

Index

- Ackermann, Laurie, 206, 233
 ACLU (American Civil Liberties Union), 44, 119
Adarand Constructors v. Peña (1995), 59–60
 Adivasis, *see also* STs
 discrimination against, 134, 141
 Advani, L.K., 171–2
 affirmative action (India), *see also* reservations
 consequential seniority and, 162–4
 in minority schools, 182
 quotas, 133–46, 150, 152, 156, 184, 186
 reverse discrimination under, 166–7
 affirmative action (South Africa)
 as a differentiated policy, 195
 reverse discrimination, 189
 as transformative, 190
 under the interim Constitution, 195–7
 under transformative constitutionalism, 211–4
 affirmative action (USA), *see also* Title VI;
 Title VII; Voting Rights Act (1965)
 as “diversity management,” 47
 judicial interpretation of, 87
 as remedying disparate impact, 85–6
 reverse discrimination under, 31, 37, 38, 45
 in the workforce, 85–7
 African National Congress, *see* ANC
 AJGAR formula, 149
Alexander v. Aero Lodge (1977), 90
Alexander v. Gardner-Denver (1974), 78
 All-India Public Service
 caste-based employment in, 133, 150, 155,
 157, 160
Allen v. State Board of Elections (1969), 103,
 105–7, 113, 119
 Allen, James, 77
 American Civil Liberties Union, *see* ACLU
American Tobacco v. Patterson (1982), 90
 ANC (African National Congress), 4, 21,
 189–92, 195, 200, 210, 216
 Anglo-Indians, 141
 arguable violation theory, 86
 Ashcroft, John, 124
Ashoka Kumar Thakur v. India (2008), 185, 186
 at-large voting districts, 102, 104, 108–10, 112,
 see also redistricting
 backward classes, *see also* SCs; STs; OBCs
 constitutional guarantees for, 138–9
 difficulty in defining, 143
 social position of, 133, 142
 Backward Classes Commission, 134, 143, 145–7
Balaji v. Mysore (1963), 147, 152
 basic structure doctrine, 136, 148, 157, 158, 185,
 see also Kesavananda Bharathi v. Kerala
 (1973)
Bato Star Fishing v. Minister of Environmental
 Affairs (2004), 214
Beer v. United States (1976), 81, 114–5, 119
Bel Porto School Governing Body v. Premier of
 the Western Cape Province (2002), 4
 Bell, Griffin, 38
 Bharatiya Janata Party, *see* BJP
 Bharti, Uma, 177
 Bihar, 139, 140, 146, 171
 BJP (Bharatiya Janata Party), 137, 149, 161,
 170–2, 177
 black capitalism, 74
 Black Economic Empowerment, 211
 Black, Hugo, 113
 Blackmun, Harry, 44, 86, 92, 123
 Blumrosen, Alfred W., 75, 79
 bona fide seniority systems, 70, 72, 90, *see also*
 constructive seniority
 Bork, Robert, 81
 Bowers, Sam, 101

- Brennan, William, 40, 41, 43–6, 62–3, 79–80, 84, 86, 90, 109, 112–3, 118–9
 Breyer, Steven, 115–6
Brink v. Kitschoff (1995), 203
 Burger, Warren, 5, 46, 51–2, 54–6, 76–7, 81–2, 109, 111, 119
 Bush, George H.W., 96
Bushey v. New York State Civil Service Commission (1985), 88–9
- California Brewers Association v. Bryant* (1979), 80
 capitation fees, 175–7
 carry-forward rules, 158–60
 caste system
 as source of inequality, 133, 141
 use of in reservations, 141–3, 145–147, 153–4
 vs. national unity, 140, 142
 Central Educational Institutions (Reservations in Admissions) Act (2007), 185
 Chamerlain, Wilt, 74
 Chaskalson, Arthur, 200, 202, 216
City Council of Pretoria v. Walker (1998), 3, 212–3, 219
City of Richmond v. JA Croson (1989), 49–50, 56
 Civil Rights Act (1957), 74
 Civil Rights Act (1964), 27, 33–4, 52, 54, 60, 67, 69, 103, *see also* Title VI (of the Civil Rights Act); Title VII (of the Civil Rights Act)
 Civil Rights Act (1991), 96–100
Coelho v. Tamil Nadu (2007), 157
 color-blind interpretations (of the law), 31–2, 34, 52–5, 61
 Commerce Clause, 69, 88
 Congress of Racial Equality, *see* CORE
 consent decrees, 91–2
 consequential seniority, 162–4
 Constituent Assembly, 138–9, 141–3
 Constitutional Assembly, 194, 198, 199
 constructive seniority, 79, 81, *see also* bona fide seniority systems
 coordinated discourse
 legal interpretation as, 12, 231–3
 CORE (Congress of Racial Equality), 74
Craig v. Boren (1976), 43–4
- Dahmer, Vernon, 101
 Dalits, *see* SCs
 Days, Drew, III, 41–3, 45–7, 52, 55, 62, 80, 81, 86–7
DeFunis v. Odegard (1974), 37, 38, 42, 43, 63, 81
 Desai, Morarji, 148
 differentiated policies (South Africa)
 affirmative action as, 195
 vs. dignity-based policies, 200
 as remedies for historical harms, 192
 disparate impact, 67–78, 83–5, 93–6, 103, 106, 108
 affirmative action as remedying, 85–6
 statistical evidence as demonstration of, 95
 disparate treatment, 69, 84–5
 diversity
 as rationale for race-conscious policies, 32, 47, 232
- Dole, Robert, 111
 Douglas, William, 36–8, 42, 106
 DP (Democratic Party, South Africa), 196, 198, 200, 206, 207
 Dunne, John R., 113
- economic transformation
 Mbeki's vision for South Africa's, 210–11
 EEA (Employment Equity Act), 212
 EEOA (Equal Employment Opportunity Act, 1972), 40, 77, 83
 EEOC (Equal Employment Opportunity Commission), 72, 75, 80
 Eisenhower, Dwight, 40
 Employment Equity Act, *see* EEA
 Equal Employment Opportunity Act, *see* EEOA
 Equal Employment Opportunity Commission, *see* EEOC
 Equal Protection Clause (USA), 37–9, 46, 55, 58, 62, 69, 84, 88–9
 Equality Clause (RSA), 189, 191–3, 204
 Ervin, Samuel, 39–40, 77
- Fair Employment Practices, *see* FEP
 Fairley, J.C., 101
 FCC (Federal Communications Commission), 46
 FEP (Fair Employment Practices), 67, 68
 FF (Freedom Front, South Africa), 198
 Fifteenth Amendment, 105, 114, 116
 fifty-percent ceiling rule, 155
Fisher v. University of Texas I (2013), 31, 64
 Fourteenth Amendment, 33, 37, 46, 60, 62, 69, 83, 85, 88–9, 107, 110, *see also* Title VI (of the Civil Rights Act)
 judicial interpretation of, 55–6
Franks v. Bowman Transportation (1976), 79, 81
 Freedom Democratic Party, 102
 Freedom Front (South Africa), *see* FF
Fullilove v. Klutznick (1980), 45, 49, 54–7, 91
- Gajendragadkar, P.B., 153
 Gandhi, Indira, 137, 147
 Gandhi, Rajiv, 149, 169

- GEAR (Growth, Employment, and Redistribution), 210
 gender discrimination, 43–4
General Building Contractors Association v. Pennsylvania (1982), 93
General Manager, Southern Railway v. Rangachari (1961), 157, 163
Georgia v. Ashcroft (2003), 124–6
 Gephardt, Richard, 50
 gerrymandering, *see also* redistricting
 evidentiary standards for claiming, 123–4
 historical use of, 118
 right to challenge, 103
 Ginsburg, Ruth Bader, 44, 57, 59–60, 63, 64, 115, 124
 GNU (Government of National Unity), 194
 Goldstone, Richard, 206, 233
Gomillion v. Lightfoot (1960), 118
 Government of National Unity, *see* GNU
Griggs v. Duke Power Company (1971), 75, 77, 82, 83, 85, 87, 93, 94
 Growth, Employment, and Redistribution, *see* GEAR

Harksen v. Lane (1997), 208
 higher education (India)
 government authority over, 168, 177–80
 India's privatization of, 173
 public vs. private, 167
 Hindu nationalism, 168–70, *see also* BJP (Bharatiya Janata Party)
 historical harms
 Fullilove v. Klutznick (1980), 45, 49, 54–7
 race-conscious policies as remedying, 43, 46, 48, 49
 Humphrey, Hubert, 69, 73

 Illinois Fair Employment Practices Commission, 66
Inamdar v. Maharashtra (2005), 183
 Indian National Congress, 20, 172–3, 226, 228
 Indian Supreme Court
 characteristics of, 135–7
Indra Sawhney v. India (1992), 150, 152–5, 157, 160, 163
 Insurance Act (1943), 203
 interim Constitution (RSA, 1993)
 affirmative action under, 195–7
 after apartheid, 192
 reconciliatory constitutionalism under, 205–6
 intermediate scrutiny, 43–5, 59, 63
 vs. strict scrutiny, 32
International Brotherhood of Teamsters v. United States (1977), 80, 82
 invidious racial discrimination, 34, 38, 53, 60

Islamic Academy of Education v. Karnataka (2003), 182

 Janata Dal, *see* JD
 Janata Party, 148
jatis, 145
 JD (Janata Dal), 149–50, 235
 Jim Crow, 34, 39, 52, 67, 101
 Johnson, Lyndon B., 41, 48, 74, 105
 Joshi, Murli Manohar, 177
 JSC (Judicial Service Commission), 202
 judicial authority, 91–3, 137, 225–7
 judicial interpretation, *see also* specific topic
 judicial review
 risks of, 6
 under the Ninth Schedule (India), 157
 Judicial Service Commission, *see* JSC

 Kalelkar Commission, *see* Backward Classes Commission
 Kalelkar, Kaka, 145
 Kennedy, Anthony, 58
Kerala v. Thomas (1976), 160
Kesavananda Bharathi v. Kerala (1973), 136, 138, 182
 Khare, V.N., 182
 Kirpal, Bhupinder Nath, 178
 Krishnamachari, T.T., 138, 143

 Lahoti, Ramesh Chandra, 183
 Langa, Pius, 202, 212
 layoff quotas, 88
 LDF (Legal Defense Fund), 41, 75
League of United Latin American Citizens v. Perry (2006), 123
 Lee, Bill L., 116
 Legal Defense Fund, *see* LDF
 Lee, Rex, 83
 legal interpretation
 as coordinated discourse, 12
 schools of thought regarding, 7–12
 legal rights
 top-down vs. bottom-up development of, 227–30
 Leonard, Jerris, 76–7
 Lewis, John, 122
 Lok Sabha (Indian Parliament), 140
 LTTE (Liberation Tigers of Tamil Eelam), 172

 majority-minority districts, 120, 124
 Mandal Commission, 134, *see also* reservations
 Mandal, Bindheshwari Prasad, 134
 Mandal II, *see* Central Educational Institutions (Reservations in Admissions) Act (2007)
 Mandela, Nelson, 189, 195, 202, 205
 Marshall, Thurgood, 40, 49, 63, 80, 81, 232

- Mbeki, Thabo, 190, 209–12
 MBEs (Minority Business Enterprises), 45, 53, 55
McDonnell Douglas v. Green (1973), 78
 Meese, Edwin, III, 51
Metro Broadcasting v. FCC (1990), 46, 50, 57–9
Miller v. Johnson (1995), 122
Minister of Finance v. van Heerden (2004), 4, 214–6, 219
Minnick v. California Department of Corrections (1981), 87
 Minority Business Enterprises, *see* MBEs
 minority disenfranchisement, 118
 minority rights
 vs. Hindu nationalism, 168–70
 minority schools (India)
 affirmative action in, 182–4
 TMA Pai Foundation v. Karnataka (2002), 178–80, 181
 minority set-aside program
 City of Richmond v. JA Croson (1989), 56
Mkontwana v. Nelson Mandela Metropolitan Municipality (2004), 217
Mobile v. Bolden (1980), 110–13, 115, 126, 128
Mohd. Ahmed Khan v. Shah Bano Begum (1985), 169
Mohini Jain v. Karnataka (1992), 175–7
 Mokgoro, Yvonne, 215, 216
 Moseneke, Dikgang, 215, 216
 MPNP (Multi-Party Negotiation Process), 192
 Munshi, K.M., 143
 Muslim Women (Protection of Rights on Divorce) Act (1986), 170
 Muslims (India)
 minority treatment of, 142
 separation of, 140
Myart v. Motorola (1963), 66–7, 71, 74
Myart, Leon, 66–8, 71, 74
 NAACP (National Association for the Advancement of Colored People), 38, 79, 101, 119
Nagaraj v. India (2006), 160
 National Association for the Advancement of Colored People, *see* NAACP
 National Front coalition government, 134, 171
 National Judicial Appointments Commission, *see* NJAC
 National Party (South Africa), *see* NP
 national unity
 vs. caste system, 140, 142
 Nehru, Jawaharlal, 139
 neoliberalism, 173–4
 Ninety-Third Amendment Act (2005), 184, 185
 Ninth Schedule (India)
 judicial review under, 157
 Nixon, Richard M., 73–6, 78, 113
 NJAC (National Judicial Appointments Commission), 137
 non-retrogression standard, 115, 116, 125
Norris v. Alabama (1935), 75
 NP (National Party), 192, 198, 228
 O'Connor, Sandra Day, 56–8, 60, 64, 94, 112, 118, 121, 124
 O'Regan, Kate, 203, 216, 217
 OBC reservations, *see* reservations
 OBCs (Other Backward Classes), *see also* STs; SCs; backward classes
 expansion of reservations to, 20, 134, 167, 171
 historical discrimination against, 150
 PAAS (Patidar Anamat Andolan Samiti), 166
 Pant, G.B., 146
 Parasaran, Sri K., 226
 Patel, Hardik, 166
 Patel, Vallabhbhai, 141
 Patidar Anamat Andolan Samiti, *see* PAAS
 Patidar *jati*
 expansion of reservations to, 166
 Patrick, Deval L., 115, 123
 Patterson, Joe, 102
 Perez, Thomas, 60
 Philadelphia Plan, 35–6
 Pollak, Stephen, 105
 Pottenger, J. Stanley, 77, 81, 81–114
 Powell, Adam Clayton, 106
 Powell, Lewis, 47, 53, 78, 82, 89, 109
 preclearance mechanism, 103, 114–8
Premier, Province of Mpumalanga v. Executive Committee of the Association of Governing Bodies of State Aided Schools (1998), 3
President of the Republic of South Africa v. Hugo (1997), 206
 Pressman, Sonia, 75
 private schools (India)
 expansion of reservations to, 168, 185
 vs. public schools, 167
Proctor & Gamble v. Fisher (1981), 89
 promotion quotas, 157–8, 162
 public schools (India)
 vs. private schools, 167
 Public Works Employment Act (1977), 53
 Punjabi Sikhs, 142
Quarles v. Philip Morris (1968), 79
 race-conscious policies
 diversity as rationale for, 32, 47, 232
 remedy vs. diversity, 32, 47
 as remedying historical harms, 43, 46, 48, 49

- race-policy conservatives
 - Republican Party alignment of, 31–2, 64, 73, 106, 113
- racial discrimination, 189
- racial disparities
 - statistical evidence as demonstration of, 66, 85
- racial gerrymandering, *see* gerrymandering
- Rao, P.V. Narasimha, 173
- Rashtriya Swayamsevak Sangh, *see* RSS
- RDP (Reconstruction and Development Programme), 210
- Reagan, Ronald, 39, 51, 87–8, 111, 113
- reconciliatory constitutionalism
 - judicial role in, 206–8
 - under interim Constitution, 206
 - vs. transformative constitutionalism, 191, 212
- Reconstruction and Development Programme, *see* RDP
- Reddy, B.P. Javeen, 176
- Reddy, Jeevan, 153, 157, 160, 163
- redistricting, 106–7, 118–9, 121, 126
- Regents of the University of California v. Bakke* (1978), 38, 41, 45, 46, 49, 52, 57, 87, 88
- Rehnquist, William, 56, 62, 82, 87, 109, 118
- Republican Party
 - alignment of race-policy conservatives with, 31–2, 64, 73, 106, 113
- reservations
 - caste-based eligibility for, 141–7, 153–4
 - expansion to OBCs of, 150–2, 167, 171, 226
 - expansion to private schools of, 168, 185
 - historic use of, 133
 - opposition to expansion of, 133, 134, 150, 155
 - relaxed standards for reserved candidates, 160–62
- reverse discrimination
 - affirmative action policies as, 31, 37, 38, 45, 166–7
- Reynolds, William Bradford, 51, 55, 82, 91
- Roberts, John, 125, 128
- Robinson, Jackie, 74
- Rodino, Peter W., Jr., 110
- Rogers v. Lodge* (1982), 111
- Roosevelt, Franklin D., 36
- RSS (Rashtriya Swayamsevak Sangh), 170
- Sabharwal v. Punjab* (1995), 159
- Sabharwal, Y.K., 157
- Sachs, Albie, 195, 202–4, 213, 216, 220, 233
- SACP (South African Communist Party), 192
- Saint Stephen's College v. University of Delhi* (1992), 177
- SALC (South African Law Commission), 199
- Salve, Harish, 178
- SAPS (South African Police Services), 189
- Scalia, Antonin, 56–9, 61, 116
- Scheduled Castes, *see* SCs
- Scheduled Tribes, *see* STs
- Schultz, George, 35
- SCs (Scheduled Castes), 133, 138, 141, 153, 156, 167
- Second Backward Classes Commission, *see* Mandal Commission
- seniority
 - bona fide systems, 70, 72, 90
 - constructive, 79, 81
 - rights under Title VII, 78–80
- Shaw v. Reno* (1993), 121, 122
- Shelby County v. Holder* (2013), 126, 128
- Shudras, 134, 142
- Singh, Arjun, 184
- Singh, Charand, 149
- Singh, Kuldip, 159, 175
- Singh, Manmohan, 173
- Singh, Vishwanath Pratap, 134, 149, 235
- Skweyiya, Zola, 211
- Slovo, Joe, 192
- Souter, David, 115, 123
- Souter, David H., 232
- South African Communist Party, *see* SACP
- South African Law Commission, *see* SALC
- South African Police Service v. Solidarity obo Barnard* (2014), 216
- South African Police Services, *see* SAPS
- South Carolina v. Katzenbach* (1966), 104, 113
- southern states
 - voter suppression by, 103
- southern states (USA)
 - voter suppression by, 101
- states' rights (USA)
 - vs. VRA, 113
- statistical evidence
 - as demonstration of disparate impact, 95
 - as demonstration of racial disparities, 66, 85
- statutory interpretation, 88
- Stevens, John Paul, 49, 52–3, 115, 123, 232
- Stewart, Potter, 41, 80–1, 114, 232
- Strauder v. West Virginia* (1880), 75
- strict scrutiny, 32, 43, 57–60, 63
- STs (Scheduled Tribes), 134, 138, 141, 153, 156, 167
- subdivision rule, 153
- Tamil Nadu, 155–6
- Thakur, Ashoka Kumar, 185
- Thomas, Clarence, 56, 59, 61
- Thornburg v. Gingles* (1986), 112
- Thurmond, Strom, 73
- Title VI (of the Civil Rights Act), 27, 32–5, 43, 53, 60, 81
- Title VII (of the Civil Rights Act), 27, 67–73, 75–8, 80, 82, 83, 88, 89, 91
 - impact of on seniority rights, 78–83
 - judicial interpretation of, 86–7
 - judicial limits under, 72

Title VII (of the Civil Rights Act), *cont.*
 legislative intent of, 68
 legislative interpretation of, 77
 results-oriented interpretations of, 77
 seniority rights under, 71
TMA Pai Foundation v. Karnataka (2002),
 181
 totality standard, 109–12
 Tower Amendment (to Title VII), 71
 Tower, John, 71
 transformative constitutionalism
 affirmative action under, 211–4, 232
 limits to, 216–7
 vs. reconciliatory constitutionalism,
 191, 212
United Jewish Organizations v. Carey (1977),
 118, 119, 123–4
 United States Commission on Civil Rights,
 104
United States, Reno v. Bossier Parish School
 Board (1997), 115–6
United States, Reno v. Bossier Parish School
 Board II (2000), 116–8
United Steelworkers of America v. Weber
 (1979), 86, 87, 89
Unni Krishnan v. Andhra Pradesh (1993), 176
 Uttar Pradesh, 139, 140, 146, 149, 150, 171
Venkataramana v. Madras (1951), 145
 VHP (Vishwa Hindu Parishad), 169

Voinovich v. Quilter (1993), 120, 122, 124
 vote banks, 140
 vote dilution, *see also* gerrymandering;
 redistricting
 Allen v. State Board of Elections (1969), 105,
 107, 113
 evidentiary standards for claiming, 107
 vs. minority disenfranchisement, 118
 voter suppression
 by southern states, 101, 103
 Voting Rights Act (1965), 27, 34, 45, 81, 102–3,
 105
 vs. states' rights, 113
 Voting Rights Act Reauthorization Act (2006),
 117, 125
 VRA, *see* Voting Rights Act (1965)
 Wallace, George, 73
Wards Cove Packing v. Atonio (1989), 95
 Warren, Earl, 40, 105
Washington v. Davis (1976), 81, 83
Watson v. Fort Worth Bank & Trust (1988), 93
 Waxman, Henry, 38
Whitcomb v. Chavis (1971), 108
White v. Regester (1973), 109
 White, Byron, 41, 84, 108, 232
Wright v. Rockefeller (1964), 106
Wygant v. Jackson Board of Education (1986),
 49, 58, 88
 Yacoob, Zak, 217