

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

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, Jurgen, 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

INDEX

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 atilts”, 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

342

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

INDEX

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