

Index

- Abington School District v. Schempp*,
xvn9, 89, 94–96, 98
- abortion, xiv, xxx, 20–22, 48, 50, 76, 135;
restrictions on, 38; Warren Court and,
33
- activist decisions, 35
- Adamson v. California*, 62n18
- Adkins v. Children's Hospital*, 67n38,
79n98
- aggression, 173
- Agostini v. Felton*, 100
- Aguilar v. Felton*, 99–100
- aid, to religious schools, 23, 28
- Albright, Madeline, 172
- Albright v. Oliver*, 81n101
- Alden v. Maine*, 36n88
- Alien Tort Claims Act (ATCA), xxxv;
first invoked, 160; forgotten statute of,
160–62; introduction, 159–60
- Allende, Salvador, 153
- Allgeyer v. Louisiana*, 66n34
- amendment process, 50–51
- American citizenry, xii; legitimacy of, xiv,
xix
- American Civil Liberties Union, xvi, 27
- American Communist Party, 30
- American flag, burning of, 29; desecration
of, xxvi
- Amish, 106
- anticontraception law, 20, 28
- anti-intellectualism, xxv
- antinationalists, 5
- Arbour, Louise, 180n81
- Argentine Republic v. Amerada Hess
Shipping Corp.*, 163
- arms control, 121
- Articles of Confederation, 12
- ATCA. *See* Alien Tort Claims Act
- Atkins v. Virginia*, 34n80
- Axworthy, Lloyd, 120–21, 123
- Bailey v. Drexel Furniture Co.*, 25n51
- Baldwin v. Missouri*, 80n99
- Barron v. Baltimore*, 68n42, 78n87
- Bassiouni, Cherif, on universal
jurisdiction, 137–38
- Belgian weltmacht, 156–59
- Belgium, universal jurisdiction in, 156–59

- Benton v. Maryland*, 17n34
 Bible, xv, 12, 94
 Bill of Rights, xviii, 10n16, 13, 18–19, 70, 93, 115; Fourteenth Amendment and, 68; guarantees of, 71n56
 birth control, 70–71, 135
 Black, Galen, 106
 Black, Hugo, 16, 27, 30, 62n18, 69, 75–76, 88–89, 92–93, 98, 103
 Blackmun, Harry A., xviii, xix, 24, 41; on family rights, xvii
 blame, shame, name, 125
 Blatchford, Samuel, 62
 blue laws, 102
BMW of North America v. Gore, 81n101
Board of County Commissioners, Wabaunsee County, Kansas v. Umbehr, xin3
Board of Education v. Allen, 97–98
 Bork, Robert H., 52, 162–63, 165–66
 Bourquin, Maurice, 116
Bowers v. Hardwick, xvii, 72n58, 73–74, 80, 83
 Brandeis, Louis, xiii, 60–63
 Brecht, Bertolt, xiv–xv
 Brennan, William J., Jr., 3, 24, 27, 33n73, 41, 71n56, 94
 Breyer, Stephen, 35
Brown v. Allen, 20, 28n56, 41–42; nondiscrimination principle of, 43–44
Brown v. Board of Education, xn1, 22–23, 22n43, 26–27
 Brutus, on independence of judges, 5–6
 Buckley, William F., Jr., 4
 Burger Court, 32–34, 37
 Burger, Warren Earl, 27, 103; desegregation and, 44
 Burke, Edmund, 25
 Bush, George H. W., 99, 127, 158
 Bush, George W., 123, 136, 174; Supreme Court appointments of, 51
Bush v. Gore, 35
 busing, 45, 48; costs of, 48n117
Calder v. Bull, 63n20, 77
Caminetti v. United States, 37n93
Cantwell v. Connecticut, 85–86, 105
 capital punishment, 38, 41; Rehnquist Court and, 34; Supreme Court and, 24
 Cardozo, Benjamin, 68
Carolene Products Co. v. United States, 16, 68
 Casey, Lee A., xxxiii–xxxv
 CCW. *See* Convention on Certain Conventional Weapons
 Chase, Samuel, 7, 63n20, 77
 Cheney, Dick, 158
Chicago, Milwaukee, and St. Paul Railway Co. v. Minnesota, 62n18, 66
 choice of law issues, 164
Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 107–8
 Churchill, Winston, 53, 144
 church-related schools, public aid to, 97–102
City of Boerne v. Flores, 33n73, 107
City of Indianapolis v. Edmond, 34n78
 Civil Rights Act (1875), 25
 Civil Rights Act (1964), xxiv, 25–26; opponents of, 42; Title IV, 45; Title VI, 41, 44, 46; Title VII, 46, 46n112
 Civil War Amendments, 13
 Clark, Tom, 94
 Clark, Wesley, 172
 Clinton, William Jefferson, 99, 123, 128–29, 136, 174; Supreme Court appointments of, 51
 Coalition for the International Criminal Court, 122
Cohen v. California, xxviii, 29n57
 Cold War, 30, 113, 133
Collins v. Collins, 24n47
 Colorado Constitution, 34
Commentaries on the Constitution of the United States (Story), xxi, 78
 Commission on Global Governance, 127
 common law system, 82
 Communism, xxiii, 30
 complementarity, 176
 Conference on Disarmament, 121

INDEX

187

- Conference on Environment and Development (1992), 124
 conservative activism, 36
 conservatives, 33; identified in Supreme Court, 35
 constitutional adjudication, 76
 constitutional amendments, 50–51
 constitutional federalism, 37n93
 constitutional history, 76–77
 constitutional judicial review, meaning of, 14; origin of, 5–8
 constitutional language, 15; liberty and, 63
 constitutional law, xii, 75; contending forces in, xxix; defined, 2; derelicts of, 82; homogenization of, xxxv; irrelevance of U.S. Constitution to, 11–24; point of, 33; as series of political impulses, xxv; as similar to international law, xxxi; social policy choices and, 27–28; U.S. Constitution overthrown by, 2–5; values v., ix
 constitutional revolution, of 1937, 15–16
 constitutional self-government, 59, 80; erosion of, 82
 constitutionalism, 6; justification for, 9; meaning of, 8
 constructive ingenuity, 59
 Contracts Clause, 10n18
 Convention on Certain Conventional Weapons (CCW), 121
Cooper v. Aaron, 47n114
County of Allegheny v. ACLU, 103–4
 court-packing plan, 15
 courts, deconstruction by, x; as ultimate law-givers, xii
Cox v. Louisiana, 29n59
Craig v. Boren, 15n27
 crimes, against humanity, 173; against peace, 145
 cultural elite, 3–4; judicial review and, 38–47; speaking and, 40
 culture war, xxvi, 3, 38
 Curtis, Benjamin, 79
Curtis Publishing v. Butts, 30n63
 Danbury Baptists, 89
 Davenport, David, xxxii–xxxiv
 Davey, Joshua, 108–9
Davidson v. New Orleans, 14n25
Day v. Trans World Airlines, 169n66
 death penalty, international law and, 130
 Declaration of Independence, 115
Demjanjuk v. Petrovsky, 143n11, 152n32
 democracy, fragility of, 48; theory of, 39
 democratic federalism, 38
 Democratic Republic of the Congo, 157
Democratic Republic of the Congo v. Belgium, 147
Denver Area Educ. Telecomm. Consortium, Inc. v. FCC, 29n57, 34n80
 deprivation of property, without due process, 66
 Derbyshire, John, on judicial elites, x
 derelicts of constitutional law, 82
 desegregation, 43–45
 Devlin, Patrick, xix
Dickerson v. United States, 34n77, 35n83
 Dirty War (Argentina), 153–54
 discrimination, racial, 26, 30, 42; sex, xxiii, 30, 33, 34; viewpoint, 108; in work place, 46, 46n112
Doe v. Bolton, 75n75
Doe v. Unocal Corp., 162n50
Dolan v. City of Tigard, 36n86
 domestic tort law, 164
 Douglas, William O., xiii, 16, 18–19, 27, 30, 71n56, 75, 89, 92; substantive due process and, 70
Dred Scott v. Sandford, 21, 24–26, 79, 82; substantive due process and, 65
 Drug Enforcement Administration, 166
 due process, 14–15, 53; boundaries of, 72–73; deprivation of property without, 66; natural law and, 62n18; personal rights v. property rights and, 69; Scalia and, 81; technical meaning of, 64–65. *See also* substantive due process
Duncan v. Louisiana, 17n30

- Eakin v. Raub*, 8n11
 Eastland, Terry, xv, xvi, xxii
 Edwards, Harry, 161–62, 164–65
 Eichmann, Adolph, xxxiv; trial of, 149–53
Eisenstadt v. Baird, 71n56
 Elementary and Secondary Education Act of 1965, Title I, 99–100
Elfbrandt v. Russell, 30n62
 elites, ix–x; Supreme Court justices as, 4
Elk Grove Unified School District v. Newdow, 104, 109
Employment Division v. Smith, 33n73, 106–7
 enemies, of all mankind, 138–42
Engel v. Vitale, 17n32, 92–94, 96
 Equal Access Act, 97
 equal protection, 53
 Equal Rights Amendment, 30, 31
 equality, xii–xiii
Erie R. Co. v. Tompkins, 168
 Ervin, Sam, on desegregation, 45
 EU. *See* European Union
 European Convention on Human Rights, 130
 European model, xv
 European project, 180–83
 European Union (EU), xxxv, 114, 120, 127; priority of, 181
 Everson, Arch, 88, 91
Everson v. Board of Education, 87, 89–91, 97, 102
 evolutionism, xxix–xxx
 extradition, 154
 Falklands War (1982), 163
 family, sacredness of, xxvi; value of, xvii
 federal common law, 161, 168
Federal Maritime Comm'n v. South Carolina Ports Auth., 36n88
 Federal Tort Claims Act (FTCA), 166
 federalism, 12
The Federalist, 73
Ferguson v. Skrupa, 16n28, 69–70
 Fifteenth Amendment, 13–14, 54
 Fifth Amendment, 18, 36, 71n56; due process clause of, 23, 58, 64
Filartiga v. Pena, 160–65
 Final Solution, 149
 First Amendment, xiii, xv, xxx, 17, 23, 30, 61, 67, 71n56, 85, 87–89, 93; accommodationist view of, 92; establishment clause of, 86, 94, 98, 104, 109–10; free exercise clause of, 86, 94, 107, 109–10; free speech clause of, 108; religion clauses of, 23; religion treatment in, 86; as Supreme Court weapon, 29
 First Congress (1789), 90, 93, 167
First English Evangelical Lutheran Church v. County of Los Angeles, 36n86
 flag-salute ceremony, 87
Fletcher v. Peck, 63n21
Florida Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav Bank, 36n88
 force, 6
 Ford, Gerald R., 49
 foreign languages prohibition, 67
 Foreign Sovereign Immunities Act of 1976 (FSIA), 159; exception to, 163
 Fourteenth Amendment, xviii, xxi, 9, 13–14, 23, 31, 36, 53–55, 65, 67, 68n42, 70, 72, 75, 80, 85; Bill of Rights and, 68; due process clause of, 17, 21, 58, 62, 68; equal protection clause of, xxiv, 19, 23; judicial review and, 54; privileges/immunities clause of, 14
 Fourth Amendment, xxix–xxx, 71n56
 Frankfurter, Felix, 92; on U.S. Constitution and Supreme Court, 10n17
 Franks, Tommy, 158
 freedom, matrix of, 68
 French Court of Cassation, 157
Frontiero v. Richardson, 31n65
 FSIA. *See* Foreign Sovereign Immunities Act of 1976
 FTCA. *See* Federal Tort Claims Act
 functional judicial review, 16

- Furman v. Georgia*, 28n54
- Garzon, Balthazar, 153–54
- Geneva Conventions, 155, 172
- genocide, 155, 171, 173
- Genocide Convention, 155
- Ginsburg, Ruth Bader, 31, 35, 41
- Gitlow v. New York*, 67n39, 68n42
- global governance, 124, 127, 133
- global security, 133
- global warming, price-tag on preventing, 129
- globalists, xxxiv, 125; treaty-based agenda of, 134
- Gobitis, Walter, 87
- Goering, Hermann, 144
- Goldberg, Arthur, 27
- Good News Club v. Milford Central School*, 108n39
- Graglia, Lino A., xiii, xv
- Graham v. Richardson*, 15n27, 31n68
- Grand Council of Ayatollah, Supreme Court compared to, 3
- Green v. County School Board*, 42–43, 52
- Gregg v. Georgia*, 24n47
- Griggs v. Duke Power Co.*, 46
- Griswold v. Connecticut*, xiiin5, 18, 20, 23–24, 28, 41n96, 60n11, 67, 69–71, 73–75
- group identity, x
- Gutter v. Bollinger*, 4n3, 35n82, 36, 41n98; compared to *United States v. Virginia*, xxiii–xxiv
- Hague Convention, 146n17
- Hall, Kermit, 99
- Hamburger, Philip, 91
- Hamilton, Alexander, 6, 8, 10, 25, 27, 47–48, 64, 73
- Hammer V. Dagenhart*, 25n51
- Hand, Learned, 39
- Harlan, John Marshall, on due process, 69
- Hedges, Charles, 139
- Heydrich, Reinhard, 149
- Himmelfarb, Gertrude, xxvi
- Himmler, Heinrich, 149
- Hitler, Adolph, 143–44
- Holmes, Oliver Wendell, 79–80
- Holocaust survivors, 29
- Home Building and Loan Ass'n v. Blaisdell*, 10n18
- homosexuality, xxi, xxx, 34–35, 58, 73, 76
- House of Lords, 154–55, 157
- Hughes, Charles Evans, 47; on due process, 67n41
- Human Rights Commission, 127
- human security, national security *v.*, xxxiii
- Humphrey, Hubert, 44–45
- Hussein, Saddam, 137, 172
- ICC prosecutors, 179–80
- ICC. *See* International Criminal Court
- ICJ. *See* International Court of Justice
- Ikle, Fred, xxxin31
- ILC. *See* International Law Commission
- ill humors, 9–10
- immunity, 147–49; rule of, 157–58
- impeachment, 7; of Supreme Court justices, 48–49
- Imperial Judiciary, 76
- impunity, 182
- IMT. *See* International Military Tribunal
- infringement, of ambassadorial rights, 165, 167
- integration, 42–44
- International Campaign to Ban Land Mines, 121
- International Committee of the Red Cross, 121
- international community, 175
- International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment of 1984 (Torture Convention), 154
- International Court of Justice (ICJ), xxxiii, 147; universal jurisdiction and, 157
- International Covenant on Civil and Political Rights, 167
- International Criminal Court (ICC), xxxii, xxxv, 114; authority of, 176; creation

- International Criminal Court (*continued*)
of, 173–74; jurisdiction of, 136, 173, 176n74; prosecutors, 179–80; role of, 136; U.S. and, 182
- International Criminal Tribunal for Rwanda, 180n81
- International Criminal Tribunal for the Former Yugoslavia, 180n81
- international diplomacy, 113
- international law, American interpretation of, 169; American values/interests challenged by, 128–33; as crystallization of international politics, 116; as customary law, 159; death penalty and, 130; discontents and, 115–17; expansion in, xxxii–xxxiii, 114; movement away from U.N., 131; ordinary rule of, 142; as similar to constitutional law, xxxi; threat to U.S. sovereignty, 132; three-way expansion of, 124–28; top-down nature of, 115–16; U.S. law *v.*, 115–17
- International Law Commission (ILC), 122
- International Military Tribunal (IMT), xxxiv, 143; Article 6, 145; Article 7, 145
- international prosecutors, 179
- international tribunals, xxxi
- Internet, pornography and, 34
- interstate transportation, 68
- Iraq war, 156
- Iredell, James, 77
- Israeli Supreme Court, 150, 154
- Jackson, Andrew, on judges, 7n8
- Jackson, Robert, 20, 88, 92; on federal prosecutors, 177–78
- Japan, war crimes and, 148
- Japanese Instrument of Surrender, 148n25
- Jaworski, Leon, 46
- Jefferson, Thomas, 7–8, 88, 90–91; on judges, 7n8
- Jehovah's Witnesses, 87
- JOUAM. *See* Junior Order of United American Mechanics
- judge-made law, 83
- judges, as dangerous, 12; independence of, 5–6; protection from, 7; role of, ix
- judicial activism, 82, 136; defined, 10; examples of, 11; of Florida Supreme Court, 36; *Roe v. Wade*, example of, 21; as source of Supreme Court power, 53
- judicial creativity, 67
- judicial gnosticism, xi
- judicial independence, 48
- judicial legislation, 75
- judicial mischief, 168
- judicial perversity, ix
- judicial power, 72
- judicial review, from conservative force to engine of social change, 24–32; cultural elite's trump card, 38–47; defenders of, 38; proposed abolishment of, 52–53, 55; restraining clause in democracy, 25. *See also* constitutional judicial review
- Judiciary Act of 1789, 160
- Junior Order of United American Mechanics (JOUAM), 88
- Kadic v. Karadzic*, 162n50
- Kellog-Briand Pact of 1928, 146
- Kennedy, Anthony, xiv, 35–36, 58, 72–76, 82–83; on personal dignity/autonomy, xviii
- Keyes v. School District*, 43n101
- Kimmel v. Florida Bde. of Reports*, 36n88
- Kirkpatrick, Jeane, xxiv
- Kissinger, Henry, on international law, xxxi
- knowledge/verbal class, 3–4
- kodakers, 61, 61n14
- Kolakowski, Leszek, on sense of sacred, xxvii; taboos and, xxvii–xxix
- Kyllo v. United States*, 34n78
- Kyoto Accords, xxxiii, 124–25
- Lamb's Chapel v. Center Moriches Union Free School*, 108
- land mines, 118, 121, 124–25, 131

- law, anticontraception, 20, 28; function of, 1; internationalization of, ix, xi, xxxi–xxxii; judge-made, 83; limitations/restrictions of, 15; loss of integrity in, xxv; meaning of, xii; principles of, 63n20; “reasonableness” of, 69; religion and, xxii; substantive validity of, 80; U.S. Constitution and, 7. *See also* constitutional law; federal common law; international law; natural law; treaty-based law; U.S. law
- law of nations, 165, 173–75; paradigms of 1789, 166–70; violations of, 165
- Law of Treaties, 123, 125, 154
- Lawrence v. Texas*, xviii, 35n82, 58, 59n9, 72n58, 73–74, 76, 83
- The Law of Piracy* (Rubin), 140
- Lee v. Weisman*, 34n75, 96
- Lemon test, 94, 110; application of, 98–99, 103; birth of, 98
- Lemon v. Kurtzman*, 28n55, 98
- Levy v. Louisiana*, 15n27, 19–20, 31n68
- Ley, Robert, 144
- liberal activism, 37
- liberals, 33; identified in Supreme Court, 35
- liberty, constitutional language and, 63; of contract, 66; as freedom to enjoy all faculties, 66; meaning of, 58–59; ordered, 68; religious, 85–134
- lifestyle issues, x
- like-minded states, 114; make-up of, 120
- Lincoln, Abraham, on Supreme Court decisions, 7n8
- Lochner v. New York*, 15n26, 75; substantive due process and, 66–67
- Locke v. Davey*, 108–9
- Lockett v. Ohio*, 28n54
- Lord’s Prayer, xv, 94
- Lucas v. S. C. Coastal Council*, 36n86
- Lynch v. Donnelly*, 103
- Madison, James, 6, 59, 110
- Mapp v. Ohio*, 34
- Marbury v. Madison*, 8, 24, 77n85
- marriage, sacredness of, xxvi
- Marsh v. Chambers*, 103
- Marshall Court, Bill of Rights and, 68n42
- Marshall, John, 8, 25, 27, 77–78; dissent of, 63n21; on executive power, 169; Supreme Court jurisdiction and, 8n13
- Marshall, Thurgood, 24
- McArthur, Douglas, 148n25
- McCullum v. Board of Education*, 90–92
- McCullum, Vashti, 91
- McCulloch v. Maryland*, 77n86, 78n88
- McDowell, Gary L., xiii–xv
- McGowan v. Maryland*, 102
- Meuller v. Allen*, 100
- Meyer v. Nebraska*, 67n38
- Michael H. v. Gerald D.*, 81n101
- Michel, Louis, 158
- Mill, John Stuart, xxvii; on sense of sacred, xxv–xxvi
- Milosevic, Slobodan, 172
- Minersville (Pa.) School District v. Gobiitis*, 86
- minimum wages, for women, 67
- Minogue, Kenneth, xix; on Olympianism, xx, xxii
- Miranda* rights, 28, 33; Rehnquist Court and, 34
- Miranda v. Arizona*, 28n56
- Mississippi University for Women v. Hogan*, 31n66
- Missouri Compromise, 25
- Missouri v. Jenkins*, 48n117
- Mitchell v. Helms*, 100
- Montesquieu, 6
- Moore v. East Cleveland*, 81n100
- morality, evolution of, xi; sexual, xiii–xiv
- Morganthau, Henry, Jr., 144
- Mormon polygamy, 105
- Mugler v. Kansas*, 66n30, 72
- multiculturalism, xxiii
- Munn v. Illinois*, 65n29
- Munoz, Vincent Phillip, 90, 108
- “mystery passage,” xix
- myth of conservatism, 32–37

- NAACP v. Button*, 29n58
 national security, human security *v.*, xxxiii
 natural justice, 63, 63n21, 75, 77–78
 natural law, 15, 38, 63, 78; due process
 and, 62n18
 Nazi Party, 144, 148–50
 Nazis and Nazi Collaborators
 (Punishment) Law, 150, 152n32
 Nazism, xxiii, 29, 142–43
 Ndombasi, Abdulaye Yerodia, 157
 Neuhaus, Richard, 102
Nevada Dep't of Human Resources v.
 Hibbs, 37n91
 New Deal, 25
 new diplomacy, creation of, 114; human
 rights agenda of, 121; new game of,
 121–24; NGOs' role in, 121–24;
 threats of, 113–34
 New Jersey Taxpayers Association, 88
 New Left, xvi, xix
 new sovereignty, 174–80
New York v. United States, 37n89
 NGOs. *See* nongovernmental organizations
 “Nietzschean vision,” 75
 Nixon, Richard M., 27, 44, 46, 129
Nolan v. Cal. Coastal Comm'n, 36n86
 nongovernmental organizations (NGOs),
 xxxii, 114; growth of, 118–19; in new
 diplomacy, 121–24; operation of, 120
 nonracial unitary system, 44
 Northwest Ordinance, 90
nullem crimen sine lege (no crime without
 a law), 146
 Nuremburg Trials, xxxiv, 130;
 controversial aspects of, 145; legacy
 of, 142–49
 obiter dictum, 69
 Obligation of Contracts, 13
 O'Connor, Sandra Day, xiv, xxiii, 31, 35–
 36, 41, 58, 72–73, 82, 104
Ogden v. Saunders, 63n21
Olmstead v. United States, 59n6
 Olympianism, xx–xxii, xxxi
 “one-person, one-vote,” 31
 Operation Condor, 154
 ordered liberty, 68
 originalism, xxix–xxx
 Orwell, George, 10
 Ottawa Conference, 120
 Ottawa Convention on Land Mines, 124,
 125
 Pace, William, 118
Pacific Mutual Life Insurance Co. V.
 Haslip, 81n101
 Palestine Liberation Organization (PLO),
 161–62
Palko v. Connecticut, 17n34, 68, 74n66
Papachristou v. Jacksonville, 30n64
 passive personality jurisdiction, 151,
 151n29
 Peace of Westphalia (1648), 175
 Peckham, Rufus, 66, 75
 Persian Gulf War (1990–1991), 172
 personal rights, property rights *v.*; due
 process and, 69
Pierce v. Society of Sisters, 67n38
 Pinochet Augusto, 126; attempted
 extradition of, 153–56; universal
 jurisdiction and, 153
 piracy, 165, 167
 pirates, 140; characteristics of, 141
Planned Parenthood of Southeastern
 Pennsylvania v. Casey, xiv, xviii13,
 58, 59n9, 72–73, 76, 82
 Plato, 39
 Pledge of Allegiance, 104
Plessy v. Ferguson, 22n43, 82
 PLO. *See* Palestine Liberation
 Organization
Poe V. Ullman, 17n35, 69–70
 political correctness, x, xxii, xxxv
 politics, of expression, xix; of meaning,
 xvii
 pornography, xiii, xxvi, 29, 50; Internet
 and, 34; suppression of, 38
Port Huron Statement (1962), xvi–xvii
 post–Cold War diplomacy, 117–20
 postmodern jurisprudence, xxv

INDEX

193

- Potsdam Declaration, 148n25
 Powell, Colin, 158
 prayer, Lord's, xv, 94; in public schools, 23, 28, 34, 50, 92–93, 95–97, 135; Regents, 93; voluntary, 95
Printz v. United States, 37n89
 privacy. *See* right to privacy
 Privy Council in London, 5n4
 procedural rights, 68
 prosecutorial discretion, 178
 prosecutors, federal, 177–78; ICC, 179–80; international, 179; role of, 178–79; under Rome Statute, 177; state, 178
 protective principle, 151, 151n29
 public schools, emergence of, 90; as pervasively sectarian, 99; prayer in, 23, 28, 34, 50, 92–93, 95–97, 135; religion and, 90–97
 Punishment of Serious Violations of International Humanitarian Law, 137, 156
R. v. Bow Street Magistrates, 155n33
 Rabkin, Jeremy, 129
 racial assignment, 43
 racial discrimination, 26, 30; history of law against, 42; U.S. Congress and, 42
 Radical Republicans, 54
 Reagan, Ronald, 99; Supreme Court appointments of, 51
Reagan v. Farmers' Loan and Trust Co., 66n32
 reason, principles of, 63n20
 reasoned judgment, 76
 Reconstruction Amendments. *See* Civil War Amendments
Reed v. Reed, 33n72
Regents of Univ. of California v. Bakke, 4n3, 45–46
 Regents prayer, 93
 Rehnquist Court, 32–35, 37, 101; capital punishment and, 34; *Miranda* rights and, 34; *Roe v. Wade* and, 34; sex discrimination and, 34
 Rehnquist, William, 75–76, 89, 104, 109
 religion, xv–xvi; denigration of, xxvi; law and, xxii; nondiscriminatory aid to, 89; public schools and, 90–97
 religious establishments, courts and, 102–5
 Religious Freedom Restoration Act of 1993, 33n73, 107
 religious liberty, as first liberty, 86; Supreme Court and, 85–134
 religious symbols on public property, 23, 28
 Restatement (Third) of the Foreign Relations Law of the United States, 152n32
 Revolutionary War, 116
Rex v. Dawson, 139
 Reynolds, George, 105
Reynolds v. Simms, 31n69
Reynolds v. United States, 105
 von Ribbentrop, Joachim, 144
 Riggiozzi, Maria Pia, 118
 right(s), ambassadorial, 165, 167; arising from natural law, 78; of association, 71n56; civil, xxiv, 25–26, 41–42, 44–46, 46n112; family, xvii; hierarchy of, 68; human, 121, 127, 130; judge-made, 81; of marital privacy, 71n56; *Miranda*, 28, 33–34; personal, 69; procedural, 68; property, 69; rights of action v., 162–66
 right to privacy, xiii–xiv, 57–83; constitutional expansion of, 68–69; foundation of, 71; history of, 60–74; impingement on, 83; political price of, 74–80; practicality of, 61n14
Ring v. Arizona, 34n80
 Rivkin, David B., Jr., xxxiii–xxxv
 Robb, Roger, 162
Roberson v. Rochester Folding Box Co., 61n14
Roe v. Wade, xiv, 20–21, 21n40, 23–24, 32, 33n72, 58, 71n56, 72, 75; Rehnquist Court and, 34
 Rome Statute, 173–75; prosecutors under, 177; U.S. and, 180
 Rome Treaty, 123, 125, 136

- Romer v. Evans*, xxi, 34n79
 Roosevelt, Franklin, 10n17, 15, 25, 144;
 on Supreme Court decisions, 7n8
Rosenberger v. University of Virginia,
 108n39
 Rubin, Alfred, 140
 rule by dead, 10
 rule of immunity, 157–58
 Rumsfeld, Donald, 127, 158
- sacramental peyote use, 107
 Salazar, Enrique Camerena, 166
*Santa Fe Independent School District v.
 Jane Doe*, 96n16, 101
 Santería religion, 108
 Scalia, Antonin, xxii, xxx, 35, 72n58, 75–
 76, 83, 106–7, 168; due process and,
 81; on judicial gnosticism, xi; *Sosa*
 opinion of, 169n66; substantive due
 process and, 81n101
Schad v. Mount Ephraim, 29n57
Schechter Poultry Corp. v. United States,
 25n51
 school segregation, 22–23; prohibition of,
 27; Warren Court and, 33
 segregation, 25
 selective nihilism, xxv
 self-government, 60
Seminole Tribe v. Florida, 36n88
 sense of sacred, xxv–xxvii
 separation of church and state, 88–89, 99;
 Protestant version of, 91
Separation of Church and State
 (Hamburger), 91
 separationist doctrine, 89, 98
 1783 Treaty of Paris, 174
 sex discrimination, xxiii, 30; Rehnquist
 Court and, 34; Warren Court and, 33
Shad v. Mount Ephraim, 17n33
 Sharon, Ariel, 127, 158
 Shattuck, Charles E., 57
 Sherbert, Adell, 105
Sherbert v. Verner, 33n73, 105–7
 sixties decade, x
Slaughter House Cases, 14–16, 65n28
 slavery, 25
 Smith, Alfred, 106
Smyth v. Ames, 66n33
Snyder v. Massachusetts, 68n44
 social activists, 135
 soft power, 114
Sosa v. Alvarez-Machain, 166, 168–69
 Souter, David, xiv, 35, 58, 72–73, 75, 82
South Dakota v. Dole, 37n92
 Soviet Union, 30; history of, 113–14; role
 in Nuremburg Trials, 144
 Speer, Albert, 144
stare decisis, 82
 state prosecutors, 178
 state sovereignty, 133
Stenberg v. Carhart, 22n42, 34n74
 Stevens, John Paul, 35, 96
 Stevens, Thaddeus, 53–54
 Stewart, Potter, 75, 93
 Stimson, Henry, 144
 Stone, Harlan Fiske, 69
Stone v. Farmers' Loan and Trust Co.,
 65n29
Stone v. Graham, 17n32, 95
 Story, Joseph, xxi, 63n21, 77–78, 140
Strauder v. West Virginia, 54n123
 Straw, Jack, 155
 substantive due process, 15–16, 18–19;
 creation of, 62–63; Douglas, William
 O., and, 70; *Dred Scott v. Sandford*
 and, 65; *Lochner v. New York* and, 66;
 “reasonableness” of, 68; revival of,
 41n96; U.S. Constitution and, 65
 Supreme Court, as activist court, 32n70;
 American society and, x; capital
 punishment and, 24; compared to
 Grand Council of Ayatollah, 3;
 conservatives identified in, 35;
 intellectual allies of, xx; justices, xii,
 2–4, 8–11, 39–41, 51; liberal
 academics and, 32; liberal victories in,
 35; limiting power of, 47–55; makeup
 of, 35; media and, 32; myth of
 conservatism and, 32–37; as oracle of
 U.S. Constitution, 48; overturning

- rulings of, 51–52; as perpetual censor, 15; personal preferences and, 41–42; politics of, xix; public’s view of, 32; religion and, xvi; religious liberty and, 85–134; rulings of unconstitutionality by, 2–3; sacredness of, xxvii; school racial integration requirement of, 44; secularizing influence of, 86–90; state courts and, 64; U.S. Congress’s power over, 49–50
- Supreme Court justices, as elites, 4; as final lawmakers, 2–3; life tenure of, 51; proposed election of, 51; qualifications of, 40–41; skills of, 39–40; U.S. Constitution and, 8–11
- Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 22n43, 33n72, 52; desegregation and, 45
- taboos, xxvii–xxix
- Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 36n87
- Talmud, 12
- Tax Code, 12
- tax exemptions, for churches, 102
- taxation without representation, 116
- Tel-Oren v. Libya*, 161–64
- Ten Commandments, 95
- Terrett v. Taylor*, 63n21
- terrorism, 133
- Texas v. Johnson*, xxvin25, 17n33, 29n59
- Thakur, Ramesh, xxxiii
- Third Reich, 144
- Thirteenth Amendment, 13–14
- Thomas, Clarence, xxiv, 35, 76, 100
- Tilson v. Ullman*, 17n35
- Tinker v. Des Moines Ind. Community School District*, 17n33, 29n60
- Tocqueville, Alexis de, 1, 25, 47, 110, 135
- Tokyo Tribunal, 130
- tort, 160; as legal wrong, 164
- tort claim, 160–61
- Torture Victims Protection Act, 162n49
- transcendental politics, xviii–xix
- transportation subsidies, for parochial schools, 88
- treaty negotiations, 123
- Treaty of Rome, xxxii–xxxiii
- Treaty of Westphalia (1648), 132
- treaty-based law, xxxii–xxxiii, 124; examples of, 124–25
- Tussie, Diana, 118
- TXO Production Corp. v. Alliance Resources*, 81n101
- tyranny, 47
- U.N. *See* United Nations
- United Nations (U.N.), 114
- United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 171
- United Nations Diplomatic Conference on the Establishment of an International Criminal Court, 137
- United Nations Universal Declaration of Human Rights, 167
- United States Terms Limits, Inc. V. Thornton*, 35n81
- United States v. Alvarez-Machain*, 166
- United States v. Butler*, 25n51
- United States v. Carolene Products Co.*, 16n29
- United States v. Eichman*, xxvin25
- United States v. Klein*, 49n120
- United States v. Lopex*, 37n90
- United States v. Morrison*, 37n90
- United States v. Robel*, 30n62
- United States v. Virginia*, 31n67, 34n76, 41n98; compared to *Grutter v. Bollinger*, xxiii–xxiv
- universal criminal jurisdiction, 159, 174
- Universal Declaration of Human Rights, 130
- universal jurisdiction, xxxiii, 124; in Belgium, 127, 156–59; Belgium’s checkered law of, 158; development of, 114; Eichman trial and, 152; as established fact, 170; ICJ and, 157;

- universal jurisdiction (*continued*)
 - introduction of, 135–38; meaning of, 126; origins of, 138–39; Pinochet and, 153; piracy and, 140–41
- universality, 170; posits of, 175; presupposition of, 171
- U.S. Attorneys, 178
- U.S. Congress, history of, 12–13; last word of, 5; lower federal courts and, 49–50; power over Supreme Court, 49; racial discrimination and, 42; religion and, xv
- U.S. Constitution, xii; additions to, 33–34; amendment process for, 50–51; constitutional law irrelevant to, 11–24; contracts clause of, 63; function of, 1–2; justices and, 8–11; law and, 7; as living document, xxx; overturned by constitutional law, 2–5; permanent construction of, 78; political correctness and, xvi; positive law of, 77; restriction on states by, 12–13; status of, xxvi; “strict construction” of, 27; substantive due process and, 65; written, 77
- U.S. Court of Appeals for District of Columbia, 161
- U.S. Court of Appeals for Eighth Circuit, 103
- U.S. Court of Appeals for Ninth Circuit, 104
- U.S. Court of Appeals for Second Circuit, 160, 162–63, 165
- U.S. law, international law v., 115–17; purpose of, 115
- values, constitutional law v., ix
- Vienna Convention, 123, 126
- viewpoint discrimination, 108
- Village of Skokie v. Nat’l Soc. Party of Am.*, 29n59
- violation, of safe-conducts, 165, 167
- voluntary prayer, 95
- wall of separation, 91; between church and state, 88
- Wallace v. Jaffree*, 89, 95, 101
- Walz v. Tax Commission*, 102
- Wansee Conference (1942), 149
- war crimes, 146n17, 173; Japan and, 148n25
- Warren Court, 11, 28, 32–33, 37; abortion and, 33; radicalism of, ix; school segregation and, 33; sex discrimination and, 33
- Warren, Earl, 27
- Warren, Samuel, 60–63
- Warsaw Convention, 169n66
- Washington, George, 110
- Weber, Max, on meaning of life, xix–xx
- West Coast Hotel v. Parrish*, 66–67
- West Virginia State Board of Education v. Barnette*, 87
- Westside v. Mergens*, 97
- White, Byron, 73, 75, 80; on due process, 74n66, 81n100
- will, 6
- Williams, Jody, 118
- Wisconsin v. Yoder*, 106
- Witters v. Washington*, 101
- World Heritage Convention, 129–30
- World Trade Organization (WTO), 114, 175
- WTO. *See* World Trade Organization
- Wynehamer v. New York*, 64–65, 64n24
- yellow journalism, 61
- Zelman v. Simmons-Harris*, 100
- Zorach v. Clauson*, 92, 103