

INDEX

- Abortion
 - Abortion in Argentina, 14, 219–220, 239, 258–261, 265, 298, 301, 302, 306, 320
 - Abortion in Ireland, 14, 295, 297, 298, 301, 302, 304, 320
- Ackerman, Bruce, 26–29, 68, 126, 192, 193
- Alberdi, Juan Bautista, 8–10, 32, 35–36, 37, 43, 78, 141, 143–146, 181, 207, 215, 217, 277, 306, 307, 310, 316
- Alexander, Lawrence, 324
- American Revolution. *See* Revolution
- Arato, Andrew, 244
- Arendt, Hannah, 91, 177
- Aristotle, 41, 287
- Atria, Fernando, 282
- Autonomy
 - and self-government, 29, 36, 37, 70
 - individual autonomy, 29–30, 70, 76
- Bello, Andrés, 32, 36–38, 181
- Benedetti, Miguel, 268
- Bentham, Jeremy, 12, 106, 107, 156–157, 158, 160, 210, 322
- Bickel, Alexander, 184
- Bolívar, Simón, 36, 43, 136–138
- Brinks, Daniel, 9
- Burke, Edmund, 78, 82–85, 87–89, 91, 92
- Charter of rights
 - and the “notwithstanding clause”, 246, 250–252, 255, 267
 - in Canada, 250–252
- Checks and balances. *See also* Separation of powers
 - “endogenous controls”, 99, 106, 312
 - “exogenous controls”, 98, 99, 102, 104, 106, 108, 312
 - and “civil war”, 127, 133–135
 - and the “Alberdian error”, 143
 - as an “unbalanced system”, 143
 - external controls, 66, 69, 99, 125, 279, 312
 - internal controls, 45, 66, 99, 106, 125, 279, 281, 312
- Citizens assemblies
 - in British Columbia, Canada, 293, 296, 299, 304, 305, 317, 319, 321
 - in Chile, 297, 305, 323
 - in France, 323
 - in Iceland, 294, 305
 - in Ireland, 295–297, 301, 317
 - in Ontario, Canada, 293, 296, 299, 304, 305, 317, 319, 321
- Civic virtue. *See* Motivation
 - and the “endogenous formation” of character, 21, 280
- Colon Ríos, Joel, 234, 244
- Community of equals
 - Interpretation in a community of equals, 223–226
- Community of immigrants, 19, 20, 22, 23–25, 29, 30, 60, 225
- Constitution
 - Argentine Constitution 1853, 32, 36, 142, 143, 207, 237
 - Argentine Constitution 1949, 174, 175
 - Argentine Constitution 1994, 176
 - Bolivian Constitution 2009, 176, 243
 - Brazilian Constitution 1934, 174

- Brazilian Constitution 1937, 174
 Chilean Constitution 1823, 77, 144
 Chilean Constitution 1833, 32, 37, 144, 235
 Colombian Constitution 1863, 139
 Colombian Constitution 1886, 38, 142, 235
 Colombian Constitution 1991, 176
 Conservative Constitution, 142, 167, 235
 Constitutional convention, 33, 51–53, 55, 60, 88, 96, 98, 125, 138–139, 143, 154, 167, 169–171, 217–218, 237, 239–241, 242, 292–293, 295–296
 Constitution-making, 244
 Counter-majoritarian constitution, 55, 57, 59, 62, 65, 106
 Crowdsourced Constitution. *See* Iceland
 Ecuador Constitution 1869, 77
 Ecuador Constitution 2008, 176, 243, 307
 French Constitution 1791, 191, 242
 French Constitution 1793, 9, 242
 Iceland Crowdsourced Constitution. *See* Iceland
 Liberal Constitution, 80, 140
 Mexican Constitution 1917, 166–168, 172, 177
 New Latin American Constitutionalism. *See* Latin America
 Pennsylvania 1776, 59, 102, 105, 125
 South Africa Constitution 1996, 248
 US Constitution 1787, 32, 33, 61, 88, 106–108, 125, 133
 Venezuela Constitution 1811, 137–138
 Venezuela Constitution 1999, 176, 243
 Weimar Constitution, 166, 172
 Constitutional Court. *See also* Supreme Court
 in Colombia, 247, 255
 in South Africa, 246–247
 Contesse, Jorge, 197
 Conversation. *See also* Dialogue; Democracy
 The law as a conversation among equals, 13, 16, 244, 303, 308, 316, 325
 Courtis, Christian, 179
 Dahl, Robert, 12, 22, 57, 61, 125, 282
 Declaration of Independence, 150–153
 Deliberation
 Deliberative assemblies, 14, 244, 288, 292, 295, 297, 298, 302, 306
 Democracy. *See also* Dialogue
 “fact of democracy”, 45–48
 and “democratic erosion”, 140, 270–271, 273, 274, 277, 278–279, 281, 282–283, 288
 crisis of democracy, 133, 273, 276, 281, 316–317
 Deliberative democracy, 84, 256, 266, 287
 Democratic objection to judicial review, 7, 185–186, 187, 190, 193, 196–197, 199, 221, 256, 314
 Direct democracy, 53–55, 58, 63, 65, 88, 200, 285, 288, 311
 Discomfort with, 51
 Distrust of democracy, 5–6, 11, 32, 34, 39–40, 90, 172, 311, 313
 vs. rights, 158–160, 179–182
 Democratic dissonance, 48–50, 310
 Democratic erosion. *See* Democracy
 Dialogue. *See also* Democracy
 Dialogic constitutionalism, 227, 230, 246, 255–257, 263, 324
 Dixon, Rosalind, 182
 Dworkin, Ronald, 155, 160–163, 204, 222, 227, 275, 314
 Dyzenhaus, David, 46, 148
 Electoral extortion, 109–112, 122, 242, 312. *See also* Democracy
 Elitism
 Political elitism, 40–41, 90
 Elster, Jon, 40, 133, 232–234, 239–240

340

INDEX

- Ely, John, 220, 228–230
 Engine room, 7, 177–179
 Equality
 Egalitarianism, 67, 76, 79
- Factions, 51–57, 61–63, 89, 128, 309
 Federalist Papers, 33, 51–55, 66, 72,
 125, 154, 183, 218, 231
 Ferrajoli, Luigi, 159, 162–163, 164–165,
 275, 314
 Fishkin, James, 292, 301
 Fiss, Owen, 264
 Forst, Rainer, 18
 French Constitution. *See* Constitution
 French Revolution. *See* Revolution
- Gardbaum, Stephen, 230
 Ginsburg, Tom, 140, 274, 279–283,
 322
 Godoy, Miguel, 268
 Grootboom case, 247–250, 252
- Habermas, Jürgen, 22, 41
 Hamilton, Alexander
 and judicial review, 183, 184, 186,
 187, 190
 Hart, Herbert, 16, 19
 Holmes, Stephen, 233
 Huq, Aziz, 140, 274, 279–283
- Iceland
 and citizens assemblies, 294, 305
 Citizens assemblies, 292
 Crowdsourced Constitution,
 244–245, 294–295, 298
- Indigenous rights
 and “prior consultation”, 253–254,
 268–269
 and “sumak kawsay”, 307
- Instructions, 45, 83, 84, 86, 92, 101,
 103, 244
- Inter-American Court of Human
 Rights
 “Gelman” case, 163, 165, 199–201
- Interpretation
 Constitutional interpretation, 28,
 194, 202, 206, 208, 216, 222–226,
 319–320
- Interpretative gap
 Interpretative theories, 205–210
 Living constitutionalism, 207, 210,
 215, 219–222
- Ireland
 and abortion, 14, 295, 297, 298, 301,
 302, 304, 320
 and citizens assemblies, 295–297,
 301, 305, 317
- Irrationality
 Irrational voters, 11, 42, 100, 120,
 123
- Jefferson, Thomas, 5, 9, 33, 34, 67, 70,
 78, 79, 89, 91, 98–100, 107,
 150–155, 187, 188, 217, 288, 323
- Judicial review
 and “democratic objection”, 6–8,
 185, 187, 190, 193, 196–197, 200,
 221, 252, 256, 314
 and “counter-majoritarian
 difficulty”, 184–185, 256
 Procedural approach, 227–228
- Lafont, Cristina, 301, 303
 Landau, David, 274
 Landemore, Helene, 303
- Latin America
 New Latin American
 Constitutionalism, 176
- Levinson, Sanford, 12
- Locke, John, 42, 88, 124, 149–153, 154,
 156–157, 158, 323
- Madison, James
 and “Vices of the Political System”,
 52, 105, 128, 317
- Majority groups
 Counter-majoritarian, 64, 65,
 163
 Majoritarianism, 57, 59–60, 106
- Manin, Bernard, 55
- Marbury v. Madison, 187, 190
- Marshall, John, 187–194, 196
- Marx, Karl, 131, 276, 287, 315
- Me too, 258
- Meaningful engagement, 231, 254, 255,
 257, 268, 321

- Mill, John Stuart
 “best judge”, 287
 and harm principle, 24, 237
- Minority groups
 Definition of minority groups, 59–61
- Motivation
 and “egoism as fuel”, 73–74
 and civic virtue, 70
 and egoism, 43, 72, 73
 personal motives, 72, 73–74
- Moyn, Samuel, 182
- Multiculturalism
 Multicultural societies, 39, 95, 97,
 176, 234, 283, 289, 298, 310,
 326
- Neutrality
 State neutrality, 76–77
- Nino, Carlos, 24, 29, 41, 145, 156, 157,
 229, 287, 322
- Notwithstanding clause, 246, 250–252,
 255, 267
- O’Donnell, Guillermo, 277, 308
- Originalism, 207, 211–212, 216–219
- Paine, Thomas, 59, 78, 89, 101–102,
 105, 124, 129
- Paper stones, 119–120
- Participation. *See* popular controls
- Perón, Juan Domingo, 148, 174,
 175
- Pitkin, Hannah, 84
- Plebiscite
 and the “hourglass”, 240–242
- Popular controls
 Instructions, 45, 86, 92, 101,
 102–104, 312
 Right to recall, 45
 Rotation in office, 45, 101, 102–104,
 108, 312
- Popular sovereignty, 5, 58, 98, 102,
 147, 287
- Presidentialism
 and the political left, 146–148
 Hyper-presidentialism, 68, 140,
 146–148, 178, 278, 299
- Prior consultation, 253–254, 268–269
- Privacy
 and harm principle, 24, 237
 and moral perfectionism, 147
 Private morality, 24, 207, 217,
 229, 237
- Protests
 Social protests, 230, 278
- Przeworski, Adam, 38, 119, 274, 282
- Public hearings, 133, 231, 253, 255, 259,
 267–268, 293, 318, 320
- Public morality, 217, 320
- Rawls, John, 22, 47, 95, 229, 239
- Representation
 “Mirror” representation, 91–94, 283
 and “presence”, 91–94, 285, 304
 Bristol debates on representation,
 82–87
 Structural difficulties, 94–97, 326
 Virtual representation, 91–94
- Republicanism, 75–77, 321
- Revolution
 American Revolution, 33, 91, 93,
 150, 156
 French Revolution, 58, 60, 67, 78,
 102, 124, 128, 156–157, 191
 Mexican Revolution, 157, 166,
 167–169
- Right to prior consultation, 254
- Rights
 and “social authoritarianism”, 168
 and democracy, 29, 30–31,
 160, 320
 and the “sphere of the undecidable”,
 162–165
 as “bribes”, 182
 as “nonsense upon stilts”, 155–158
 as “nonsense upon stilts”, 13, 192
 as “planets”, 151, 304
 as “trump cards”, 155, 160–162
 crisis of rights, 275–276, 316
 indigenous rights, 243, 253, 305, 307
 natural rights, 149, 152–153,
 155–157
 vs. “engine room”, 177–179
 vs. democracy, 158–160, 179–182
- Rousseau, Jean Jacques, 4, 67, 70,
 98

- Sáenz, Jimena, 268
 Sandel, Michael, 6, 75, 261
 Scalia, Antonin, 207, 218
 Self-evident rights, 153
 Self-government
 and individual autonomy, 29–30, 36, 37, 70
 Collective self-government, 9, 11, 12, 30, 70, 71, 89
 Material conditions, 69, 70, 78, 89, 109
 Separation of powers. *See also* Checks and balances
 and “departmentalism”, 125, 188
 Social authoritarianism. *See* Engine room; Rights; Social rights
 Social rights, 85, 157, 163, 166, 167, 173–174, 175, 178–180, 243, 248–250
 Strauss, David, 230
 Strict scrutiny, 228
 Sunstein, Cass, 157, 173, 229, 235, 250, 274
- Supreme Court
 Argentine Supreme Court, 215, 220, 253, 321
 US Supreme Court, 27, 52, 94, 173, 185, 193, 202, 205, 214, 314
 Warren Court, 211, 230
- Tushnet, Mark, 251, 274, 324
- Unger, Roberto Mangabeira, 46, 51, 313
- Vargas, Getulio, 148, 174–175
 Vile, Maurice, 124
 Vote
 and “electoral extortion”, 108, 109–112, 122, 242, 312
 Periodic vote, 108–109, 115, 281, 312
- Waldron, Jeremy, 22, 47, 161, 224, 261, 284–289, 319
 Warren Court. *See* Supreme Court
 Wood, Gordon, 4, 102, 128