
 ordinary politics and, 161–2
 secession of Quebec, 160–3
 South African death penalty case, 167–71
- constitution-making
 Breyer on, 418–20
 Canadian Constitution and, 10
 Ginsburg on, 418
 revolution and, 9–10
- contract theory, 40
- Cook, Ramsay, 63–4, 67
- “co-operative federalism,” 51
- co-ordinate construction, 280
 French language rights and, 283–5
 minority rights and, 284
- Corder, Hugh, 404
- “correlative conjunctions,” 9
- cosmopolitanism, 29, 319
- Council of the Federation, 2003, 73
- Criminal Procedure Act, 415
- Crown title, to Indigenous territories, 86–7
- Dagenais v. Canadian Broadcasting Corp.*, 235
- Dahlab v. Switzerland*, 142
- Daigle v. Tremblay*, 237
- Daniels v. Canada*, 298
- De Bané, Pierre, 68
- death penalty, 168, 383. *See also* S. v. *Makwanyane and Another*
 for juveniles, 170
 in South Africa, 167–71
 in US, 170
- Declaration on Fundamental Principles and Rights at Work*, 199
- declarations of incompatibility, 332–3, 339–40
 constitutional counter-balancing and, 340–1
- declaratory remedy, 298–9
- Delage, Denys, 75–6
- Delgamuukw v. British Columbia*, 30, 446
 Aboriginal title and, 93
- Delisle v. Canada*, 368
- democracy, 3–4, 16–17, 47
 amending formula and, 5
 constitutional, 75
 constitutionalization of, 166
 federalism and, 46–7
 multinational, in Quebec, 74–6
- democratic dialogue, 326–7, 344–7
 distinctive feature of, 337–8
 failure of, 344–5
 flaws of, 331, 335–7
 global, 421–2
 human rights protections and, 337
 theories of, 335–7
- denominational schools, 274, 300–1
- Department of Justice Act 1985, 327–8
- Dickson, Brian, 196–7, 424–5, 429–30
- difference theory, 230–2
- dignity, 233
 social hierarchy and, 234
 standard, 227–8
 substantive equality and, 232–3
- disadvantage, 229–30
 economic, 243–4
- disallowance of legislation, 280–1
- discrimination, 230–2
 economic disadvantage and, 243
 Indigenous peoples, 29
 stereotyping, 230
- distinct society, Quebec as, 60–1, 68, 77–8
 debate on concept of, 67–8
 Task Force on Canadian Unity and, 68–9
 Trudeau, P., on, 67
- diversity. *See also* respect for difference and diversity
 in Canada, 17, 28–9
 under Constitution of Canada, 29
 equality and, 145–50
 face-covering ban and, 20
 judiciary's role in, 28–9
 Quebec and, 59–60
 rule of law and, 27–33
 territorial, 41
 in US, 28–9
- Dodek, Adam, 397–9, 404, 416–17
- Dominion status, 107–8
- Doucet Boudreau v. Nova Scotia*, 291–2
- dualism, 66
- Dubuc, Joseph, 272
- Due Process Clause, US, 210
 rights inflation and, 217

- Al-Dulimi and Montana Management Inc. v. Switzerland*, 368
- Dumont v. Canada*, 295
- Dunmore v. Ontario*, 222–4, 238
- Dyzenhaus, David, 399
- Eaton v. Brant County Board of Education*, 235, 237
- ECHR. *See* European Convention on Human Rights
- economic disadvantage
- discrimination and, 243
 - hierarchy and, 243–4
- economics, law and, 158–60
- ECtHR. *See* European Court of Human Rights
- education rights, 251–2. *See also* *Public Schools Act*
- Edwards v. Canada*, 31–2, 188, 428–30
- Elections Act 1985, Canada, 331
- English Canada, 13–14, 38, 50
- federalism and, 39–40, 48–9
 - two-nations view and, 64
- equal participation, 252–3
- equality, 20. *See also* gender equality;
- substantive equality
 - Aristotelian, 232
 - asymmetrical equality approach, 227
 - diversity and, 145–50
 - freedom of expression and, 249–50
 - hate speech and, 250
 - hierarchy and, 227–8, 230–1
 - law, 230–1
 - liberalism and, 47–8
 - pornography and, 250
 - provincial, 47–8
 - R. v. Keegstra* and, 250
 - same sex marriage and, 232–3
- Estey, J., 279
- “eternity clauses,” 53–4
- EU. *See* European Union
- European Commission and Others v. Yasin Abdullah Kadi*, 368
- European Convention on Human Rights (ECHR), 168, 246, 327
- Article 2, 359–60
 - Article 3, 342–3, 359–60
 - Article 8, 359–61
 - assisted suicide under, 358–60
 - sexual assault in, 239–40
- European Court of Human Rights (ECtHR), 137–8, 306–7, 434
- domestic decisions and, 355
 - foreign influence on, 356
 - “foreign law” in, 354–6
 - German Constitutional Court and, 355
 - Hirst v. the UK* and, 359–62
 - on *Pretty v. Director of Public Prosecutions and Secretary of State for the Home Department*, 359–60
 - on prisoner disenfranchisement, 361
 - proportionality and, 355–6
 - Supreme Court, Canada and, 21, 369–70, 424–5, 436–7
 - veiling in, 142–3
- European Union (EU)
- Charter of Fundamental Rights and Freedoms, 334–5, 346–7, 437–41
 - secession, 437–8, 440–3
 - “evolving meaning” gambit, 203
 - Eweida and Others v. the UK*, 367
 - “executive federalism,” 51–2
 - expression, Canadian concept of, 247–8
- face-covering ban, 20, 127–8, 145–50, 426
- Ishaq v. Canada*, 128–9, 148–50
- Faiza M.* case, 144
- Favreau White Paper on constitutional amendment, 112
- federal moment, 37, 41, 427–8
- federal principles, 51
- federalism, 3–4, 16–17
- amending formula and, 6–7
 - asymmetrical, 69, 76
 - binationality and, 39–40, 48–9, 445–6
 - British North America Act, 1867* and, 34–5, 38
 - categories, 37
 - consent and, 46–7
 - Constitution of Canada and, 17
 - constitutional change and, 54–5
 - constitutional theory and, 36–7, 40, 54, 58
 - constitutionalization of, 166
 - “co-operative federalism,” 51
 - democracy and, 46–7
 - design, 50–3
 - dynamics, 53–8
 - “executive federalism,” 51–2
 - “flexible federalism,” 52
 - globally, 35–6
 - institutionalisation of, 50

- federalism (cont.)
 liberalism and, 47–8
 origins, 37–44
 provinces and, 37–8, 47–8
 purposes, 44–9, 51
 respect for difference and diversity and,
 35
 subjects, 49–50
 Supreme Court, Canada and, 53
 territories and, 42
 “treaty federalism,” 92–3
 US, 34–5, 37–8, 51–2
 federalism, Canadian, 17, 51–2, 108–9, 166–7
 features of, 34–5
 federal idea and, 34–6
 history of, 34, 38
 Finnis, John, 189
 First Amendment, US, 218, 245–6
 freedom of expression in, 252
 freedom of expression in Canada and,
 261–2
Firth and Others v. the UK, 364
Fisher v. University of Texas, 279
Fleming v. Ireland, 360
 “flexible federalism,” 52
 foreign citations/cross-referencing, 418–22,
 426–7
 by Constitutional Court, South Africa,
 407–10
 increase in, 421–2
 by Supreme Court, Canada, 315, 320, 420–4
 by Supreme Court, US, 316–17, 418–20
Forest v. Attorney General of Manitoba, 282–5
 Fourteenth Amendment, US, 252, 330
 France
Faiza M. case, 144
laïcité principle, 143–4
 veiling in, 142–3
Francophonie, 72–3, 76
 Frankfurter, Felix, 131–2
 free speech law, 20
 rights inflation and US, 218
 freedom of expression, 245–63
 in Australia, 260
 basic structure, 247
 under *Canadian Charter of Rights and
 Freedoms*, 247
 comparative insights into, 260–2
 “double-sided” nature of, 253–4
 equality and, 249–50
 in First Amendment, 252
 First Amendment and Canadian, 261–2
 in Germany, 260–1
 in Israel, 260
 limits on, 248–52
 methodology, 257–60
 mistrust in government and, 254–5
 multiculturalism and, 251–3
 proportionality and, 257–8
 French Canada, 13–14, 28, 38. *See also* Quebec
 federalism and, 39–40
 liberalism in, 48–9
 recognition of, 50
 territories of, 44
 French Civil Code, 28, 428
Frodl v. Austria, 364
 “frozen concepts” principle, 345
 Fulton-Favreau formula, 112
 fundamental rights, 161–2. *See also* Charter of
 Fundamental Rights and Freedoms, EU
 in Israel, 171–2
 law on human, 349–50
 Gagnon, Alain G., 80, 428, 445–6
 Gardbaum, Stephen, 324, 327
 Garlicki, L., 338–9
 gender equality, 144, 446–7
 in Canada, 151
 in *Canadian Charter of Rights and
 Freedoms*, 129
 Gentili, Gianluca, 422–4
 Gérin-Lajoie doctrine, 72–3
 Germany. *See also* Constitutional Court,
 Germany
 Constitutional Court, 355, 404–6
 freedom of expression in, 260–1
 politicization of constitution in, 179–80
Ghaidan v. Godin-Mendoza, 327–8
 Ginsburg, Ruth Bader
 on constitution-making, 418
 on US Constitution, 1
 globalization, 310–11
 human rights and, 348–50
Gonzales v. United States, 239
Gosselin v. Quebec, 206–7, 235, 237–8
 Grand Chamber, 362
 on *Frodl v. Austria*, 364
 on *Scoppola v. Italy*, 363–4
 Greenawalt, Kent, 248
Greens and M.T. v. UK, 363
 Greshner, Donna, 400
 Griffiths, John, 82–3

- Griswold v. Connecticut*, 165–6
Gross v. Switzerland, 360
Guerin v. The Queen, 87
- Haas v. Switzerland*, 360
Haida Nation v. British Columbia, 91, 96
Haig v. Canada, 225
Hamlet of Baker Lake v. Minister of Indian Affairs and Northern Development, 87
 Harlan, John Marshall, 234–5
Harrison v. Carswell, 367
 Hashemi, Negar, 129
 hate speech
 equality and, 250
 freedom of expression and, 248–52
Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 199
 Henderson, James Youngblood, 90
 on “treaty federalism,” 92–3
 Hickman, Tom, 336
 Hiebert, Janet, 324–5, 336–7
 hierarchy, 447
 economic disadvantage and, 243–4
 equality and, 227–8, 230–1
 inequality and, 228–30
 opposition to, 229–30
 sexual assault and, 239
 social, 233–4
 Supreme Court, Canada on, 235–9
 High Court, Australia, 203–4, 434
hijab, 142, 149–50. *See also* face-covering ban
 Hirschl, Ran, 398, 422–4, 431–2
Hirst v. the UK, 362–5
 Pretty v. Director of Public Prosecutions and Secretary of State for the Home Department and, 359–62
 HKCFA. *See* Hong Kong Court of Final Appeal
HKSAR v. Lee Ming Tee & Another, 379–80, 392–5
HKSAR v. Lee Ming Tee & Securities and Futures Commission, 375–6, 392
 Hoehn, Felix, 91
 Hogg, Peter, 56–7, 208, 324–5
 on originalism, 193–4
 on property rights, 199
 homogenization, 59–60
 homosexuality
 same sex marriage, 160, 203–4, 232–3
 social hierarchy and, 233–4
- Hong Kong
 Basic Law of, 372–3, 375, 383
 Bill of Rights Ordinance, 374–5, 382
 Hong Kong Court of Final Appeal (HKCFA), 21–2, 371–2, 395–6
 Canadian Charter of Rights and Freedoms references, 372–84, 390–5, 435–6
 Canadian Charter of Rights and Freedoms references, by judge, 373–8
 Canadian Charter of Rights and Freedoms references, by litigant parties, 378–84
 case-law, Canadian referenced by, 372–84
 House of Lords, on assisted suicide cases, 359
 Howlett, Michael, 69–70
 HRA. *See* Human Rights Act, UK
Hristozov and Others v. Bulgaria, 368
 human rights, 324–7, 436–7
 commonwealth model of, 326–7, 329–30
 constitutional collaboration and, 338–9
 constitutional counter-balancing and, 338–9
 democratic dialogue and, 337
 globalization and, 348–50
 judicial dialogue and, 354–9
 law on, 349–50
 scrutiny of, 335, 343–4
 in UK, 334–5
 Human Rights Act, UK (HRA)
 assessments of, 331–2
 Canadian Charter of Rights and Freedoms and, 324–9
 declarations of incompatibility and, 332–3
 Human Rights Act 1984, Australia, 324, 434–5
Hunter v. Southam, 196–7, 429–30
Hunter v. Underwood, 330
 Huntington, Samuel, 9
Hutchinson v. UK, 342–3
- ICCPR. *See* International Covenant on Civil and Political Rights
 identity, 148
 Ignatieff, Michael, 77–8
 immanent constitutionalism, 165–6
 immigrants, 318
 religious freedom of, 128
 independence, Canadian, 109–11
 India, 306–7
 Indigenous peoples, 446. *See also* treaties,
 Indigenous-Canadian
 discrimination against, 29
 legal norms of, 95–7
 legal pluralism and, 82–4

- Indigenous peoples (cont.)
 legal validity and, 82–3
 relocation and assimilation of, 85
 rights of, 30
 1665 treaty, 83
- Indigenous territories, 86–9
 Aboriginal title to, 87–8
 Crown title to, 86–7
Hamlet of Baker Lake v. Minister of Indian Affairs and Northern Development, 87
 judiciary and, 88–9
 legal protection of, 87–9
- Indigenous-Canadian relations, 18
 “common normative language” in, 84
 constitutional pluralism in, 84–97
 disputes in, 87
 treaties in, 84–6
- Indigenous-Crown relations, 91–2
 individual choice, expression of, 148
 inequality, hierarchy and, 228–30
 Inkatha Freedom Party, 411
 institutional design, 50–1
 Canadian, 51–2
 institutionalisation, of federalism, 50
 interculturalism, 75–6
 “internal nations,” 12
- International Covenant on Civil and Political Rights (ICCPR), 168, 374–5
- International Criminal Court, 239–40
 Rome Statute of, 240
- international law, constitutionalization of, 348–9
- internationalization, of constitutional law, 172–3
Irwin Toy v. Quebec, 247, 255, 414–15
- Ishaq, Zunera, 123, 150–1
- Ishaq v. Canada*, 128–9, 148–50, 448
- Islam
 Muslim women, 144, 151
 veiling and, 142–3
- Israel, 155, 180–1, 306–7, 431–2
 Basic Laws, 171–4
 constitutional adjudication in, 173–4
 freedom of expression in, 260
 fundamental rights in, 171–2
 as Jewish state, 173
 judicial politics in, 172–4
 The Knesset, 171
- James Smith Indian Band v. Saskatchewan*, 88–9
- Janzen v. Platy Enterprises Ltd.*, 235–6
- JCPC. *See* Judicial Committee of the Privy Council
- Jennings, W. Ivor, 190–203
- Johnston, Richard, 12–13
- Jordan v. State*, 240–1
- judicial activism, 333, 341
- Judicial Committee of the Privy Council (JCPC), 62, 107, 426–7
- judicial comparativism, 391
- judicial dialogue, 350–2
 accommodational (co-habitational), 353
 confrontational, 353
 cooperative, 352, 360
 direct and full link of subordination in, 350–1
 external partners in, 354
 forms of, 352–3
 human rights and, 354–9
 between jurisdictions, 351–2, 354
 legal family and, 390–1
 openness and, 393–4
 reticence and, 393–4
 transnational, 354, 371
- judicial interpretation, 16
 of treaties, Indigenous-Canadian, 85–6, 91
- judicial politics, 159–60
 constitutional adjudication and, 169
 constitutionalization of, 161–2, 174–81
 in Israel, 172–4
 judicial decisions and, 177–8
 legitimacy in, 170
 ordinary politics and, 18–19, 160–1, 175
 Quebec’s secession and, 163–5
- judicialization, 155–6
- judiciary
 anti-majoritarian/majoritarian handling and, 161–2
 constitutional law and, 157–8
 constitutionalization and, 155
 diversity and role of, 28–9
 Indigenous territories and, 88–9
 on patriation, 114
 protection of rights and, 333–4
- juridification, 334–5
- jurisprudence, Canadian, 406, 431–2
 rights, 310–12
 South Africa and, 397–8
 UK courts and, 357
- jurisprudence, foreign
 Constitutional Court, South Africa and, 407–10
 referencing, 418–20
 “jurisprudential maturation” factor, 315–16
- Kadic v. Karadzic*, 240
- Keating, Michael, 74

- Kelsen, Hans, 158–9
 Kennedy, Anthony, 170, 175, 419–20
 Kentridge, Sydney, 404–5, 413, 415
Al-Khawaja and Tahery v. the UK, 357–64
Kimel v. Florida Board of Regents, 278–9
 King, Mackenzie, 71
 Kirby, M., 201–2
 Kitchen Accord, 115
 The Knesset, 171
Koch v. Germany, 360
Koo Sze Yiu v. Chief Executive of the HKSAR, 291
 Kostakopoulou, Dora, 132–3
 Kumm, Matthias, 336–7
 KwaZulu-Natal, 410–11
- Lac La Ronge Indian Band v. Beckman*, 88–9
laïcité principle, 143–4
 Lamer, Antonio, 30, 94, 196–7
 land grants, Manitoba Métis, 270
 language game, law as, 157–62
 language rights, 14, 29–30, 251–2, 267, 280.
 See also bilingualism; *Official Language Act*
 co-ordinate construction and, 283–5
 English, 416
 French, 283–5
 litigation, 282–3
 minority, 282–3, 287–8, 292–4
 in Quebec, 68–9
- Lau Cheong & Another v. HKSAR*, 374–84, 392–3
 Laurendeau, André, 77
 Laurendeau-Dunton Commission, 68
 Laurier, Wilfrid, 71, 276–7
Lautsi v. Italy, 137–8
Lavoie v. Canada, 235
Law v. Canada, 228, 232–3
 lawmaking, 159–60
 dualistic system of, 11
Lawrence v. Texas, 239–40
 legal family, 390–1
 legal pluralism, 65–6
 in Canada, 81–2
 concept of, 81
 Indigenous peoples and, 82–4
 legal reality, 82–3
 constitutional plurality and, 83–4
 treaties, Indigenous-Canadian and, 85
 legal validity, 82
 indigenous peoples and, 82–3
 legality
 amendment rigidity and, 120–2
 concept of, 102–3
 constitution and, 104–5
 constitutionalism and, 102–6
 legitimacy and, in constitutions, 104–5
 statutory, 106–13
 legislature
 Canadian Charter of Rights and Freedoms
 reviewed by, 327–9
 Constitution enforced by, 276–91
 on human rights scrutiny, 343–4
 role of, 265–6
 legitimacy, 45–7
 amendment, 101–2
 amendment rigidity and, 120–2
 concept of, 102–3
 Constitution, Canada and, 103–5
 Constitution, US and, 105
 constitutional amendment and, 101–2, 105–6
 of constitutional reform, 121
 constitutionalism and, 102–6
 in judicial politics, 170
 legality and, in constitutions, 104–5
 patriation and, 106, 120–1
 subjects and, 49
 legitimization factor, 352
Leyla Sahin v. Turkey, 142
 L’Heureux-Dubé, Claire, 312, 314–15, 319
 on foreign references, 420
Li Defan & Another v. HKSAR, 381–2, 392–3
 liberal constitutional theory, 49–50
 liberalism, 45–7
 constitutionalism and, 47
 equality and, 47–8
 federalism and, 47–8
 in French Canada, 48–9
 unitary-liberal constitutionalism, 49, 54
 licensing regulations, in US, 218–20
 limitations clause, 425
 in South African Constitution, 401–5
 “limited identities,” 62
 limiting rights, 394–5
 Lin, Tzu-Yi, 386–8
 Lipset, Seymour Martin, 3, 12, 316
Little Sisters Book & Art Emporium v. Canada, 237, 255–6
 “living tree” metaphor, 189, 369, 430
 Canadian Charter of Rights and Freedoms
 as, 199
 Constitution of Canada as, 22, 31–2, 160,
 189–90, 205–6
 McLachlin on, 431, 444–5
 Supreme Court, Canada shift from
 originalism to, 207–8
 Locke, John, 9–10

- Loranger, Thomas, 65, 70–1
 Lord's Day Act, 136–7, 425
Loving v. Virginia, 233
 loyalists, 52–3
 Luhmann, Niklas, 158–9
 Lyon, Sterling, 283–4, 286–7
- Ma Bik Yung v. Ko Chuen*, 380–1, 392, 395
 Macdonald, John A., 39–40, 271–2, 277–8
Manchester City Council v. Pinnock, 333
 Mandela, Nelson, 167–8, 180, 399
 Manitoba Act, 1870, 267–71
 enforcing, 265–7
 legislative blockage and, 276
 remedial legislation and, 276
 s. 22, 269, 275–6
 s. 23, 269, 280–3, 287–8
 s. 31, 270, 294
Manitoba Language Reference, 266–7, 433–4
Manitoba Métis Federation, 266–7
Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al., 296
 Manitoba Métis land grant litigation, 270
 Aboriginal rights and, 296–8
 comparing executive, legislative and judicial performance, 299–300
 declaratory remedy and, 298–9
 Supreme Court, Canada and, 296–8
 Manitoba Schools crisis, 271
 Marshall, Thurgood, 22–3
M.C. v. Bulgaria, 239
McAteer v. Canada, 126
McGeoch v. The Lord President of the Council, 364
 McLachlin, Beverley, 2–4, 17, 22, 317, 421, 423–4, 428
 on diversity and rule of law, 27–33
 on foreign references, 420–1, 426–7
 on “living tree” metaphor, 431, 444–5
 on *R. v. Khawaja*, 221–2
 on *R. v. NS*, 426
 R. v. Van der Peet dissent, 95–6
 on religious freedom, 140
 McRoberts, Kenneth, 12
 Meech Lake Accord, 4, 18, 66, 99, 116–17, 441–2, 445–6
 constitutional legality and, 113–20
 failure of, 23–4, 117–18
 legality and legitimacy of, 101
 patriation and, 99
 Quebec and, 116
- Melloni v. Ministerio Fiscal*, 352
Meritor Savings Bank v. Vinson, 239
 Métis. *See also* Manitoba Métis land grant litigation
 Aboriginal title, 270
 extra-judicial settlements, 295
 land grant litigation, 270
 Mignault, P.B., 65
 Mill, John Stuart, 192, 254
Minister of Home Affairs (Bermuda) v. Fisher, 413, 430
 minority rights, 161–2, 300–2
 co-ordinate construction and, 284
 enforcing, 293–4
 language, 282–3, 287–8, 292–4
 misjudgment, 254–5
 monoculturalism, 138
 Monture, Patricia, 23–4
 Moon, Richard, 251
 moral principles, 194–5
 Mouffe, Chantal, 79
Mouvement laïque quebécois v. Saguenay, 235–6
Multani v. Commission scolaire Marguerite-Bourgeoys, 30, 311, 367–8
 multiculturalism, 136–42, 425
 in Canada, 145
 Canadian Charter of Rights and Freedoms and, 14–15
 citizenship and, 147
 face-covering ban and, 147–50
 freedom of expression and, 251–3
 niqab and, 141–2
 policy of, 318–19
 in South Africa, 417
 multinational democracy, in Quebec, 74–6
 multinational federation, 60–1
 multinationality, 12–14
 amending formula and legal recognition of, 4
 Canadian Charter of Rights and Freedoms, 14
 Charlottetown Accord and, 12–14
 “Charter Canadians” and, 13–14
Murat Vural v. Turkey, 364
 Murphy, Emily, 429
 Muslim women, 144, 151
- Nada v. Switzerland*, 368
National Bank of Canada v. Retail Clerks' International Union, 380–1

- nationalism, 41–2
 Nationality Act, 1948, 130–1
 naturalization, 124–5
 automatic, 134–6
 process, 134
 requirements, 148
 in US, 125
 Naturalization Act, 1790, 131
 naturalized citizens, distrust of, 131–2
 negative rights, 224
 new constitutional order, 9
 new constitutionalism, 307–8
 New France, 428
New York v. United States, 411–12
 New Zealand, 306–7, 434
 Bill of Rights Act 1990, 324, 434–5
 Nicol, Danny, 336
niqab, 123, 448. *See also* face-covering ban
 banning, 140–1
 multiculturalism and, 141–2
 “no-right-approach,” 359
 “normative functionalism,” 36
 notwithstanding clause, 339–40
 in commonwealth model of rights
 protection, 435
 constitutional collaboration and, 341
Nova Scotia v. Walsh, 235–6
 Nye, Joseph, 313
- Oakes test, 413–15, 425–6. *See also* *R. v. Oakes*
Official Language Act, 270, 280, 292–4, 433–4
 amending, 285–7
 court challenges, 281–2
 disallowance of legislation and, 280–1
 legislative blockages, 285–7
O'Halloran and Francis v. The United Kingdom, 31
 Oliver, Peter, 55
 Omar, Dullah, 400–1
Oncale v. Sundowner Offshore Services, Inc., 239
Ontario Hydro v. Ontario (Labour Relation Board), 192–3
Ontario (AG) v. Bear Island Foundation, 88–9
Ontario v. Fraser, 238
Opuz v. Turkey, 239
 ordinary politics
 consensus in, 176–7
 constitutionalization and, 161–2
 judicial decisions and, 177–8
 judicial politics and, 18–19, 160–1, 175
 Quebec's secession and, 163–5
 original intent
 confederation and, 42–3
 originalism compared with, 200–2
 originalism, 19, 195, 430
 in Australia, 183–4
 in Canada, 183–4, 192–200, 205–7
 in *Canadian Charter of Rights and Freedoms*, 193
 original intent compared with, 200–2
 rejection of, 194, 205–7
 statutory interpretation and, 185
 Supreme Court, Canada shift from, to
 “living tree” constitutionalism, 207–8
 in US, 195, 207
Osborn v. Parole Board, 334
 “Other,” 143–4
Othman (Abu Qatada) v. the UK, 365–6
 Ottawa, Quebec as distinct society and, 68
- Palermo Protocol to the Transnational Organized Crime Convention, 244
Palmore v. Sidoti, 233
 Parliament, Canada
 amending formula and, 6
 override provision, 155
 on *Public Schools Act*, 274–6
 Parliament, UK, 4–5
 parliamentarism, 11
 parliamentary system, 51–2, 62
 patriation, 18, 99
 Charlottetown Accord and, 99
 constitutional legality and, 113–20
 judiciary on, 114
 legitimacy and, 106, 120–1
 Meech Lake Accord and, 99
 provincial opposition to, 114–15
 Quebec and, 116–17
 Trudeau, P., on, 120
Patriation Reference, 5, 11, 56–7, 114–15
 Quebec and, 56–7
Pellant v. Hebert, 270, 281
 Pelletier, Benoît, 73
 Pepin-Robarts Commission. *See* Task Force on Canadian Unity
Perera v. Canada, 380–1
Perez v. Brownell, 145
Persons Case, 189–90
 Plant, R., 93–4
Plessy v. Ferguson, 233–5

- pluralism, 16–18, 75, 445–6. *See also*
 constitutional pluralism; legal pluralism
 national, 41–2
 territorial, 41–3
- plurinationalism, 35–6, 41–2, 46–7
- political nationality, 60–1
 Quebec and, 61–3
- political spaces
 charting, 60–1
 key concepts of, 60–1
 Quebec, 78–9
- politicization, of constitution, 162, 179–80
- pornography, 242–3
 equality and, 250
 freedom of expression and, 248–52
- positive rights, 224
- Posner, Richard, 158–9
- presumption of innocence, 378, 413
- Pretty v. Director of Public Prosecutions and Secretary of State for the Home Department*, 358–60
Hirst v. the UK and, 359–62
- prisoner disenfranchisement
 in Canada, 331
 ECtHR on, 361
 in Europe, 361
 in South Africa, 329–30
 in US, 330
- prisoners' voting rights cases, 361–5
- Privy Council, 275–6, 413. *See also* Judicial Committee of the Privy Council
Edwards v. Canada and, 428–9
 on *Public Schools Act*, 273–4
- property and civil rights clause, 52–3
- property rights, 199
- proportionality, 210, 307
 balancing rights and, 426
 in Bill of Rights, South Africa, 403–4
 ECtHR and, 355–6
 in foreign law systems, 258
 freedom of expression and, 257–8
 rights inflation and, 221–5
 rights infringements and, 426
- Prosecutor v. Akayesu*, 240
- Prosecutor v. Thomas Lubanga Dyilo*, 240
- prostitution, 240–2
- province state, 60–1
 notion of, 69–70
 Quebec as, 69–74
- provinces
 amending formula and involvement of, 7
 autonomy of, 52
 in *British North America Act*, 1867, 444
- consent of, 115
- Constitution Act*, 1982 and, 50
- constitutional amendment and, 57
- constitutional change and, 54–8
- federalism and, 37–8, 47–8
- patriation opposed by, 114–15
- status of, 52–3
- two-nations view and, 64
- unilateral provincial procedure, 6–7
- provincial equality, 47–8
- provincial rights, 70
 federal defense of, 71
 Loranger on, 70–1
 Quebec and, 73–4, 76
 Tremblay Commission and, 71–2
- Public Schools Act*, 271
 Catholic Church and, 271–3
 comparing executive, legislative and judicial performance, 277–8
 Parliament on, 274–6
 Privy Council on, 273–4
 “the sunny ways” compromise and, 276–7
 Supreme Court on, 272–3
- Quebec
 Aboriginal Canadians and, 75–6
 asymmetrical federalism in, 76
 in *British North America Act*, 1867, 428
 Canada and, relations between, 17–18, 59–60, 63–4
 in comparative context, 76–9
Constitution Act, 1982 and, 57
 constitutional change and role of, 54–5
 as distinct society, 60–1, 67–9, 77–8
 diversity and, 59–60
 in *Francophonie*, 76
 government, 66
 language rights in, 68–9
 Meech Lake Accord and, 116
 multinational democracy in, 74–6
 patriation and, 116–17
Patriation Reference and, 56–7
 political nationality and, 60–1
 political spaces, 78–9
 as province state, 69–74
 provincial rights and, 73–4, 76
 Quiet Revolution, 60–1, 317
 “regional veto statute” and, 57–8
 secession of, 160–3, 180, 308–10
 self-government by, 77
 special status for, 67
 two-nations view and, 63–6
Quebec Act, 1774, 28–30, 64–5, 428

- Quebec Conference 1864, 59
 Quebec referendum, 1995, 4
 Quebec Royal Commission of Inquiry on
 Constitutional Problems. *See* Tremblay
 Commission
Quebec v. A., 243
 Quiet Revolution, Quebec, 60–1, 66, 72, 317
- R. v. Badger*, 89–90, 446
R. v. Big M Drug Mart Limited, 136–7, 243,
 367–8, 412–13
R. v. Bishop of London, 185–6
R. v. Blais, 206–7
R. v. Broyles, 366–7, 374
R. v. Butler, 245–6, 249, 255–6, 387–8
R. v. Chaulk, 377–8, 414–15
R. v. Chief Constable of South Yorkshire Police,
 367
R. v. Drybones, 345
R. v. Dytham, 374
R. v. Edwards Books, 255
R. v. Gray, 96
R. v. Guerin, 87
R. v. Hawkins, 242
R. v. Hebert, 366–7, 374
R. v. Hertford College, 185–6
R. v. Horncastle and Others, 357–64
R. (Wilkinson) v. Inland Revenue
 Commissioners, 328
R. v. Jorgenson, 243
R. v. Kapp, 232–3, 235, 279
R. v. Keegstra, 237, 245–6, 249–51, 256
R. v. Khawaja, 221–2
R. v. Labaye, 243
R. v. Latimer, 365–6, 384
R. v. Lavallée, 237
R. v. Layton, 367
R. v. Liew, 366–7
R. v. Luxton, 365–6, 384
R. v. Martineau, 383
R. v. Mills, 238
R. (on the application of Nicklinson and
another) v. Ministry of Justice, 360–1
R. v. NS, 140–2, 426
R. v. Nguyen & Another, 376–7
R. v. Noble, 382
R. v. NS, 30, 147
R. v. Oakes, 247, 307–8, 329–30, 377–8, 403–4,
 412–13
 Oakes test, 413–15, 425–6
R. v. O'Connor, 238, 376
R. v. Osolin, 238
R. v. Price, 242
R. v. R.C., 367
R. v. Sappller, 96
R. v. Seaboyer, 238
R. (Chester) v. Secretary of State for Justice,
 364
R. (Davis) v. Secretary of State for the Home
Department, 334
R. (Miranda) v. Secretary of State for the Home
Department, 324–32
R. (HS2 Action Alliance) v. Secretary of State
for Transport, 327
R. v. Simmons, 424
R. v. Smith, 365–6, 384
R. v. Sparrow, 30, 87–8
R. (Ullah) v. Special Adjudicator, 333–4
R. v. Sullivan & Lemay, 237
R. v. Vaillancourt, 383
R. v. Van der Peet, 93, 95–6
R. v. Wholesale Travel Group Inc., 255
Rabone v. Pennine Care NHS Foundation
Trust, 334
- race
 Civil Rights, US, 234–5
 social hierarchy and, 234
- rape, 239–42
 culture, 242
- recognition
 of the court, 391
 treaties, Indigenous-Canadian and mutual,
 91–2
- Red River rebellion, 268–9
 “regional veto statute,” 7, 57–8, 443
- regions, concept of, 60
- Reid, Bill, “The Spirit of Haida Gwaii,” 32–3
- Reilly (2) v. Secretary of State for Work and*
Pensions, 332
- religious compulsion, 137–8
- religious freedom, 20, 29–30, 425
 in Canada, 151
 in *Canadian Charter of Rights and*
*Freedom*s, 129, 140, 367–8
 face-covering ban and, 426
 of immigrants, 128
R. v. NS, 141
 Supreme Court, Canada on, 141
- remedial activism, 291–2
- remedial choice, 271
- remedial legislation, 276
 contrasting Canadian and American
 approaches to, 278–80
 1896 election and, 276–7
- Rémillard, Gil, 66
- Representation of the People Act 1983, 362–3

- respect for difference and diversity, 3–4, 16–17, 61–2
 accommodation of difference, 29–30
 amending formula and, 7–8
 federalism and, 35
 reason for, 8
- revolution
 constitution-making and, 9–10
 evolution and, 30–1
- Reyes v. the Queen*, 383–4
- Richards, William, 186–7
- Richardson v. Ramirez*, 330
- Riel, Louis, 267–9
- rights discourse, 371–2
- rights inflation, 209–10, 426
 in Canada, 210, 221–5
 constitutional culture and, 225–6
 critics of, 213–14
 doctrinal account, 215–16
 Due Process Clause and, 217
 general provisions and, 211–12
 licensing regulations and, 218–20
 politico-cultural account of, 213–15
 proportionality and, 221–5
 specific provisions and, 212
 Supreme Court, Canada and, 221–4
 types of, 211–13
 in US, 19, 210, 217–21
- rights infringements
Baier v. Alberta and, 223–4, 426
 in Canada, 215–16
 proportionality and, 426
 in US, 215–16
- rights protection, 394–5. *See also*
 commonwealth model of rights
 protection
 of individual, 429–30
- rights-claims, function of, 215
- R.J. Reynolds Tobacco Co. v. FDA*, 218
- RJR-MacDonald Inc v. Canada*, 389
- RJS v. The Queen*, 379
- Roach, Kent, 324–5, 336–7
- Roach v. Electoral Commissioner*, 203
- Robinson-Huron Treaty, 88
- Rodriguez v. Attorney General of Canada*,
 358–61, 365
- Roe v. Wade*, 105
- Rome Statute, International Criminal Court,
 240
- Romer v. Evans*, 232
- Roper v. Simmons*, 170, 175
- rule of law, diversity and, 27–33
- Russell, Peter, 256
- S. and Marper v. the UK*, 367
- S. v. Coetzee*, 415
- S. v. Makwanyane and Another*, 18–19, 167–71,
 352, 404–5, 412–15
- S. v. Williams*, 31
- S. v. Zuma and Others*, 404–5, 412–13
- same sex marriage, 160, 203–4
 equality and, 232–3
- SAS v. France*, 142–4
- Saskatchewan Federation of Labour v. Saskatchewan*, 221, 320
- Saul, John Ralston, 29, 399
- Sauvé v. Canada*, 331, 361, 365
- Sayadi and Vinck v. Belgium*, 368
- Saywell, J.T., 186–7
- Scalia, Antonin, 183–4, 195, 232
- Schaar, John, 227–8
- Schattsscheider, E.E., 79
- Schauer, Frederick, 257–8
- Schlesinger, Arthur, Jr., 27–8
- Schneiderman, David, 82–3
- Schneiderman v. United States*, 131–2
- Scoppola v. Italy*, 363–5
- secession
 Canadian constitutionalism and, 165–6,
 180
 constitutionalism and, 160–3, 165–6
 constitutionalization of, 166
 EU, 437–8, 440–3
 globally, 309–10
 of Quebec, 160–3, 180, 308–10
- Secession Reference*, 53, 163–5, 308–10, 437–8,
 441–3
- Secretary for Justice v. Lam Tat Ming & Another*, 373–4, 379, 392
- Secretary of State for the Home Department v. AF*, 334
- self-determination, statehood and, 74
- self-government
 by Quebec, 77
Statute of Westminster and, 109–10
- separatism, 28
- Sesquicentennial, 1–2, 22–3, 264, 444–5, 449
- Severn v. The Queen*, 186–7
- sex trade, substantive equality and, 240–4
- sex trafficking, 240–1
 Palermo Protocol to the Transnational
 Organized Crime Convention on, 244

- sexual assault
 in Canada, 238–9
 in European Convention on Human Rights,
 239–40
 hierarchy and, 239
 in US, 239–40
- SGH Ltd v. Federal Commissioner of Taxation*,
 201–2
- shared sovereignty, 84–5
- Sharpe v. Wakefield*, 184–5
- Shum Kwok Sher v. HKSAR*, 374–5, 392, 394–5
- Simeon, Richard, 60, 80, 400
- Skweyiya, Zola, 402–3
- Slaight Communications Inc v. Davidson*,
 380–1
- Smith, Peter, 38
- Smith v. The Queen*, 88
- So Wai Lun v. HKSAR*, 374–7, 392, 394–5
- Societie Franco-Manitoba, 285–6, 301
- “soft power,” in international diplomacy, 313
- Solid Waste Agency of Cook County v. US
 Army Corp., of Engineers*, 178
- South Africa, 155, 180, 306–7. *See also*
 Constitution, South Africa;
 Constitutional Court, South Africa
 Bill of Rights, 246, 403–4
 Canada and, 416–17
 Canadian constitutionalism and, 409–16,
 432–3
 Canadian influences on, 398–406, 432–3
 Canadian jurisprudence and, 397–8
 death penalty case, 167–71
 democratic transition of, 22
 interim constitution, 167–8
 multiculturalism in, 417
 pretrial detention, 212
 prisoner disenfranchisement, 329–30
 prostitution in, 240–1
- sovereignty, 65, 74
 constitutional amendment and, 107–8
 shared, 84–5
- Special Joint Committee of the Senate and of
 the House of Commons on the
 Constitution, 68
- “The Spirit of Haida Gwaii,” 32–3
- St Catherine’s Milling and Lumber Co v. The
 Queen*, 88, 186–7
- state-individual relationship, 40–1
- Statute of Westminster*, 109–10, 426–7, 435–6,
 444
 amending formula, 111–13
- statutory interpretation
 in Australia, 184–6, 191–2
 originalism and, 185
 textualism and, 185–6
 in UK, 184–6
- statutory legality, 106–13
- statutory platforms, 224–5
- stereotyping, 230
- Strange Multiplicity. Constitutionalism in an
 Age of Diversity* (Tully), 77
- Strasbourg court, 333–4, 357
 UK courts and, 341–3
- Strengthening Canadian Citizenship Act*,
 147–8
- Strong, Samuel, 186–7
- subjecthood, *Charter of Rights and Freedoms*,
 Canadian and, 50
- subjects
 federalism and, 49–50
 legitimacy and, 49
- substantive equality, 227–8, 447
*Andrews v. The Law Society of British
 Columbia* and, 227–8
- dignity and, 232–3
 pornography and, 242–3
 in prostitution and sex trafficking, 240–1
 sex trade and, 240–4
 stereotyping and, 230
- substantive rights, 209
- sui generis* interest, 88–9
- Suicide Act 1961, 358–9
- “the sunny ways” compromise, 276–7
- Sunstein, Cass, 126–7
- Supreme Court, Canada, 16, 18–19
 accommodation of difference and, 30
 Constitutional Court, South Africa and,
 412–13
 ECtHR and, 21, 369–70, 424–5, 436–7
 federalism and, 53
 foreign citations by, 422–4
 foreign law and, 258
 foreign references by, 315, 320, 420–1
 founders’ intentions referenced by, 197
 global influence of, 31, 307–8, 369–70,
 418–49
 on hierarchy, 235–9
 influence of, 431–2
 on Manitoba Act, 287–8
Manitoba Language Reference, 288–9, 292
 Manitoba Métis land grant litigation, 296–8
 originalism in, 196–8

- Supreme Court, Canada (cont.)
 on *Public Schools Act*, 272–3
 on Quebec's secession, 163–5
Reference re Same Sex Marriage, 160
Reference re Senate Reform, 320
Reference re Supreme Court Act ss 5 and 6,
 320
 on religious freedom, 141
 rights inflation and, 221–4
 on same sex marriage, 203–4
Secession Reference, 163–5, 308–10, 437–8,
 441–3
 self-reference by, 314–15
 on sexual assault, 238–9
 shift from originalism to “living tree”
 constitutionalism, 207–8
 Supreme Court, US and, 315–17, 423–4
 suspended declaration of invalidity, 266–7,
 288–90
 UK Courts and, 423–4
 Supreme Court, US
Canadian Charter of Rights and Freedoms
and, 424
 Civil Rights Cases, 234–5
 Constitutional Court, South Africa and,
 411–12
 foreign references by, 316–17, 418–20
 influence of, 357
 originalism in, 195
 sexual assault in, 239–40
 Supreme Court, Canada and, 315–17, 423–4
Supreme Court Act, 198, 320, 423
Suresh v. Canada, 365–6
 Suspended Declaration of Invalidity, 266–7,
 276–91, 433–4
 export of, 290–1
 growth of, 290
 Swepson, L., 93–4
Syndicat Northcrest v. Amselem, 30, 311, 367–8
- Taiwan
 comparative constitutionalism in, 385–6
 Constitution, 385
 Taiwan's Constitutional Court (TCC), 21–2,
 371–2, 395–6
Canadian Charter of Rights and Freedoms
 references, 372–95, 435–6
Canadian Charter of Rights and Freedoms
 references, by judge, 386–8
Canadian Charter of Rights and Freedoms
 references, by litigant parties, 389–90
- Taku River Tlingit First Nation v. British*
Columbia (project Assessment Director),
 91, 96
 Tarnopolsky, Walter, 345, 400
 Task Force on Canadian Unity (Pepin-Robarts
 Commission), 68–9
Tasmania v. Commonwealth, 186, 191–2
 TCC. *See* Taiwan's Constitutional Court
 territories. *See also* Indigenous territories
 confederation and, 42–4
 constitution and, 41–4
 federalism and, 42
 of French Canada, 44
 pluralism, 41–3
 textualism
 in Australia, 191
 in Canada, 197–8
 statutory interpretation and, 185–6
Thibodeau v. Air Canada, 291
Thoburn v. Sunderland City Council, 327
 Thompson, John, 281
Thomson Newspaper Ltd v. Canada, 379
 Tobacco Product Labeling Act, 389
Town Planning Board v. Society for the
Protection of the Harbour, 377–8, 391–2,
 394–5
 transjudicial communication, 421–2
 treaties, Indigenous-Canadian, 84, 446
 Constitution Act, 1982 and, 89–91
 as constitutional accords, 91–2
 constitutional pluralism and, 86, 90–1
 as international law, 85
 judicial interpretation of, 85–6, 91
 legal reality and, 85
 legislative authority and, 86
R. v. Badger and, 89–90
 recognition and, 91–2
 rights, 89–91
 Robinson-Huron Treaty, 88
 1665 treaty, 83
 “treaty constitutionalism,” 92–3
 “treaty federalism,” 92–3
Treaty of Lisbon, 437–8, 440
Treaty of Nice, 440
Treaty on European Union, 440
 Tremblay, L.B., 338–9
 Tremblay Commission (Quebec Royal
 Commission of Inquiry on Constitutional
 Problems), 67
 provincial rights and, 71–2
 Trudeau, Justin, 113, 298–9, 448

- Trudeau, Pierre, 11, 56, 64, 68–9, 113, 278
 on constitutional conferences, 113
 on patriation, 120
 on provincial rights, 71
 on Quebec as distinct society, 67
 on unanimity, 113
- Truth and Reconciliation Commission, 297
- Tsilhqot'in Nation v. British Columbia*, 94
- Tully, James, 32–3, 64–5, 74
 on plural societies, 75
Strange Multiplicity. Constitutionalism in an Age of Diversity, 77
 on “treaty constitutionalism,” 92–3
- Turner, Dale, 86
- Turpel-Lafond, Mary Ellen, 23–4
- two-nations view, 63–6
 English Canada, 64
 provinces and, 64
- UK *See* United Kingdom
- UK courts
 Canadian jurisprudence and, 357
 criticism of, 341–3
 Strasbourg court and, 341–3
 Supreme Court, Canada and, 423–4
- unanimity, 113–14
- UNESCO, 72–3
- unilateral provincial procedure, 6–7
- uninationality, 35–6
- unity constitutionalism, 36–7, 53–4
- unitary-liberal constitutionalism, 49, 54
- United Kingdom (UK), 306–7. *See also*
 Human Rights Act, UK
 Bill of Rights, 345–6
 “Brexit,” 437–8
 Canada and, 51–2
 common law, 30–1
 commonwealth model of rights protection
 in, 339–44
 constitutional amendment and, 114–15
 human rights protection in, 334–5
 immanent constitutionalism, 165–6
 Indigenous-Crown relations, 91–2
 Nationality Act, 1948, 130–1
 Parliament, 4–5
 statutory interpretation in, 184–6
- United Mizrahi Bank Ltd. v. Migdal Village*,
 171–4
- United States (US). *See also* Constitution, US;
 Supreme Court, US
 abortion rights in, 218
 Bill of Rights, 438–9
 citizenship in, 125
 Civil Rights, 234–5
 Constitutional Court, South Africa and,
 407–13
 constitutionalism, 1, 165–6
 death penalty in, 170
 diversity in, 28–9
 Due Process Clause, 210, 217
 federalism in, 34–5, 37–8, 51–2
 licensing regulations in, 218–20
 naturalization in, 125
 originalism in, 195, 207
 prisoner disenfranchisement in, 330
 remedial legislation approaches in,
 278–80
 rights inflation in, 19, 210, 217–21
 rights infringements in, 215–16
 states’ rights debate, 38–9
United States v. Burns, 365–6, 384
United States v. Ferras, 365–6
United States v. Morrison, 177–8, 278–9
United States v. Windsor, 233
 unreasonable searches, 212
 urbanization, 321–2
 US *See* United States
 usufructuary right, 88–9
Uukw v. AGBC, 88–9
- Various Claimants v. Catholic Child Welfare
 Society*, 31
- veiling. *See also* face-covering ban
 in ECtHR, 142–3
 in France, 142–3
 Islam and, 142–3
- Vertido v. The Philippines*, 239
- Victoria Charter*, 112
- Vidal Hall v. Google*, 334
- Vinter and Others v. the UK*, 342–3, 366
- von Hannover v. Germany*, 355
- voting rights
 in Australia, 202–3
 of prisoners, 361–5
- Vriend v. Alberta*, 237
- Waldron, Jeremy, 336–7, 419–20
- Washington v. Glucksberg*, 358
- Watts v. United States*, 222
- Webb v. Outtrim*, 190
- Webber, Jeremy, 83
- Weinrib, Lorraine, 400

West Virginia State Board of Education v. Barette, 131–2
Westen, Peter, 232
Whitman, James, 260–1
Wildlife Act, Alberta, 89–90
Williams, Robert, 92–3
Wiseman, Nelson, 270–1
Withler v. Canada, 228

Wittgenstein, Ludwig, 157–8
Wong Kim Ark, 125

Yasin Abdullah Kaadi and Barakaat
International Foundation v. the Council of the EU and the Commission of the EC, 368
Young, Margot, 229–30