

INDEX

- Abahlali baseMjondolo, 202
 Abella Esquivel, Aída, 54, 61
 access to justice, 28, 178, 183, 203
acción de tutela, 3, 7, 59, 62, 69, 148, 216
 attempts to limit the tutela, 156–60
 Constitutional Court decisions on tutela claims, 113
 daily work of deciding tutela claims, 171
 as entry-point to healthcare system, 87
 in everyday language, 81
 expansion, 63, 100, 102, 107, 117
 giving meaning to rights, 62, 90
 ineffective, 91, 92
 ordinary judges deciding tutela claims, 113–19
 tutela contra sentencias, 144, 146–56
 African National Congress, 184, 186, 188
 Agua Blanca, Colombia, 3, 19, 80, 88–91, 124, 121–43, 220
amparo, 58, 62
 Angarita, Ciro, 100, 104, 105, 147, 148
 Antioquia, Colombia, 19, 118, 167, 171
 Aragón Reyes, Manuel, 56
 Arango, Rodolfo, 56, 57
 Arauca, Colombia, 167
 Arias, Jaime, 61
 armed conflict, 20, 48, 65, 122, 124, 127, 134, 136, 143
 Asamblea Nacional Constituyente, 53, *See also* constitutional assembly: of Colombia
- Barco, Virgilio, 52, 53
 Barrera, Antonio, 148, 157
 Barrios, Alejandra, 52
Bel Porto School Governing Body and Others v Premier of the Western Cape Province and Another (2002), 192
 beliefs, 8, 10, 11, 19, 27, 38, 40, 43, 44, 84, 99, 203
 inaccurate beliefs, 10, 81, 220
 Bernal, Sandra, 74
 Bernal, Viviana, 174
 black letter lawyers, 197
 Bogotá, Colombia, 18, 19, 46, 53, 65, 74, 80, 88, 89, 91, 92, 118, 167, 175
 Bonivento, José, 153
- Braulio Romero, Johnny, 116, 179
 Buga, Colombia, 177
 Burdeau, Georges, 56
 bureaucratization of rights, 125
- Cabezas, Cristian, 114, 117, 172
 Cajas, Mario, 155
 Caldas, Colombia, 167
 Cali, Colombia, 3, 18, 19, 80, 88, 113, 114, 116, 123, 137–9, 141, 156, 172, 174, 179
 Canadian Charter, 185
 Caquetá, Colombia, 167, 171
 Carranza Coronado, María Mercedes, 54, 61
 Carrillo Flórez, Fernando, 53
 Cartagena, Colombia, 104
 C-cases, 20, 147
 C-157/97, 110
 C-229/98, 161
 C-543/92, 147
 C-590/05, 149
 C-747/99, 111
 C-950/07, 87
 Cepeda, Fernando, 52
 Cepeda, Manuel José, 30, 49, 54, 73, 119, 151, 158
 Chalita, Marcos, 61
 Chaskalson, Arthur, 190, 191
choque de trenes, 144, 153
Christian Education South Africa v Minister of Education (2000), 191
 Cifuentes, Eduardo, 57, 96, 100–6, 111, 146–8, 161
 common knowledge, 71, 72
 comparative constitutionalism, 214
 comparative grievance, 123
 compliance, 175, 178, 217
conexidad doctrine, 104, 110, 112, 117, 157
 Conservative Party of Colombia, 48, 50, 53, 59, 184
 constitutional assembly
 of Colombia, 53–62, *See also* Asamblea Nacional Constituyente
 of South Africa, 186–9
 public submissions, 201
 Technical Committee, 188
 Theme Committee 4, 186

- Constitutional Court
 - of Colombia, 100, 144
 - of South Africa, 185, 190, 201
- constitutional dictatorship, 51
- constitutional embedding, 25, 26, 189, 213
 - challenges to embedding, 31, 213
 - legal legibility, 31, 121–43
 - power struggles, 31, 144–63
 - workload, 31, 164–81
 - change over time, 29, 31
 - dislodging an embedded constitution, 32, 37, 35
 - legal embedding, 12, 96
 - in Colombia, 96–120
 - evidence of, 27
 - in South Africa, 190–8
 - partial embedding, 29, 35, 37, 183, 207, 209, 213, 222
 - relationship between social and legal embedding, 28
 - social embedding, 12, 71
 - in Colombia, 71–95
 - evidence of, 27
 - in South Africa, 198, 207
 - subnational variation, 30
 - successful embedding, 12, 37
 - uneven embedding, 12, 29, 45, 119, 213
 - visualizing embedding, 29
- constitutional patriotism, 28
- Constitutional Talk*, 199
- constitutional veneration, 28
- constitutionalism
 - constitutional turnover, 24
 - constitutional types, 6
 - critiques of, 224
 - fourth wave of constitutionalism, 5
 - illiberal constitutionalism, 7
 - Latin American constitutionalism, 216
 - liberal constitutionalism, 7, 59, 60
 - material consequences of, 216
- constitution-building approach, 198, 209, 210
- Constitutions of Colombia
 - 1821 Constitution, 47
 - 1863 Constitution, 47, 48
 - 1886 Constitution, 48
 - failed reforms, 51
 - 1910 reform, 48
 - 1936 reform, 48, 49, 59
 - 1936 reform, 100
 - 1954 reform, 50
 - 1957 reform, 50
 - 1968 amendment, 50
 - 1991 Constitution, 7, 13, 46, 49, 54, 55, 62, 78
 - Article 23, 63
 - Article 49, 64
 - Article 86, 61, 63, 66, 101, 146
 - Title I, 61
 - Title II, 61
- Constitutions of South Africa
 - 1993 Interim Constitution, 185–7
 - 1996 Final Constitution, 37, 182, 185, 186, 189, 190, 196, 198, 199, 201, 202, 205, 208–11
 - Section 22, 205
 - Section 23, 205
 - Section 26, 191, 205
 - Section 27, 191, 205
 - Section 29, 205
- Constitutions, other
 - 1917 Mexican Constitution, 6, 49
 - 1919 German (Weimar) Constitution, 49
 - 1988 Brazilian Constitution, 57, 58
 - 1993 Peruvian Constitution, 58
- constructivist approach, 32, 39, 96
- Conventions for a Democratic South Africa (CODESA I and II), 185
- corporatism, 14, 16, 17, 215
- Correa, Hernán, 67
- Council of State of Colombia, 51, 100, 144, 146, 149–56, 159, 162
- court constituencies, 24, 31

- de Dios Montes, Juan, 156
- Defensoría del Pueblo, 59, 65, 108, 113, 118, 171, 216
- democratic backsliding, 2
- Democratic Party, 187, 188
- deservingness, 121, 122, 137, 139
- dignity, 14, 16, 43, 106, 109, 110, 112, 119, 191, 193, 194, 196, 197, 210
- directive principles, 7, 183, 187, 221
- displacement, 81, 135–8, 161, 220

- Ejército Popular de Liberación, 53
- Emiliani, Raimundo, 61
- entidades promotoras de salud (EPS)*, 216, *See also* insurance companies
- Esguerra, Juan Carlos, 54, 60–2, 83, 102, 103, 154
- estado de cosas inconstitucional*, 145, 160
- estado social de derecho*, 56, 150
- evictions, 191, 194, 195, 197, 198, 209, 210

- Fajardo, Diana, 55, 162
- feedback loops, 12, 34, 35, 37, 43, 44, 72, 84, 119, 125, 146, 164, 178, 195, 196
- Fondo de Solidaridad y Garantía, 85
- framing, 38, 39
- France, Anatole, 12
- Fuerzas Armadas Revolucionarias de Colombia (FARC), 20, 139
- fundamental rights, 63, 147, 148, 161, 172, 174
- Fusagasugá, Colombia, 74

INDEX

- Galán, Luis Carlos, 52
Gallón, Gustavo, 49
Garcés Lloreda, María Teresa, 54
García de Enterría, Eduardo, 56
García Pelayo, Manuel, 57
Garzón, Jaime, 73
Gauteng Provincial Legislature in re: Gauteng School Education Bill of 1995 (2000), 190
Gaviria, Alejandro, 86, 162
Gaviria, César, 55, 73, 76, 78
German Basic Law, 185
Gómez Hurtado, Álvaro, 54
Gómez, Andrés, 73, 76, 78, 79
Government of the Republic of South Africa and Others v Grootboom and Others (2000), 191–3, 196
Grootboom, See *Government of the Republic of South Africa and Others v Grootboom and Others* (2000)
guerrillas, 50, 51, 57, 59, 127, 137, 139, 140, 180, 184
- haves and have-nots, 124
Henao, Juan Carlos, 48, 107, 154, 155
Hernández, José Gregorio, 75, 100, 146, 147
Herrán de Montoya, Helena, 54, 59
Herrera, Hernando, 49, 55, 152
Hugo, Víctor, 47
Human Rights Commission, 187, 205
- incidentes de desacato*, 166, 174
inequality, 13, 14, 51, 123, 124, 183
informed disenchantment, 37, 123, 134
Inkatha Freedom Party, 187
insurance companies, 4, 39, 44, 80, 84, 85, 87, 88, 93, 111, 131, 133, 216, 218
International Covenants on Civil and Political Rights, 186
International Covenant on Economic, Social, and Cultural Rights, 6, 186, 188
international law, 16, 26, 56, 185, 193
- Jaramillo Ossa, Bernardo, 52
judicial agency, 40, 41
judicial receptivity, 12, 33–5, 38, 40–4, 72, 84, 98, 108, 109, 113, 128, 143, 145, 164, 180, 194–6, 223
 changes in argumentation, 41
 changes in personnel, 41
 pedagogical interventions, 41
 public exposure mechanism, 40, 41, 97, 109, 111, 194
judicial review, 24, 48, 185, 224
judicial role, 10, 19, 28, 40, 116
judicialization, 7, 215, 216
juces sin rostro, 50
- justiciability, 7, 19, 27, 41, 58, 100–2, 105, 106, 186–8, 193
- La tutela factor humano*, 73–6
Law 100 (1993), 84, 85
Law 1448 (2011), 65, 122, 134, 136, 137
Law 1751 (2015), 110
legal alienation, 37, 221
legal consciousness, 11, 28, 206, 214, 220, 221, 223
legal culture, 113, 197
legal grievances, 12, 33–5, 38–40, 43, 44, 72, 84, 88, 98, 128, 143, 145, 164, 189, 203
legal mobilization, 12, 27, 214, 218, 220, 221
 definition of, 33
 despite ambivalence, 88–95
 as a mechanism of constitutional embedding, 9, 12, 25, 34, 44, 112
 and social embedding, 82–8
 without a support structure, 218–19
legal opportunity, 218, 219
Legislative Act 10 (2002), 157
Lemaitre, Julieta, 49, 51, 57, 82, 140, 141, 162, 184
Leyva, Álvaro, 61
Liberal Party of Colombia, 48, 50, 59, 184
limits of liberal legalism, 124
Londoño, Fernando, 158
López Michelsen, Alfonso, 51
López Pumarejo, Alfonso, 48, 49
López, Andrés, 114, 175
- M-19, 50, 53, 57
Magdalena, Colombia, 167
Marikana, South Africa, 204
Marín, Albeiro, 172, 176
Martínez, Alejandro, 100, 104, 105, 146, 147, 148
Mbeki, Thabo, 193
meaningful engagement, 209
Medellín, Colombia, 18, 20, 50, 65, 81–3, 88, 92, 113, 117, 118, 167, 172
Mejía, Darío, 61
Mejía, Jorge Arango, 148
Meta, Colombia, 167
mínimo vital doctrine, 65, 104–6, 110–12
Minister of Education v Harris (2001), 192
Minister of Health and Others v Treatment Action Campaign and Others (2002), 193, 196
Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others (2001), 193
Mogollón, Lina, 154
Montealegre, Eduardo, 158
Montes, Jorge, 179

- Morón Díaz, Fabio, 100
 movements, 53, 142, 210, 212, 218, 220
 Movimiento Armado Quintín Lame, 54, 57
 Movimiento de Salvación Nacional, 53, 59, 60
 Movimiento Unión Cristiana, 53
 Multi-Party Negotiating Process (MPNP), 185
 myth of rights, 219, 220
- Naranjo, Vladimiro, 111, 148
 National Front, 50, 184
 National Party, 183, 187, 188
 Navarro Wolff, Antonio, 54
 neoliberalism, 8, 9, 14, 17, 213, 215
 Norte de Santander, Colombia, 167
 Núñez, Rafael, 48
- Olano, Hernán, 107
 ordinary (lower court) judges, 99, 113, 115, 116, 119, 164, 165, 171, 172, 174
 ordinary courts, 66, 167, 171
 Ortiz, Jaime, 55, 61
 Ortiz, Julio, 49
 Osuna, Néstor, 101, 102
- Palmira, Colombia, 176, 177
 Pan African Congress, 187
 parchment promises, 1, 25, 30, 141, 212, 213
 Pardo Leal, Jaime, 52
 Partido Revolucionario de Trabajadores, 53
 Pastrana, Misael, 61
 patron-clientelism, 14, 16, 17, 215
Permanent Secretary of the Department of Education of the Government of the Eastern Cape Province and Another v Ed-U-College (2000), 192
 Personería, 113, 118
 Pizarro Leongómez, Carlos, 52
 political participation, 34, 142, 214, 221
 politics of rights, 219, 220
 Popayán, Colombia, 175
 poverty, 14, 90, 124, 127–30, 134, 136, 138, 142, 210
Premier, Province of Mpumalanga and Another v Executive Committee of the Association of Governing Bodies of State Aided Schools: Eastern Transvaal (1998), 191
 progressive realization, 5
 Puerto Tejada, Colombia, 175
 Putumayo, Colombia, 167, 171
- Quinche, Manuel, 149, 154
 Quindío, Colombia, 167
- Ramírez Ocampo, Augusto, 61
 Ratanang, South Africa, 204
 reasonableness standard, 192, 193
- res judicata*, 149
Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (2009), 195
- rights to
 access to justice, 65
 bear arms, 25
 children, 61
 culture, 104
 dignity, 102, 106, *See also* dignity
 due process, 65, 102, 151, 157
 education, 61, 81, 102, 190, 193, 205
 environment, 104
 equality, 58
 food, 191, 205
 freedom from torture, 58
 freedom of association, 58
 freedom of religion, 102
 fundamental rights, 57, 60, 61, 63, 70, 83, 91, 101, 103–7, 110, 115, 117, 118, 146, 149, 151, 179, 186
 health, 3, 13, 35, 39, 61, 64, 65, 70, 72, 76, 83, 84, 86, 91, 94, 97, 98, 102, 104–6, 108–10, 112, 113, 118–20, 128, 190, 191, 193, 196, 205, 217, 219, 220, 223
 housing, 58, 61, 102, 108, 111, 113, 190, 191, 193–7, 204, 205, 210
 labor rights, 116, 179, 205
 life, 58, 65, 102, 105, 106
 newly-codified rights, 46, 71, 73, 108
 pensions, 179
 personal integrity, 106
 petition, 63, 65, 70, 83
 property, 104, 105
 public services, 179
 rights consciousness, 40, 134, 206, 218, 220
 rights retrenchment, 226
 rights talk, 4, 27, 30, 34, 71, 206, 212, 213
 sanitation, 104
 shelter, *See* rights to: housing
 social assistance, 191
 social security, 106, 179, 190, 191, 205
 strike, 61
 subsistence, 105
 vital minimum, 106
 water, 65, 105, 179, 190, 191, 205
 work, 65, 104
- Risaralda, Colombia, 167
 Rodríguez, Carlos, 116, 174, 178
 Rodríguez, Simón, 100
 Rojas, Francisco, 61
 Roldán, Gabriel, 81, 83, 113
 Rueda, Pablo, 107, 111
 rules of the game, 3, 14, 226
- Sachs, Albie, 191
 Samper, Ernesto, 156, 158

INDEX

- San Andres y Providencia, Colombia, 167
 San José del Sur, Colombia, 79
 Sanín, Jaime, 100
 Santa Marta, Colombia, 79
 Santander, Francisco de Paula, 46, 47, 57
 Santos, Juan Manuel, 139, 140
séptima papeleta, 53
 Serpa Uribe, Horacio, 54, 61
 social change, 30, 185, 212, 215, 219
 social citizenship, 13, 122, 214, 215
 social constitutionalism, 1, 6–9, 17, 25, 58,
 72, 122, 141, 185, 196, 198, 215, 216,
 220, 224, 226
 importance of, 13–17
 models of, 183
 social incorporation, 14–17, 124, 214, 215,
 217
 social welfare, 4, 13, 14–17, 25, 205, 213–15
 sociolegal values, 22, 43, 110, 112, 119, 194,
 196, 197, 210
Soobramoney, *See Soobramoney v Minister of
 Health (Kwazulu-Natal)* (1997)
*Soobramoney v Minister of Health (Kwazulu-
 Natal)* (1997), 190–3, 196
 sterilization by judicial interpretation, 30, 49,
 69, 119
 SU-250/98, 161
 SU-559/97, 161
 SU-1219/01, 151
 Sucre, Colombia, 167
 Superior Council of the Judiciary of
 Colombia, 101, 144, 146, 153, 171
 support structure, 30, 84, 195, 209, 218, 219
 Supreme Court of Colombia, 48–54, 58, 100,
 106, 144, 146, 148–50, 152–6, 158,
 159, 162
 T-cases, 20
 T-002/92, 102, 104
 T-005/95, 106
 T-006/92, 146
 T-024/04, 161
 T-068/98, 161
 T-079/93, 148
 T-153/98, 161
 T-158/93, 148
 T-223/92, 147
 T-289/98, 161
 T-296/98, 161
 T-406/92, 105, 193
 T-413/92, 147
 T-426/92, 104, 105
 T-439/98, 161
 T-451/92, 104
 T-474/92, 147
 T-492/92, 147
 T-506/92, 105
 T-523/92, 147
 T-531/92, 147
 T-535/98, 161
 T-559/98, 161
 T-590/98, 161
 T-598/92, 110
 T-606/98, 161
 T-607/98, 161
 T-760/08, 110, 161, 216
 T.H. Marshall, 13
 Thusong, South Africa, 204
 Tisnés, Juan Sebastián, 82, 172, 180
 Tolima, Colombia, 167
 Toro, German, 61
 Treatment Action Campaign (movement
 organization), 193
 Treatment Action Campaign (movement organization),
 202
 Turbay Ayala, Julio César, 51
 Tutela y Juega, 73, 76–9
 prompting real-life claim-making, 78
 Unidad de Poder Adquisitivo Constante
 (UPAC), 110, 111
 Unidad para la Atención y Reparación
 Integral a las Víctimas, 65
 Unión Patriótica, 53
 Universal Declaration of Human Rights, 56,
 186
 Uribe Uribe, Rafael, 177
 Uribe Vargas, Diego, 61
 Uribe, Álvaro, 156–9
 Valencia, César Julio, 158
 Valencia, Guillermo, 177
 Vargas, Getulio, 141
 vernacularization, 27, 72, 80, 82, 213
vía de hecho doctrine, 147, 148, 151
 written constitutions, 1, 2
 Yacoob, Zak, 191, 196
 Zalamea Costa, Alberto, 58, 61