

## Index

adaptability, 78, 79, 89, 95, 393-399, 414. See also amendment; flexibility; specific Afghanistan, 5, 6, 28–30, 35, 62–63, 356 Africa, 27, 256t, 321, 322, 343n20. See also specific countries African National Congress (ANC), 27 African-Americans, 46, 50, 53, 236, 250, 316, 317 agency costs, 5, 15, 20-21, 27 AIDS, 327 Al Shabaab, 221 Al-Ali, Zaid, 12, 32, 33, 365-391 Alberdi, Juan Bautista, 31, 101, 102, 131, 372 Alberdian test, 102-105, 111, 116, 131 Al-Brahimi, Mohammed, 214 Alemparte, Justo Arteaga, 119, 119n18, 120 Alesina, Alberto, 44 Alevi community, 196 Algeria, 212, 378n15, 379, 380, 380n19, 383, 388, 391 Ambedkar, B. R., 13, 32, 295; affirmative action and, 320, 326; caste and, 296, 303, 311, 317; constitutional morality, 304, 327, 330; courts and, 309, 310, 329; early life, 296; education, 297, 310, 320, 325; as formalist, 323, 330;

Gandhi and, 312n21; Grote and, 330; Hinduism and, 312n22; importance of, 302, 332; Marxism and, 304; minorities and, 304n9; Muslims and, 317-318; Nehru and, 296; resignation of, 305; women and, 303, 323, 324; See also India amendment: adaptability and, 78, 89, 95;

amendment culture, 284n5; endurance and, 78-79, 284, 285 (see also endurance); entrenchment and, 398; frequency of, 284n5, 285, 286; measurement and, 282; minimum

core and, 284, 286, 289 (see also minimum core); public attitudes, 284; replacement and, 272, 273, 284; super-statutes, 274; unconstitutional amendment, 289 Anand, Mulk Raj, 313n25 ANC. See African National Congress Annan, Kofi, 343n20, 352 answerability, 358

Arab region, 33, 212, 368, 373; Arab Spring, 21, 33, 365-391, 380n19; Arabic language, 155, 184; conservatism and, 382, 383; controlling elites, 374, 375, 384, 389; executive power, 378; legal tradition, 383; political elites, 384; pre-2011 constitutions, 374, 376, 377, 383; preambles, drafting of, 368; priorities in, 372, 373; religious elites, 374, 375 (see also Muslims); revolutions, 379-380; rights and, 377, 382; social justice, 382; See also specific countries, topics

Arboleda, Sergio, 116 Argentina, 31, 101, 107n6, 148, 164 Aristotle, 4, 57n5 Arrow, K., Asia Foundation, 29

aspirations, 14, 32, 55, 57, 65; agency slack and, 20; conflicting, 9; convergence in, 6; democracy and, 19; entrenchment and, 260 (see also entrenchment); external criteria and, 10; gap studies, 236-241; internal method and, 9; liberalism and, 366 (see also liberalism); maturation and, 260, 26of; minimum core and, 366 (see also minimum core); performance and, 10; problem of, 236-241; rights and (see rights); transitions and, 210 (see also transition); welfarism and (see welfarism); See also specific countries, topics



422 Index

authoritarianism, 20, 31, 117, 387; agency slack and, 20, 21; conservatism and, 114; democracy and, 271, 282, 287, 349; dictatorship, 263; endurance and, 270-271; entrenchment and, 149 (see also entrenchment); governance and, 5; maturation and, 265; media and, 357; military and, 15 (see also military); religion and, 176, 189; repression and, 119118 (see also repression); restrictiveness and, 185; rights and, 239, 265; stability and, 117, 119n18; transition and (see transition); See also specific countries, persons autonomy, 106, 108, 111, 117, 121, 128, 137; conservatism and, 117, 118; cultural, 51; entrenchment and, 158, 162; free speech and, 331; individual, 105, 106, 108, 123, 124, 128; institutional, 145, 338, 349, 350, 357; military and, 145, 148, 161, 162; radicalism and, 122; religion and, 179, 195; sovereignty and, 106, 108, 111, 117, 121, 128, 377; See also specific topics

Bahrain, 380 Bajranji, Babu, 318 Barre, Siad, 220 Ben Achour, Yadh, 213 Ben Ali, Zine el-Abidine, 185, 212, 213 Berlin, Isaiah, 56, 63 Bhargave, Rajeev, 178 Bilbao, Francisco, 121 Bisarya, Sumit, 11, 13, 32, 203–231 Blair, Tony, 402 Bolívar, Simón, 100, 101, 107-113, 109n7 Bolivia, 18, 78n6, 110 Bonn Agreement, 28 Bosnia, 366, 374 Bourguida, Habib, 212 Bouteflika, Abdelaziz, 378n15 Brandenberg test, 299 Brass, Paul, 356n44 Braver, Joshua, 78n6 Brazil, 106, 157, 158, 209-210, 248 Brown, Nathan, 377 Buddhism, 194t, 297, 297n4 bureaucracy, 11, 18, 164, 184, 235, 242, 349. See also specific countries, topics Burger, Warren, 24 Burma, 150, 154, 155 Buthelezi, M., 27 "by law" clauses, 274n2

Camp Keith, Linda, 231, 243, 251 capabilities approach, 43, 61 Carey, John M., 74, 76, 78, 207 Carrión, Sánchez, 112, 112n10 causation/correlation, 301, 366, 367 CCP. See Comparative Constitutions Project Chavez, Hugo, 280, 281 Chile, 112111, 113, 116; amendments and, 27311; Catholicism and, 100, 114, 115; conservatism and, 113, 118; Constitution of 1833, 100-102; Ecuador and, 101, 114; executive and, 115; France and, 121; military and, 151; National Security Council, 156; president and, 100, 158; radicalism and, 121; transition in, 154 China, 19 Christians, 175, 192t, 252t, 253t, 254t; anti-Christian movement, 116n16; Chile and, 100, 113, 114, 114n13, 115; Iceland and, 83, 87, 88, 89, 93; India and, 178, 209, 303, 304, 319, 320, 324, 332; Indonesia and, 181; Islam and, 181, 317, 320, 332; Lausanne Treaty and, 194; women, 324 Churchill, Winston, 326 Cicero, 57 CIRI Human Rights dataset, 245 citizens, 8, 9n1, 17; agency slack and, 20; amendment and, 279; democracy and, 8, 303 (see also democracy); enforcement and, 241; ethnic groups and, 46, 306, 318, 322 (see also ethnic groups); institutions and, 19 (see also specific topics); maturation and, 241, 270; office holders and, 17; participation of, 911, 17, 19, 22, 77, 94n15, 111n9, 126n22, 279; rights and, 911, 20, 2613, 85, 124, 185, 186, 277, 369, 382 (see also rights); See also specific countries, topics civil war, 6, 18, 23, 25, 26, 29, 212, 236 clarity, 8, 74, 75, 92, 299 coherence, 7, 8, 74, 75, 147, 164, 401n23 collective action, 54n2, 59, 105 Colombia, 112, 112n11, 116, 121, 276, 366, 367 Communism, 19, 59, 314n27, 320 comparative constitutionalism, iii, 39, 102, 171, 233, 247, 275, 286 Comparative Constitutions Project (CCP), 247 concision, in constitutions, 74 conflict resolution, 9n1, 18, 19, 62, 63, 75, 95, 396. See also specific countries, topics consequentialism, 43, 55 conservatism, 86, 197, 305; Arab region and, 382, 383; Catholicism and, 115; judiciary and,



Index 423

342, 343; Latin America and, 107, 107n6, 113–119; Madison and, 124–126; radicalism and, 106, 130, 131; stability and, 117–118; values and, 116–117
Copenhagen principles, 278
core, minimum. See minimum core
Correa, Raphael, 281, 283
corruption, 9, 20, 21, 24, 27, 346, 354, 375n12
cost-benefit analysis, 5, 15, 20–21, 27, 45
Council of Europe, 83n9
courts. See judiciary
Cover, Robert, 236
Crews, Robert, 29
Cross, Frank, 243

Dahl, Robert, 165 Davenport, Christian, 243 decentralization, 21, 46, 189, 352, 385 Declaration of the Rights of Man and the Citizen (1789), 57 Delaney, Erin F., 15, 19, 33, 393-417 Demirel, Suleyman, 145 democracy, 19, 32, 63, 79, 86, 93, 129, 187t, 189, 251; citizenry and, 8, 303 (see also citizens); competitive theory, 268-288; concept of, 268, 276-278, 277n3, 287-288; consensus theory, 279; constitutionalism and, 19, 275-279, 288; deliberative, 77, 94, 276; democraticity and, 76, 77, 90, 93, 94; egalitarian theory, 105-107; elections and, 139, 253, 276-277 (see also elections; specific countries); endurance and, 270-271 (see also endurance); erosion of, 282; European Union and, 278; frankenstate and, 282; legitimacy and, 16; liberalism and, 129 (see also liberalism); measures of, 187t; mechanisms of, 9n1; military and, 146-147, 164; minimum core and (see minimum core); parliamentary (see parliamentary systems); political marketplace, 164; protection of, 147; radicalism and, 106n6; religion and, 105, 186; rights and, 76, 239, 258, 278, 408 (see also rights); rule of law and, 9n1, 278; stability and, 279; success and, 74, 268, 366; transition and, 146, 147, 211 (see also transition); See also specific countries demographics, 45-47. See also specific countries, topics Dewey, John, 297

Dostum, Abdul, 29 Douglass, Frederick, 24 drafting process, 171–173, 213, 341, 376, 383–387. See also specific countries, topics dramas, constitutional, 14, 31, 103 Dréze, Jean, 320 Dryzek, John, 77 durability. See endurance

economics, 14, 21, 44–47, 270. See also specific countries, topics

Ecuador: Bolívar and, 124; Catholicism and, 115; Chile and, 113, 114; conservatism in, 107, 110, 113; Correa and, 281, 283; democratic

115; Chile and, 113, 114; conservatism in, 107, 110, 113; Correa and, 281, 283; democratic values, 369n4; individual rights, 283; military and, 151; Moreno and, 101, 107, 108, 113–117, 115n14; poverty and, 365, 366; secret police, 115n14; See also specific persons, topics education, 105, 382; Afghanistan and, 30; Chile

and, 113; civic instruction, 241; Egypt and, 379, 379n16; elites and, 375; GDP and, 386; India and, 297, 302, 303, 306, 310–315, 319, 320, 322, 325, 326, 332; Islam and, 196, 319; Kenya and, 350; law schools, 310, 384; religion and, 185, 189, 191, 192t, 318; rights and, 22, 299, 325; South Africa and, 27, 237n1, 370; Turkey and, 196; U.K. and, 393; women and, 242, 322, 326; See also specific countries efficacy: cross-sectional studies, 234; dead hand

problem, 234; entrenchment and, 244; gap studies, 236–241; heterogeneity in, 245; Hobbes on, 8; maturation and, 258, 259f, 265 (see also maturation); mechanisms and, 239; over time, 233–265, 240f; rights and, 247–265 (see also rights)

egalitarian theory, 105–108 Egaña, Juan, 101, 108, 113 Egaña, Mariano, 101, 108, 113 Egypt, 217, 272, 280: Arab Spr

Egypt, 217, 273, 389; Arab Spring and, 365–391; CAO and, 379n17; constitution of 1971, 381, 382; controlling elites, 384; decentralization, 383–384; drafting committee, 383; education in, 379, 379n16, 387; elections in, 157, 372n8; executive and, 161, 372n8, 379, 383–384; GDP, 387; judiciary, 379; military, 18, 150, 158, 163, 373, 385, 386, 386n28; Morsi protests, 159, 372, 373, 373n9, 373n10, 374; Muslim Brotherhood, 18, 159; National Security Council, 154; parliament in, 389; recent constitutional texts, 381n20, 384, 386; rights and, 386; Sisi and, 379n17; state

Dixon, Rosalind, 19, 32, 33, 268-288, 274n2

Dorf, Michael, 237



424 Index

institutions, 388; temporal limitations, 161,

163; transition in, 158, 159; urban centers, 385 El Salvador, 164, 366 elections, 9, 13, 164, 208, 382; advertising and, 94; biometric technology, 347; citizens and, 19; coat-tails effect, 283; democracy and, 9, 911, 139, 186, 283 (see also democracy); electronic tallies, 347; ethnic groups and, 347; EU and, 278; minimum core and, 282, 283; one person, one vote, 85; parliamentary systems (see parliamentary systems); presidential, 139, 140 (see also presidential systems); spill-over effects in, 283; transitions and, 147, 157, 203, 205-208, 227 (see also transition); violence and, 338, 347, 348, 349, 352, 357; See also specific countries, bersons

Elkins, Zachary, 32, 90, 209, 211, 233–265, 284, 284n6, 398

Elster, Jon, 52

emergency periods, 62, 63, 103n3, 274. See also transition

empirical studies: concision and, 74; conservatism and, 117; democraticity and, 76; entrenchment and, 145, 163; external standards and, 72; flexibility and, 174; Gordian Knot factor, 75n5; heterogeneity and, 245; human rights and, 32; judicial independence in, 244; limits on government and, 264; maturation and, 233, 234, 236; MAW and, 47, 55; military and, 145, 163; minimum core and, 285; research design and, 244–264; rights and, 233, 236, 243, 299; theory and, 301; transparency and, 277, 299; welfarist criteria in, 41, 44; See also specific studies, topics

endurance, 32, 74–79, 90, 270–275, 284. See also stability; specific countries, topics enforcement, 54n2, 234, 241, 242, 244, 261, 358, 386

entrenchment, 148–158; amendments and, 398; aspirations and, 260f, 260; courts and, 152; curtailment of, 158; direct, 149; flexibility and, 398; norms and, 271; political marketplace and, 164; procedural, 156; removal risk, 250; rights and, 247–250, 249f, 259–261; security council and, 154; stickiness and, 248; temporal limitations and, 160; three types of, 149; transition and, 145, 148–151

Essebsi, Beha Caid, 212

ethnic groups, 16, 46, 51-53, 63, 347-349. See also specific countries, groups European Constitutional proposal, 74 European Union (EU), 107, 159, 160, 167, 278, 367, 416 ex ante criteria, 12, 31, 55, 61, 75n5, 76, 95, 104, 123, 279-280, 415 ex post criteria, 75n5, 94, 280 executive. See presidential systems external criteria, 5, 367, 368n1; defined, 39; existence of, 40; general theory of, 8; goals of, 5; human rights and, 39; identification and, 10; internal criteria and, 9, 39 (see also internal criteria); MAW metric, 43, 55; midrange, 14-15; normative approach, 10, 105; success and, 8, 39; transition and, 204; welfarist (see welfarism); See also specific

countries, topics

Fahim, Mohamed, 29 federalism, 21, 121 Feldman, David, 415 financial crisis, 71 First Amendment, 299, 300, 300n8 flexibility, 90, 173, 396, 398, 399, 414; adaptability and (see adaptability); amendment and, 173 (see also amendment); basic structure doctrine, 280; British constitution and, 393-419; defined, 173, 398; entrenchment and, 173 (see also entrenchment); Hitler and, 401n26; inclusion and, 398; legislation and, 173, 174; permissivity and, 172-175, 185, 190; problems with, 397-398; replacement and, 284; specificity and, 398; stability and, 393-419; success and, 396, 397; Tocqueville on, 401n24 Flinders, Matthew, 404n34 Forster, E. M., 326 France, 57, 73n1, 109, 110, 116, 121, 251 frankenstates, 282 Frankfurter, Felix, 306 Frey, Bruno, 55

game theory, 42
Gandhi, Indira, 305n10, 331
Gandhi, M. K., 312n21
gap studies, 236
García Moreno, Gabriel, 101, 108, 114, 115n14
Gargarella, Robert, 7, 14, 31, 99–133, 372
Gathii, James, 13, 32, 209, 337–364
GDP. See gross domestic product



> Index 425

gender, 30, 171, 242, 303, 321. See also sexuality; geographic factors, 47, 48. See also specific countries Germany, 14, 61, 63, 138, 401n26 gerrymandering, 282 Ghai, Yash, 9, 15, 17, 19, 21 Ghannouchi, Mohamed, 212 Ghosh, Jayati, 314 Ginsburg, Tom, 32, 40n1, 75n5, 90, 204, 211, 233–265, 270, 274n2, 284, 284n5, 284n6, 285, 394, 398 Gordian Knot factor, 75, 89, 95 Great Britain, 19, 33, 110, 135 Greece, 148 gross domestic product (GDP), 41, 43, 44, 53, 253, 387 Grote, George, 327, 330 Guatemala, 164 Guilhou, Pérez, 123 Gylfason, T., 73n2, 86n12

Habermas, Jürgen, 79 Harsanyi, John C., 53, 64 Hasan, Zoya, 320 Hathaway dataset, 245-265 health care, 22, 27, 234 Hekmatyar, G., 29 Henry, Patrick, 125n21 Herodotus, 4 Herrera, Bartolomé, 116n15 Hinduism, 192t, 195, 297, 312n22, 317n32, 326 Hippocratic approach, 39-40, 42, 56, 60-65 Hitler, Adolf, 401n26 Hobbes, Thomas, 4, 8, 31, 45, 58-60, 242 homelessness, 237, 238 human rights, 19, 26n3, 171, 265; abuses, 9, 30; aspirations and, 39, 369; crowdsourcing and, 90, 92; datasets, 190n26, 245-265, 246t, 249f, 252t, 253t, 254t, 259f, 260f, 262f; de facto protection, 244, 245; dramas and, 103; EU and, 278; external/internal metrics, 39, 340; liberalism and, 185; maturation and, 243, 245; normative approach and, 59, 185; performance and, 32, 43; protection of, 244; rights-heaviness, 75-76, 91, 92; value-fitness and, 77-78; welfarist metrics (see welfarism); See also rights; specific countries, topics Hungary, 20, 273, 282 Huq, Aziz Z., 10, 17, 22, 31, 39-69, 40n1, 75n5, 204, 211, 394 hybrid constitutions, 271

Iceland, 31; adaptability and, 89; assessments of, 72, 73, 80; autonomy, 80; Constitutional Council, 80, 86n12, 89; cornerstones of, 86; crowdsourcing, 71-73, 80-92, 95-96; democracy and, 85, 88, 92-95; democraticity, 88, 92-95; European Union and, 93; executive branch, 85; expert drafts, 81, 82n7, 86; financial crisis, 71; human rights and, 90, 92; National Forum, 71-97; original constitution, 73, 80, 85, 95; parliamentary system, 73, 85, 88, 93; preamble, 87-95; religion in, 83, 87, 88, 91, 92, 93; rights-heaviness, 88, 91-95; Venice Commission, 83ng, 91, 92, 94n15 identification, 10, 17, 24 incrementalist strategies, 171 India, 13, 14, 32; affirmative action, 319–320; AIDS, 327; Ambedkar and (see Ambedkar, B. R.); amendment in, 275; caste system, 14, 296, 302, 308n15, 311, 313, 313n25, 314-317, 318n35; Christians, 317, 318, 319, 323-324; civil law, 304; democracy and, 186, 187t, 327; due process, 306; education, 307, 310-315, 319, 320, 322, 325, 332; emergency rule, 186n22; Fundamental rights, 303, 305, 306, 312, 324, 331; gender, 296, 303-308, 321, 322, 326, 329; Gujarat riots, 318; Hinduism and, 177, 195, 297, 312n22, 326; Human Development Survey, 312; intellectual community, 310n17; judicial review, 305; liberalism, 331, 332; literacy, 314, 315; Mandal Commission, 317; Mayawati and, 314; minorities, 304ng, 317, 318, 318n35; Muslims and, 196, 308n15, 314-320, 324; Naroda Patiya case, 318; official languages, 298n5; Pancasila and, 180-183, 186, 189; Parliament in, 276; Parsi community, 304, 308n15; permissiveness and, 174; populist leaders, 314n27; religion and, 172, 175, 176-177, 190, 192t-194t, 195, 296, 303, 304, 312n22, 315n28, 317, 318n35; Shah Bano case, 196, 324; social inclusion, 295, 302; Supreme Court, 307, 308, 309, 310, 323; terrorism, 319; Uniform Civil Code, 177; U.S. and, 305, 306, 316n31; women and, 296, 303, 305, 306, 307, 308n15, 321, 322; See also specific topics individualism, 105, 106, 124, 128 Indonesia, 20; Alevi community, 195; constitutional change, 273; constitutions of,

180, 181, 182; Jakarta Charter, 180-181, 182; martial law in, 182; Pancasila doctrine,



426 Index

180–183, 186, 189; parliamentary system, 181, 186n23; permissiveness, 174; religion and, 172, 175–176, 180–183, 1921–194t, 195; restrictiveness, 185; Sharia law, 182; Soeharto and, 182; Sukarno and, 181–182; transition and, 31

institutions, 11, 242, 264; conflict and, 15, 18-20, 23, 75, 77, 396; constitution and, 42, 49, 60, 134, 152, 172, 242, 366; courts and, 152-154, 174, 208, 338; creation of, 7, 13, 14, 22, 48; democracy and, 74, 92, 129, 174, 186-190; econometrics and, 44, 52; elections and, 13, 19 (see also elections); elites and, 48; enforcement and, 242; entrenchment of, 13, 47, 151–164, 268–269; flexibility and, 396, 397n11, 398, 399, 399n16; institutional culture, 316; internal criteria and, 42; international, 381; legitimacy and, 17, 23, 27, 218; marketplace and, 164-167; maturation and, 264; MAW and, 54; minimum core and, 269, 276-277; parties and, 13, 31, 136-140; reforms and, 129, 244, 337n2, 338, 397; religion and (see religion); risk analysis, 62-63; second-best, problem of, 51; security council and, 154-156; technocratic approach, 14; temperance and, 76; transition and, 145, 146, 193, 203-207; universal test and, 366, 377; See also specific countries,

intelligence services, 22
interest groups, 15, 50, 54
internal criteria: definition of, 7, 39, 42;
diversity of, 40; domain of, 12–14; external
criteria and, 6–10, 39, 41, 42 (see also external
criteria); human rights and, 39; institutions
and, 42; success and, 39
International Monetary Fund, 359n47
international treaties, 275
Iran, 174, 366
Iraq, 217, 370, 371, 378, 380, 383
Islam. See Muslims
Israel, 394n6, 415, 416; democracy and, 186,
187t; Jews and, 174n1, 175, 176, 178–180;
Palestinians and, 175, 178; parties in, 137;

Jefferson, Thomas, 79, 111n9, 125n21 Jews, 174n1, 175, 176, 178, 179, 192t, 193t, 196, 317 Jirga, Loya, 29

permissiveness and, 174, 178-180; religion

and, 172, 175, 176, 178-180, 190, 192t-194t,

195, 196, 197n34

Jónsson, Örn, 87n13 Jordan, 378, 380, 380n19, 381n21, 383, 388 judiciary, 59, 62, 63, 120, 134, 253; conflicts and, 19; entrenchment and, 154; executive and, 278; institutions and, 152–154, 174, 208, 338; maturation and, 263; military and, 151, 153; regime type, 262; rights and, 242, 244, 261, 262; role of, 340; sovereignty and, 395; See also specific countries, topics

Kapadia, S. H., 308n15 Karzai, Hamid, 28, 29 Kemal, Mustafa, 184 Kemalism, 183 Kenya, 32, 207, 234, 337-364; CORD and, 340; corruption and, 346, 354, 355; county governments, 352, 353, 354; EACC, 337-338, 354; elections and, 340, 347, 348-349, 351, 355, 357, 358; ethnic groups and, 348, 349; executive, 339, 349, 350, 352, 357, 358; Garissa University, 349; governance system, 339; Implementation Commission, 13, 350-351; independent commissions, 351; judiciary, 209, 338, 3411110, 342-347, 357; media and, 357; parliamentary system, 339; political elites, 358; reforms in, 339; resignations, 355; rights and, 341; Shollei and, 346; Somalia and, 230; terrorist attacks and, 349; Uhuru government, 347, 348, 355, 358; Vetting Board, 344; violence in, 347-352 Kenyatta, Uhuru, 347, 348, 358 Khan, Ismail, 20 Klarman, Michael, 26 Kohlscheen, Emanuel, 52 Konvitz, M., 125n21 Kumar, Nitish, 314 Kurlantzick, Joshua, 20, 21 Kuwait, 380

LaCroix, Alison, 25, 299n6 lag, in causal effects, 237 Landau, David, 18, 19, 32, 33, 268–288 Landemore, Hélène, 8, 9, 15, 31, 71–97 Lastarria, José Victorino, 118, 119, 119n17 Latin America, 100, 106, 164; Alberdi and, 372; constituent assemblies, 18; Framing Period, 111, 113; inequality in, 372n7, 373; radicalism and, 119–124; revolution and, 121; Spain and, 108; United States and, 123; See also specific countries, persons, topics law and order, 373



Index 427

Lebanon, 375n12 Lee, Richard Henry, 123 legitimacy, 23, 78, 211, 413; data for, 16, 17; democracy and, 16, 262, 279, 370-371; ethnic groups and, 16; identification and, 17, 54, 78; institutions and, 17, 210 (see also institutions); internal/international, 371n6; political elites and, 211; post-hoc, 78; public goods and, 23; sociological legitimacy, 17, 23, 29; success and, 15, 16-17, 40, 204; transitions and, 211, 218-219; value fitness and, 78 Lerner, Hanna, 8, 11, 31, 171-202 liberalism, 127, 331; Alberdi and, 104; autonomy and, 130; conservatism and (see conservatism); constitutionalism and, 118, 120n19, 129, 173; definition of, 106n6; democracy and, 129, 186, 277, 366; egalitarian ideals and, 106, 130, 185, 331; human rights and, 185; Paretian paradox, 51; permissivity and, 175; radicalism and, 120119, 128, 131; religion and, 173, 174; rights and, 174; spectrum, 57; success and, 40, 58 Libya, 217, 378, 380, 383 Limongi, Fernando, 52 linguistics, 299n6 Linz, Juan, 51 literacy rates, 305, 307, 314, 322, 333t, 379, 385n26 Livy, 4 Locke, John, 4, 8, 104 Loughlin, Martin, 401n25 Louis XVI, 24

Machiavelli, N., 31, 65 MacKinnon, Catharine, 300, 300n8 Madison, James, 107, 123, 124-129, 126n22, 129n25, 163, 264, 270, 318 Malaysia, 20 Marshall, Thurgood, 299 Marzouki, Moncef, 214 Matta, Manuel Antonio, 112n11 Mattes, Robert, 27 maturation, 234, 239; aspiration and, 236, 26of; decay and, 239-241; durability and (see endurance); effect of, 243-244, 258, 259f, 260f, 261, 262f, 263; judicial independence and, 262f, 263; maturation hypothesis, 235, 236; mechanisms of, 236, 241-243; regime type and, 262f; rights and, 240f, 258, 261; stasis and, 239-241 maximin criterion, 56, 64

maximum aggregate welfare (MAW), 43, 55 McGinnis, John O., 44 McHarg, Aileen, 401, 409 media, 94, 243, 245, 248, 281, 295–296, 350, 357, 368, 374, 413 Mediene, Mohamed, 378n15 medieval law, 57 Melton, James, 32, 90, 233-265, 284n5, 285, 398 Menderes, Adnan, 152 Merchant, Jacob, 299n6 Mexico, 110, 110n8, 123 military, 18, 22, 111, 385; Afghanistan and, 30; authoritarianism and, 15 (see also authoritarianism); Chile and, 151; courts and, 150, 152; definition of, 147; democracy and, 146, 147, 164; division of, 147-148; Egypt and, 18, 150, 158, 163, 373, 385, 386; elections and, 157; emergency powers and, 63; entrenchment and, 145, 148, 149, 151, 156 (see also entrenchment); exit benefits for, 163; institutions created by, 159; military rule, 31, 145–168; parliament and, 157–158; police and, 22, 30, 348, 374; president and, 157; temporal limitations, 160, 162; transition and, 145-168 (see also transition); Turkey and, 149, 151, 152, 160, 163, 167; United States and, 25; war and (see war); See also specific countries, conflicts minimalist approach, 8, 4011, 47, 56–65, 277 minimum core, 268-288; aspirations and, 366; changes to, 269, 280, 283-287; defined, 269, 276; democracy and, 268, 285, 286n7; endurance of, 268, 278; ex-ante/expost protections, 280; interaction effects, 280, 282; international, 278; threats to, 279-282; See also specific countries, topics minority groups, 51, 53, 171, 178, 195, 196, 278 Mitre, Bartolomé, 106n6 morality, constitutional, 327, 330 Moreno, Gabriel Garcia, 101, 107, 108, 113-117, Morocco, 378, 380–383, 380n19, 387–390 Morsi, Mohamed, 159, 217, 372n8, 373n10 Mubarak, Hosni, 157, 158, 212 Murphy, Walter, 10n2 Muslims, 43, 175, 177, 181, 185, 189, 195, 303, 308n15, 318-320 Mutunga, Willy, 345, 347, 357

Myanmar, 271



428

Index

Nalanda University, 297n4 Napoleonic model, 109, 110 Native Americans, 46 natural law, 104 Negretto, Gabriel, 208 Nehru, J., 177, 296, 328, 328n58 Nepal, 16, 18 nepotism, 349, 375n12 normative theory, 104–131 Nussbaum, Martha, 7, 13, 14, 15, 32, 295–336

Oakeshott, M., 65 Odinga, Raila, 347, 348 Oliver, Dawn, 412 Omar, 380 originalism, 13, 44, 297, 298, 299

Paine, Thomas, 57, 120 Pakistan, 29, 31, 61, 176-177 Palestinians, 175, 178 Pareto efficiency, 51 parliamentary systems, 51, 135–141, 206. See also specific countries Parsi religion, 304, 308n15, 324 Parthasarathy, D., 315 parties, political, 13, 31, 136-141 Paul, Rand, 24 permissive models, 173-175, 185, 190 Perrow, Charles, 61 Perry, Adam, 410 Persson, Torsten, 44, 52 Peru, 100, 110, 112, 112n10, 116n16, 121, 164 Pétursson, Hannes, 88 Plato, 4 pluralism, 4, 61, 118, 165, 176, 196, 381 police, 242, 302, 374; Afghanistan and, 30; conservatism and, 116; corruption and, 355, 357n46; due process and, 306, 308, 319; election violence and, 348; military and, 22, 30, 348, 374; principal-agent problems, 235; secret, 115114; security and, 22; torture and, 319, 328n57, 330 political elites, 15, 50, 374, 381; competition among, 47, 271; constitutional changes, 283;

counterparties, 48; democracy and, 277, 384; factions and, 47; hegemonic preservation,

48; institutions and, 48; legitimacy and, 211,

228; lustration and, 358; power and (see

power, political); replacement and, 272;

See also specific countries, topics

Polybius, 4 Portugal, 106, 149, 159-166 poverty, 14, 103, 356, 358, 365, 369, 379, 389, power, political, 264; checks and balances, 76, 85, 128; future actors, 173; hegemonic preservation, 11, 48; military and (see military); political elites and (see political elites); replacement and, 272; temperance and, 76; See also specific countries, topics preambles, 14, 367, 368, 369, 377, 381, 383. See also specific countries, topics presidential systems, 51, 114, 115, 120; Arab region, 378; Bolívar and, 110, 112, 112n11; Egypt and, 383-384; elections and, 139; judiciary and, 278; parliamentary systems and, 52; party systems and, 134, 139; powers, 102, 275; quasi-presidential system, 134, 138, 139 principal-agent problems, 235 Przeworski, Adam, 52, 211 public goods, 5, 15, 21–25, 28, 30, 47, 393

polling, 23, 78, 166, 190, 218, 351n32, 394n7,

Qadaffi, Muammar, 212 Qatar, 380 quantitative analysis, 244, 252–257 quasi-presidential systems, 134, 138, 141

racism, 14, 77, 366 radical constitutionalism, 119-124, 127, 130, 131 Rappaport, Michael, 44 rational choice theory, 54, 54n2 Rau, B. N., 297n3 Rawls, John, 4, 61, 299 religion, 31, 63, 87, 88, 113, 114113, 115, 192t-194t, 248, 366; Christians (see Christians); civil law, 303, 304; democracy and, 105, 186; freedom of, 245; Hinduism (see Hinduism); identities and, 11; Islam (see Muslims; specific countries); Jews (see Jews); liberalism and, 173, 174; minority groups, 195; nationalism and, 196; permissiveness and, 174, 178, 180-183, 189, 190; restrictiveness and, 180-183; secularism and, 178, 183; See also specific religions, countries replacement, 273, 280 representativeness, 77, 78 repression, 104; authoritarianism and, 119n18 (see also authoritarianism); conservatism



Index 429

and, 118; emergency and, 243; legitimacy and, 16; media and, 243 (see also media); Pancasila doctrine and, 180; standard model for, 251; See also specific countries, topics revolution, 71, 159; Americas and, 106; anarchy and, 116, 118; Arab Spring, 12, 21, 33, 365-391, 380n19 (see also Arab region); Bolívar and, 108; democratic, 121, 273; education and, 312n21; flexibility and, 416; Iceland and, 71; secularism and, 184; self-government and, 106, 116, 120, 121; weapons and, 312n21; See also specific countries rights, 11, 20, 79, 234-240, 331; authoritarianism and, 239 (see also authoritarianism); categories of, 245; citizens and, 9n1; constitutionalism and, 58, 265; context sensitivity and, 76; de facto rights, 239, 246-248, 246t, 251-253, 259-263; de jure rights, 243-248, 246t, 253, 258-261; democracy and, 76, 239, 258, 278, 408; effect of time, 240f; efficacy and, 234, 240, 240f, 243 (see also efficacy); enforcement of, 242, 386; entrenchment and, 247-250, 249f, 259-260, 261; housing and, 237; human rights, 86, 91 (see also human rights); India and, 305, 305n10; judiciary and, 244, 258, 262 (see also judiciary); maturation and, 258, 261, 265; negative associations, 239; practices of, 239; protection of, 247, 251; quantitative analysis, 250, 251; religion and (see religion); removal risk, 250; rights-heaviness, 75, 79, 90, 91-95; South Africa and, 370; Spain and, 369, 370; trade-offs in, 51; United States and, 250-251; women and (see women) risk analysis, 44, 56, 61-65, 185-186, 249f, 250 Rodríguez, Mariano Ospina, 116n16 Rojas, Ezequiel, 112 Rosenberg, Gerald, 26 Rousseau, J. J., 4, 42, 49, 53, 54, 63, 65, 123, 184 Roznai, Yaniv, 275 rule of law, 340; Arab Spring constitutions and, 382; constitutional morality and, 331; democracy and, 9, 911, 278, 369; Enlightenment and, 57; EU and, 278; Iceland and, 86; mechanisms of, 9n1, 278;

Sadat, Anwar, 376 Safford, Frank, 110n8 Samper, José María, 104 Santa Cruz, Andrés, 110 Saudi Arabia, 174, 380 Schedler, Andrea, 358 Scheppele, Kim Lane, 282 Schumpeter, Joseph A., 277 Scotland, 394n7, 409 second best, theory of, 51 secularism, 178, 183 self-government, 106, 108, 111, 117, 121, 128, 377 semi-presidential systems, 134, 138, 141 Sen, Amartya, 51, 297n4, 320, 321 separation of powers, 20, 57, 85, 86, 88, 89, 134, 135, 206, 310. See also specific countries, topics Seth, Leela, 322 sexuality, 24, 87, 91, 92, 171, 296, 303-308, 321-330. See also gender; women Shafik, Ahmed, 372n8 sham constitutions, 10n2 Shapiro, Martin, 31, 134-141 Shays, Daniel, 126 shocks, 11, 22, 238, 272 Shollei, Gladys, 346 Shugart, M., 207 social choice theory, 7 social contract, 4, 8, 75, 121 socialism, 61, 312, 382 Somalia, 32; ARS, 221; elections, 221, 226, 227; Garowe Agreement, 221, 223; governance, 223, 226, 227; IFCC, 220; institutions in, 223, 225; Islam and, 220, 221; Kenya and, 230; legal system, 226; Provisional Constitution, 220, 222-228; stability in, 227; transition and, 13, 207, 223 South Africa, 5, 6, 14, 26-28, 77, 234, 365, 369-370 South America, 120 South Korea, 31 sovereignty, 108, 111, 117, 121, 128, 377. See also autonomy Spain, 100, 106, 108, 365, 367, 369–370 speech, freedom of, 299–300 Spolaore, Enrico, 44 Sri Lanka, 204n2, 322 stability, 19, 29, 31, 58, 131, 218, 227; adaptability and, 78, 393-397; authoritarianism and, 117, 204, 209, 210; collective choice and, 7; comparisons of, 134; coordination and, 270; durability and (see endurance); institutions

success and, 9, 9n1; See also specific

countries, topics

Ruto, William, 348

Russia, 21, 138



430 Index

and, 165, 254; minimalist standard, 8, 79; minimum core and, 269; normative value, 272; order and, 117; permissivity and, 189; political parties and, 166; preservation and, 270; risks and, 33; secularism and, 178; socialeconomic basis, 356, 390; success and, 99, 101, 102, 397; time inconsistency, 47-49; transition and, 204, 209, 210; U.K. and, 393-416; See also specific countries statistical analysis, 252t-257t, 264 subsidiarity, principle of, 273n1 Sudan, 6 Sukarno, 180, 182 Sunstein, Cass R., 64 super-statutes, 274 Sweden, 6 Switzerland, 365, 367 Syria, 217, 378, 380-383, 380n19

Tabellini, Guido, 44, 52 Tacitus, 401n25 Taliban, 28 technocratic approach, 14 temperance, 74, 76, 77, 79, 89, 95, 109 terrorism, 18, 221, 319, 349 textualist theory, 298 Thorarensen, Björg, 81 Thorat, Sukhadeo, 315 Thucydides, 4 time: efficacy and, 233-265; endurance (see endurance); maturation and (see maturation); shocks and, 11, 22, 238, 272; theoretical effects of, 264; time inconsistencies, 47-49, 51 Tocqueville, Alexis de, 401n24 torture, 8, 246t, 247, 256t, 328n57, 330 transgender people, 295, 303, 323, 328n57, 329 transition, 145-147, 220; authoritarianism and, 210, 271; competitive democracy, 271; completion of, 211; consolidation and, 147; context-specific objectives, 204; democracy and, 146, 147, 211; economy and, 210-211; elections and, 147, 203, 205-208; endurance and, 206; entrenchment and, 145, 148, 149, 150, 151; external/internal criteria and, 204; Indonesia and, 31; institutions and, 145, 146, 193, 203-207; interim constitutions and, 206, 208; military and, 145-168; Pakistan and, 31; second-order functions, 210, 211; sociological factors in, 210; Somalia and, 13, 207, 223; South Korea and, 31; stability and,

204, 209, 210; success of, 206; Tunisia and, 207, 212, 215; violence, 211; See also specific countries

transparency, 27, 94, 277, 340, 355, 356, 358, 386n28, 399n15, 406

Tucker, Adam, 410

Tunisia, 32, 241, 366; 1959 constitution, 382; Achour Commission, 213; Arab Spring and, 21, 380, 380n19; aspirations and, 367; checks and balances, 388; Constitutional Court, 216, 219; drafting bodies, 383; elections, 207, 213, 215–216, 217; Ennahda party, 213; Jasmine Revolution, 212; mediation and, 18; National Dialogue, 214; national identity of, 214; NCA and, 213, 215, 216, 217, 219; preamble, 368n2; presidential elections, 390n45; reform efforts, 390; revolution, 212; social justice and, 367; state institutions, 388; Supreme Judicial Court, 217; transition and, 207, 212, 215; UGTT, 379

Turkey, 20, 31, 176; Constitutional Court, 152, 154; democracy and, 189; EU and, 160; Islam and, 184–185, 189, 196; Kemalism, 182, 183, 184–185, 189, 196; Lausanne Treaty, 196; liberalization, 184; military and, 149, 151, 152, 160, 163, 167; National Security Council, 154; parliament and, 166–167; parties in, 153–154, 167, 184; religion and, 172, 175–176, 184–185, 192t–194t; restrictiveness, 174, 183, 185; secularism, 183, 184; temporal limitations, 163; transition and, 145, 149–150, 189

tyranny, of majority, 295, 296, 297, 303, 327, 329, 349

Unger, Roberto Mangabeira, 129 United Arab Emirates, 380 United Kingdom, 125, 251, 202, 41

United Kingdom, 135, 251, 393–417; Bank of England, 408; Blair government, 401; civil service, 405–407; constitutional conventions, 409; constitutional crisis, 401n25; electoral system, 407–409; explicit repeal, 416; flexibility and, 393–419; parliamentary system, 135, 136, 404, 405, 405n39; political parties, 135, 136, 400n18, 400n22, 414; prime ministers, 135–136; referendums, 402, 411–412; Salisbury convention, 404, 408; Sewel convention, 409; Supreme Court, 416; unwritten constitution, 135

United States, 5, 23–26, 104, 106, 120; amendments, 26, 191n28, 236, 237, 250–251,



Index 431

299, 300, 300n8; Argentina and, 101; Articles of Confederation, 61; Bill of Rights, 236, 237, 250-251; California constitution, 276; checks and balances, 126, 127, 128; Civil War, 23, 25, 237; concision and, 74; Congress, 129, 275; constitution of 1787, 23; corruption and, 24; counter-majoritarian devices, 129; democracy and, 126n22, 129; Dred Scott decision, 46; executive, 275; factions and, 124, 125, 125n20, 126n22, 127; federalism, 120, 124, 125, 126, 128; foreign affairs, 25, 275; identification and, 24; individual autonomy and, 128; Latin America and, 123; military and, 25; national bank, 25, 126; paper money, 126; Pax Americana, 24; political parties, 50; popular mobilization, 24; racism in, 316, 317; radicalism and, 120, 123; religion and, 105, 125, 127, 191n28; rights and, 236, 237, 250-251; slavery and, 23, 25, 50, 237; See also specific persons, topics universal test, 365-368 Uribe, Alvaro, 276 utilitarianism, 41, 45, 53-55

value fitness, 77, 78, 79, 89, 95
Varol, Ozon O., 7, 31, 145–168, 206
Venezuela, 18, 78n6, 108–113, 109n7, 280, 281
Venice Commission, 83n9, 91, 92, 94n15, 286
Vermeule, Adrian, 44, 62, 64
veto players, 251, 252t, 253, 253t, 254t, 398
violence, 15, 16, 18, 29, 91. See also revolution; war; specific countries

war, 106, 150, 395; civil war, 23, 25, 26, 58, 128, 212, 220, 236; declaration of, 156; drafting and, 48; MAW and, 54; mediation and, 18; military and (see military); war powers, 25; WWII, 24, 77; See also specific countries Weingast, Barry, 25, 241 Weinrib, Laura, 299n6 Weisskopf, Thomas, 316n31 welfarism, 14, 22, 41; aggregative, 44; altruism and, 54; demographics and, 46, 47; discounting and, 47; GDP and, 53; Hippocratic criterion and, 60; intergenerational, 47; MAW and, 43, 45, 47, 49, 53, 54; objections to, 52-55; Pareto efficiency and, 51; proxies for, 41; second-best problem and, 51; utilitarianism and, 54 Williams, Bernard, 53 women, 241, 341; Afghanistan and, 30; equality of, 321; gender and, 171 (see also gender); India and, 296, 303, 306, 307, 308n15, 318, 321, 322, 324, 325; missing women, 321; Muslims and, 189, 195, 196, 318, 319, 324; U.S. and, 237; See also specific countires Wood, Gordon, 106 World Bank, 353n41 World War II, 24, 77

Yemen, 365, 380, 383 Youngstown decision, 274 Yusah, Abdulahi, 220

Zimbabwe, 27 Zulu, Jacob, 27