INDEX

A and others v. Secretary of State for the Home Department [2004], 399
Administrative Litigation Code (Russia), 223, 227
Administrative Litigation Law (China), 353
Advisory Committee (El Consejo para la Consolidación de la Democracia), 254
advocacy groups, 409
Africa
Benin, 334–37
class conflicts in, 137, 233
corporatist system in, 306–51
decolonization in, 113, 234
end of European imperialism in, 233
ethnic conflicts in, 312–13
Ghana, 325–33
inclusionary structure in, 306–51
international law and state structures in, 315–16, 348
judicial constitutionalism in, 349–51
judicial inclusion in, 315
Kenya, 337–51
neo-patrimonialism in, 311–12
post-independence states of, 153
pre-transitional states in, 309–10
rise of judicial power in, 308–09
systemic transformations in, 234
transnational judicial constitutionalism in, 314–15
weak statehood in, 310–11, 314
African Commission on Human and Peoples’ Rights, 307–08, 336, 337, 348, 350
African National Congress (ANC), 318
African Socialism, 338
Ahmed v. HM Treasury [2010], 389
Airey v. Ireland [1979], 411
Aldenbur (2000), 400
Alessandri, Arturo, 282
Alfonsín, Raúl, 253, 255, 257–58, 259, 261–62, 278
Alien Tort Statute, 393–94, 409
Allende, Salvador, 283–85
American constitution of 1789, 92
American Declaration of the Rights and Duties of Man (1948), 73, 114
American Revolution, 35–36
Amnesty Law of 1978 (Chile), 278
Amsterdam Treaty, 378
ancien régime, 39–40, 57, 138, 419
apartheid, 317–18
Apotheken Urteil (1958), 401
Appellate Body, 370
Aramburu, Pedro, 252
Arbeitsordnungsgesetz, 181
Arbitration Act, 145
Argentina, 249–64
delegative democracy in, 236
developmental corporatism in, 244
government autonomy, 262–63
human rights in, 254–56
hyper politicization of state, 252–53
international human rights and, 260
international law and, 238–39
intersection between public and private organizations in, 249–50
judicial corruption in, 236
political integration of labour in, 250–52
political system in, 249–64
replacement of Peronism in, 256
rights-based political system under Alfonsín, 257–58
social and economic rights in, 291
societal conflicts, 261–62
structure-building impact of human rights in, 259–60
Supreme Court, creation of, 249
trade unions, 261–62
transition from military rule in 1983, 253–54
transitional reform in, 258–59
Asia, decolonization in, 113
Atlantic Charter (1941), 72
Austro-Hungarian Empire, 149
authoritarianism, 157
as alternative to classical liberal states,
184–85
external/societal position of
post-authoritarian states, 194–96
post-1945 constitution and, 190–91
privatism and, 245
state structure and, 182–83
state-building and
first stage of formation, 170–71
second stage, 172–74
state-building in, 170–76
structural debility of interwar states, 183–84
auto-constituent constitution, 366–418
inner-legal constitution making and,
383–96
international human rights and, 366–68
internationally defined rights and, 368–69
litigation and, 383–96
multiplication of constituent power in,
411–17
private parties and, 411–17
proportionality, 396–404
results of, 369
rights and global structure in, 382–96, 417
rights and new legislative actors in, 404–11
rights and supranational order in, 369–81
Auxiliary Service Law (1916), 150
Aylwin, Patricio, 277, 278
Bachelet, Michelle, 289
Barcelona Traction (1970), 78
Becker (1982), 377
Behrami v. France and Saramati v. France,
Germany and Norway [2007], 389
Benin, 334–37. See also Africa
Constitutional Court, 336, 337
Haut Conseil de la Republique, 335
National Conference, 335–36
transnational judicial structure building in,
334–37
Ben-Shalom v. Secretary of the Army [1980], 391
Bhe (2004), 322
block of constitutionality, 298, 299
Bolivia. See also Latin America
block of constitutionality and, 298
consequences of liberalisation in, 303–04
Constituent Assembly, 298
Constitution (2009), 235
Constitutional Tribunal, 297
corporatist system in, 293, 302–03
ILO Convention 169 and, 296
indigenous rights in, 296, 299, 415
international law and, 237
judicial constitutionalism in, 297
plurinational constitution making in,
296–97
Popular Participation Law, 296
universal rights in, 299
Bosphorus (1995), 376
Bowers v. Hardwick [1986], 386
Brazil, 264–77. See also Latin America
constitution writing in, 269–70
Constitutional Court, 269
corporatist constitutionalism in, 271–73
corporatist system in, 265, 267–69
developmental corporatism in, 244
early construction of state in, 266–67
Estado Novo under Vargas, 267
international law and, 239
jurisdiction of Supreme Court, 270
military regime in, 268
patronage in, 265
political system in, 264–77
re-definition of state’s legitimacy, 274–75
state structure, 264–66
structure-building in, 273
Brind and others v. Secretary of State for the
Home Department [1991], 399
Bugdaycay v. Secretary of State for the Home
Department [1987], 387
Bulgaria, Constitutional Court, 219
Burdov v. Russia (no 2) [2009], 223
caciquismo, 206
Caetano, Marcelo, 202
Campbell v. Mirror Group Newspapers Ltd
[2004], 400
Canada (Justice) v. Khadr [2008], 389
Canada, interpretation of laws in, 94
capitalism, early development of, 141
Carta del lavoro, 179–80
cartels, 143
Chile, 277–93. See also Latin America
Commission for Truth and Reconciliation
(Rettig Commission), 281
concertación, 277
corruption, 237
Constitutional Court, 279–80, 385–86
democratic transition in, 277–93
depoliticized democracy in, 288–89
international human rights law and, 415
international law and, 237
judicial structure building in, 277–78
Labour Code (1987), 288
Labour Plan of 1979, 286, 288
neo-corporatism in, 288
Pinochet regime in, 279–80, 285–87
political repression in, 78
proportionality principle in, 401–02
ratification of ILO convention by, 282
China, 94
  constitution (1982), 351
  constitutionalism in, 351–58
  Cultural Revolution, 355
  inclusionary structure in, 351–58
  legal system, 352–53
  patrimonialism in, 357–58
  structure-building role of judicial power in, 356–57
  weak statehood in post-Mao period, 354–56
Chinese Communist Party (CCP), 352
Chisholm v. Georgia [1793], 47, 61
Chorzów Factory (1928), 75
citizens, as holders of rights, 50
civil codes
  in European societies after 1789, 133
  France, 52
  Napoleonic Civil Code of 1804, 52, 140
Civil Procedure Code (Russia), 223
class conflicts, 137
  in Africa, 137, 233
  European state formation and, 231–32
  in Latin America, 293
  as source of inclusionary pressure, 137
class inclusion, crisis of, 136–54
class relations, depoliticization of, 190
classical, national constitutions, 10
classical constitutions. See also constitutions
classical ending power and, 33–50
  national political system and, 31–68
  national sovereignty and, 33–50
  rights and, 50
  society's functional structure and, 31–64
  sociological position of, 10
classical sociology, 419–20
Coca-Cola, 394
collectivism, 143
Collor de Mello, Fernando, 272
Colombia. See also Latin America
  constitution, 235, 237, 385–86
  Constitutional Court, 247–48, 291, 300
  constitutional rights in, 415
  ethnic centrifugalism in, 293
  indigenous rights in, 296
  international law and, 238
  paramilitary groups in, 247
  plurinational constitution making in, 296–97
  social and economic rights in, 291
  structure-building in, 247–48
Commission for Truth and Reconciliation (Rettig Commission), 281
Communism, collapse of, 216
concertación, 277, 287–88
Conciliation Act of 1896, 145
Conseils de prud'hommes, 144
Consolidation of Labour Laws (Brazil), 265
constituent power, 38–39
  classical theory of, 33–34
  emergence of doctrine of, 39–41
  eradication of, 382
  European constitutions in 19th century and, 44–45
  genealogy of concept of, 34–36
  Jacobin constitution of 1793 and, 43–44
  of litigation in national societies, 391–92
  monarchical constitution of 1791 and, 43–44
  multiplication of, 411–17
  national sovereignty and, 33–50
  of NGOs, 408
  paradoxes of, 43–46
  popular sovereignty and, 45–46
  revolutionary America and, 41–42
  sociological significance of, 38–39
  splitting or multiplication of, 382
Constitution Act (1982), 399
Constitution of Portugal, 202
Constitutional Courts, 15
  Benin, 336, 337
  Brazil, 269
  Bulgaria, 219
  Chile, 279–80, 385–86
  Colombia, 247–48, 291, 300
  creation of, 92
  Egypt, 362
  Germany, 374–75
  Hungary, 218–19
  indigenous rights and, 299–300
  Italy, 374–75
  Poland, 217–18
  political systems and, 193
  Portugal, 202
  Russia, 219–21, 224, 415
  South Africa, 319–20, 321
  Spain, 202
  systemic transformations and, 216
constitutional laws
  domestic-related litigations, 390–91
  inclusionary pressures and, 130–31
  inner- or inter-judicial generation of, 390
  inner-legal construction of, 388–90
  transnational
    formation of, 426–29
    national foundations of, 159–62
    rise of, 11
  constitutional revolutions, 36–37
constitutional rights
  global political system and, 69–101
  transformation of international law, 72–89
  inclusion of nations and, 163–230
  constitutional state, rise of, 42–43
  constitutionalism, 12–13
in Africa, 306–51
in China, 351–58

global, 12–13

internationalist analyses of, 16
pluralism and, 13–14
transnationalist literature on, 19–20
internationalist analyses of, 16
judicial, 297–98
in Africa, 314–15, 349–51
in Bolivia, 297
in Sub-Saharan Africa, 314–15
in Venezuela, 297
in Latin America, 235–306
in North Africa, 358–63
pluralism and, 13–14
rights-based, after 1945, 196–97
state fracture and inclusionary pressures, 131–32
structure building in Eastern Europe and, 211–30
in Sub-Saharan Africa, 306–51
transnationalist literature on, 19–20
constitutions
auto-constituent. See auto-constituent constitution
Bismarckian, 173
classical
constituent power and, 33–50
national political system and, 31–68
national sovereignty and, 33–50
rights and, 50
society’s functional structure and, 31–64
sociological position of, 10
definition of, 7–8
as embodiment of sovereign national will, 28–29
Jacobin constitution of 1793, 43
Meiji Constitution, 173–74
as part of state-building, 172
plurinational
block of constitutionality in, 299–300
in Bolivia, 296–97
in Colombia, 296–97
economic reforms, 300–01
in Ecuador, 296–97
indigenous rights, 298–99
Statuto Albertino, 172
Weimar Constitution, 176–77
Contra Corbalán Castilla y otros (2013), 401
Convention on the Privileges and Immunities of the United Nations (1946), 107
Convention on the Reduction of Statelessness, 114
Convention Relating to the Status of Refugees, 113
coronelismo, 266
corporations, 138
abolition of, 139–40
decline of, 142
transnational, 409–10

corporatist systems
in Africa, 313–14
in Bolivia, 293, 302–03
in Brazil, 265, 267–69
developmental, 253
in Germany, 197–200
in Ghana, 326–27
indigenous rights in, 301
in Italy, 197–200
in Japan, 197–200
in Latin America, 242–44
in Portugal, 205–07
in Spain, 205–07
in Sub-Saharan Africa, 313–14
Costa Rica, constitution, 237
Costello-Roberts v. UK [1993], 412
Council of Europe, 105, 216, 406
councils, 144
Councils of Conciliation, 145
courts
constituent role of interlinking of transnational or transjurisdictional community, 98–99
international human rights conventions and, 96–98
open texture of international law, 99–100
vertical power of international courts and, 95–96
factory, 145
global political system and, 90–101
international, 90–91, 95–96
quasi-constitutional position as institutions, 14–15
superior, 191
trade, 145
crisis of inclusionary structure, 243
Cultural Revolution, 355

Damião Ximenes Lopes, 412
Danske Bank, 410
d’Aspremont, Jean, 75
Date-Bah, Kofi, 329
Declaration of Independence, 46
Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 81
decolonization, 113
in Africa, 113, 234
in Asia, 113
impact on international human rights law, 117
deleagative democracy, 235–36
INDEX

*Delgado Páez v. Colombia* [1990], 412
*Democratic Republic of the Congo v. Rwanda* [2006], 77
*Deutsche Arbeitsfront*, 181
developmental corporatism, 244–45
developmentalist state, 189
*Diamond Trust Ltd v. Daniel Muwema Mulwa*, 341
Dispute Settlement Understanding, 370
*Doe v. Unocal* [2002], 394
*Dow Jones & Co v. Gutnick* [2002], 396
*Draft Declaration on Rights and Duties of States*, 102
*Dudgeon v. UK* [1981], 384

Eastern Europe
expulsion of minorities in, 113
international human rights law and, 216–17
structure building in, 211–30
systemic transformations in, 211–15
Economic and Social Council (ECOSOC), 72, 115, 406
economic rights, 133
ECOSOC Resolution 1503 (1970), 115
Ecuador
constitution, 235
indigenous rights in, 296
plurinational constitution making in, 296–97
Egypt
agreement with WHO in 1951, 86
Constitutional Court, 362
emergency courts, 360, 361
judiciary as instrument of coercion in, 360
overthrow of Mubarak, 359
Supreme Constitutional Court, 360
Supreme Judicial Council, 360
*Eichin Zambrano* (2013), 282
El-Ghobashy, Mona, 361
El-Morr, Mohammed, 361
*EMI Records Ltd & Ors v. British Sky Broadcasting Ltd & Ors* [2013], 403
empires. See also decolonization
collapse of, 119, 120–22
Erhard, Ludwig, 188
*ERT* (1991), 377
*Estado Novo*, 267
Estates-General, convention of, 34–35
ethnic conflicts. See also indigenous rights
in Africa, 312–13
in Colombia, 293
in Kenya, 339–40
European Commission of Human Rights, 85, 406
European Convention on Human Rights (ECHR), 70, 73, 97, 224–25, 226, 375, 376, 379, 384, 386, 414
European Court of Human Rights (ECtHR), 73, 85, 90, 96, 224, 376, 379, 386, 406, 411–12
European Court of Justice (ECJ), 372–80, 414
European Empires, fragmentation of, 113, 119.
See also decolonization
European Political Community, 372
European Union, 216, 371–74, 382
ExxonMobil, 394
factory courts, 145
Ferrini v. Germany [2004], 390
Filartiga v. Pena Irala [1980], 389, 393
*Flaminio Costa v. E.N.E.L.* [1964], 373–74
Fletcher v. Peck [1810], 47, 62
France
Civil Code, 52
Constitution (1795), 43
legislative supremacy in, 93
Napoleonic Civil Code of 1804, 52, 140
National Assembly, 49
post-Thermidorean, 32
trade unions, 142
Franco, General Francisco, 202, 204, 205
Francovich (1991), 377
Frei, Eduardo, 283
French Revolution, 34–35, 40, 44, 48–49, 60, 140, 419
Fujimori, Alberto, 236
Fundamental Labour Law (Fuero del Trabajo) of 1938, 205
Gabon, 335
Geitling (1959), 372
General Confederation of Labour (Argentina), 255
Geneva Conventions, 112
Genocide Convention (1948), 76, 85, 115
*Gerardo Ruiz Zambrano v. Office national de l’emploi* [2011], 378
Germany
under Bismarck, 171
Bismarckian constitution, 173
cartels, 143
Constitution (1919), 92
Constitutional Court, 374–75
developmentalist policies in, 168–69
Grundgesetz, 187, 189, 192, 199
legislature in 1929–1933, 155
national statehood in, 181–82
post-1945 constitution, 191–93
post-war corporatism in, 197–200
post-war industrial production, 197
quasi-corporatist economic policies in, 197–200
state-building in, 170–76
collection making as part of, 172
index

inclusionary structure (cont.)
in North Africa, 358–63
political rights and, 132, 134
social inclusion
crisis of, 130–62
state fracture and inclusionary pressures, 130–36
of society, 186
in Sub-Saharan Africa, 306–51
transnational rights and, 383
independent territories, 123–24
India, 163–64
Indian Supreme Court, 163
indigenous people
rights of, 282
structural adjustment policies and, 301–02
indigenous rights, 293–306
in Bolivia, 296, 299, 415
in Colombia, 296
Constitutional Courts, 299–300
in corporatist systems, 301
in Ecuador, 296
in Kenya, 415
in Latin America, 293–306
plurinational constitutions and, 298–99
Institute of International Law, 78
intellectual property, 403
Inter-American Commission on Human Rights, 73, 294
intergovernmental domain, 110
Interhandel (1959), 97
international constitutional law, rise of, 193–96
structure-building in Eastern Europe and, 216–17
international law, 17, 106–07
classical-sociological account of, 420
corpus of, 102–29
global inclusionary system and, 106–16
rights and autonomy of global legal structure, 128–29
constitutional change in international legal order after 1945, 82
constitutional power of, 104–05
erosion of imperial power and, 119–20
expansion of World War II military conflict and, 111–12
external structure of national states and, 105
globalization of statehood and, 126
human rights conventions and, 85–86
human rights norms and, 118–19
individualization of, after 1945, 116
individuals as subjects of, 405
judicial promotion of, 90–91
Latin America and, 237–39
and legitimation of new independent territories, 124–26
manifest individualization of, 82
non-governmental organisations and, 407–08
positivist constructions of, 74–76
refugees and, 112–13
relativization of national sovereignty and, 88–89
rise of, 126–28
rise of rights as constitutional principles for, 114
sociology of, 17
spread of global legal phenomena and, 106–16
state sovereignty and, 103–04
statehood as source of responsibility in, 83–84
states’ promotion of, 136
superior courts as transformers of, 191
transformation of, 72–89
war crimes trial and, 84–85
International Law Commission (ILC), 78, 85, 102
International Monetary Fund (IMF), 108, 300
international organizations, 107–08
human rights conventions and, 108–10
judicial review of, 109
International Refugee Organization, 113

international human rights law
decolonization’s impact on, 117
reinforcement of political systems through, 193–96
structure-building in Eastern Europe and, 216–17

512

Downloaded from https://www.cambridge.org/core. IP address: 54.191.102.95, on 31 Mar 2017 at 11:34:09, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/CBO9781139833905
Internet regulates, 395–96

internet regulation, 395–96

Italy
Constitutional Court, 374–75
corporatism in, 179–80
developmentalist policies in, 168–69
Italian Constitution (1948), 187, 192, 195
legislature in early 1920s, 155
national statehood in, 181–82
post-1945 constitution, 191–93
post-war corporatism in, 197–200
post-war industrial production, 197
quasi-corporatist economic policies in, 197–200
relatively weak statehood after 1945, 197
state-building in, 170–76
constitution making as part of, 172
second stage, 172–74
third stage, 174–76
Statuto Albertino, 172
structure-building impact of rights in, 168–202
totallitarian regime in, 169
trasformismo strategy, 172
unification in 1860s, 170
weak political system in, 169

Jacobin constitution of 1793, 43

Japan
anti-monopoly laws, 197
corporate actors in, 184
developmentalist policies in, 168–69
Japanese Constitution (1947), 187
labor unions, 177–78
Labour Relations Adjustment Law of 1946, 189
Labour Union Law of 1945, 189
Meiji, 171
Meiji Constitution, 173–74
national statehood in, 181–82
post-1945 constitution, 191–93
post-war corporatism in, 197–200
quasi-corporatist economic policies in, 197–200
relatively weak statehood after 1945, 197
state-building in, 170–76
constitution making as part of, 172
second stage, 172–74
third stage, 174–76
structure-building impact of rights in, 168–202
Taisho democracy, 174
Tokugawa era, 171
totallitarian regime in, 169
weak political system in, 169
Japanese Constitution (1947), 187, 195
Japanese Supreme Court, 192
judicial constitutionalism, 297–98
in Africa, 314–15, 349–51
in Bolivia, 297
in Sub-Saharan Africa, 314–15
in Venezuela, 297
Judicial Service Commission (Kenya), Kenya, 344
Judiciary Transformation Framework (Kenya), Kenya, 344
Jurisdiction of the Courts of Danzig (1928), 83
jus cogens theory, 76–77, 96, 109
Justicialista movement, 251–52, 257, 262
Kadi (2008), 389
Kadi cases, 109
Kadic v. Karadžić [1995], 393
Kalashnikov v. Russia [2001], 224
Kelsen, Hans, 102
Kenya, 337–51. See also Africa
African Socialism in, 338
Bomas draft of constitution, 342–43
custom (2010), 343–44
Constitution of Kenya Review Act, 340
Constitution of Kenya Review Commission, 340
custom writing in, 341–42
customial reform, 340–41
ethnic conflicts in, 339–40
High Court, 343
indigenous rights in, 415
Industrial Court, 337
International Criminal Court and, 345
international law and state structures in, 345–47
judicial reforms in, 344–45
Judicial Service Commission, 344
Kalenjinization of public offices in, 339
majimboism in, 339
National Constitutional Conference, 341
post-colonial political system in, 337–39
public accountability in, 415
transnational judicial structure building in, 337–51
Wako draft of constitution, 342–43
Kenyatta, Jomo, 337–38
Kényatta, Jomo, 337–38
Kérékou, Mathieu, 334–35
Khubulani v. Barclays National Bank Ltd [2002], 408
Kibaki, Mwai, 341
Köbel v. Royal Dutch Petroleum [2013], 393
Kirchner, Nestor, 263
Kjaer, Poul, 198

513
INDEX

Konstantin Markin v. Russia [2012], 224
Küçükdeveci (2010), 377
Kurczewski, Jacek, 215

La última tentación de Cristo v. Chile [2001], 384
Labour Disputes Conciliation Act, 178
labour laws, 145–46
Argentina, 250–52
Chile, 286, 288
Consolidation of Labour Laws (Brazil), 265
Fundamental Labour Law (Fuero del Trabajo) of 1938, 205
Ghana, 326–27, 329
inclusionary pressures and, 145–46
Japan, 189
Portugal, 208–10
South Africa, 323–24
Spain, 208–10
Labour Plan of 1979 (Chile), 286, 288
Labour Relations Act (South Africa), 324
Labour Relations Adjustment Law of 1946 (Japan), 189
Labour Union Law of 1945 (Japan), 189
LaGrand (Germany) v. United States of America [2001], 92
Latin America
Argentina, 249–64
Brazil, 264–77
Chile, 277–93
class conflicts in, 233, 293
constitutionalism in, 235–306
corporatist constitutional experimentation in, 242–44
delegative democracy in, 235–36
developmental corporatism in, 244–45
developmentalist economic policies in, 241–42
hyper-politicization of political systems in, 245–46
inclusionary structure in, 235–306
indigenous rights in, 293–306
international judicial actors in, 294–95
international law and, 237–39
national states, 293–306
origins of weak state structures in, 240–41
political repression in, 78
state-centric distribution of material rights in, 304–05
statist politicization in, 243
weak inclusionary forces in, 241–42
Lauterpacht, Hersch, 75
Law of Professional Associations (1945), 250
Law on Judges (China), 352
Lawless (1961), 85
Lawrence et al. v. Texas [2003], 386
Laws on Criminal Procedure (China), 352
Lawyer's Law (China), 352
Le Chapelier, Jean [Isaac René Guy], 40
Le Chapelier law of 1791, 40
League of Nations, 112, 115
legal inclusion, crisis of, 131–32
legal structure, rights and autonomy of, 128–29
Legge Rocco, 179
Ley de Pacificación Nacional, 278
Ley de Reordenamiento Sindical (1983), 255
Lisbon Treaty, 378
litigants, 390
litigation
auto-constituent constitution and, 383–96
extra-territorial, 393–94
right-based, 394–96
transnational norm construction, 393
localism, persistence of, 141
Loizidou v. Turkey [1995], 376
Lotus decision (1927), 75
Lubbe v. Cape [2000], 394
Lula da Silva, Luiz Inácio, 274
Maastricht Judgment (1993), 379, 384
Maastricht Treaty, 378
Madison, James, 36, 48
Magistratura del trabajo, 179
Maina Mbacha v. Attorney General [1989], 340
majimboism, 339–40
Mali, 335
Mansour, Adly, 362
Mapiripán Massacre v. Colombia [2005], 247
Marckx v. Belgium [1979], 412
margin of appreciation doctrine, 97
Marshall, John, 47
Marx, Karl, 140, 422
material inclusion, 290
Meiji Constitution, 173–74
Meiji Japan, 171
Menem, Carlos, 236, 254, 258, 261, 277
minorities, 114–15
modern society, formation of, 425–26
Moi, Daniel, 339, 346
monarchical constitution of 1791, 43
monopolies, 143
Montevideo Convention (1933), 121
Morales, Evo, 296
Morsi, Mohamed, 362
Mubarak, Hosni, 359
multinational corporations, 409–10
Munitions Act, 1915, 150
Musolin, Benito, 179–80, 182
Namibia
constitution, 307
South Africa's occupation of, 123

514

Downloaded from https://www.cambridge.org/core. IP address: 54.191.102.95, on 31 Mar 2017 at 11:34:09, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/CBO9781139833905
Namibia (1971), 77
Napoleonic Civil Code of 1804, 52, 140
national constitutional law, rise of, 22–30
National Council of Corporations, 179
national courts, as legal transformers, 92
National People's Congress (NPC), 352
National Socialist Party (NSDAP), 181, 183, 184
national societies, 380
constituent power of litigation in, 391–92
self-originating, 367
stabilization by production of rights, 419
national sovereignty, 31, 70
constituent power and, 33–50
European constitutions in 19th century and, 44–45
paradoxes of, 43–46
popular sovereignty and, 45–46
revolutionary America and, 41–42
sociological significance of, 38–39
national statehood, sociological theory of, 424–25
national states, 293–306
classical-sociological account of, 420
constitutionalism and, 131–32
crisis of class inclusion and, 136–54
crisis of legal inclusion and, 154–58
crisis of social inclusion and, 130–62
democratic legislatures in, 155–56
inclusionary pressures in, 422–24
mass-democratic inclusion in, 156–57
paradoxical nature of, 151–52, 153–54
political rights and, 135–36
state fracture and inclusionary pressures, 130–36
transnational constitutional laws and, 159–62, 420–22
negative freedoms, 51
negative rights, 55
neo-corporatism, 198, 288
New Zealand, 386
Niger, 335
Nigeria, constitution, 315
Njoya and Others v. Attorney General and Others [2004], 342
Nkrumah, Kwame, 325, 326
Nold (1974), 375
non-governmental organisations (NGOs), 405–09
constituent power of, 408
international law and, 407–08
non-self-governing territories, 122
normative inclusion, 290
North Africa
constitutionalism in, 358–63
inclusionary structure in, 358–63
international laws and, 94
Norwegian Government Pension Fund, 410
Nunca más (Never Again) report, 254
Nuremberg Tribunal, 84
Okanda v. Republic [1970], 340
Ongania, Juan Carlos, 252
Oppenheim, Lassa, 82
Organization of American States, 73
Paraguay, international law and, 238
patrimonialism, 245
in Africa, 311–12
in Chile, 357–58
patronage, 265
People's Police Law (China), 352
Permanent Court of International Justice (PCIJ), 75, 83
Perón, Juan
impeachment of Supreme Court justices by, 249
Justicialista movement and, 251
labour policies, 251–52
Persönlichkeitsrecht, 391
Peru, 236
Pham v. Secretary of State for the Home Department [2015], 400
Philadelphia Convention, 35
Pierson v. Secretary of State for the Home Dept [1998], 388
Pinheiro principles, 385
Pinochet, Augusto, 277, 278, 279–80, 285–87
Pinochet rulings, 389
plurinational constitutions
block of constitutionality in, 299–300
in Bolivia, 296–97
in Colombia, 296–97
economic reforms and, 300–01
in Ecuador, 296–97
indigenous rights and, 298–99
Poland
Constitutional Court, 217–18
Martial Law Decree of 1981, 215
trade unions, 215
political rights
class conflicts and, 137
inclusionary structure and, 132, 134
as instruments of inclusion, 135–36
as second tier in inclusionary structure, 135
political systems
Constitutional Courts and, 193
constitutional laws and, 29–30
constitutional rights and, 69–101
definition of, 4–5
external/societal position of
post-authoritarian states, 194–96
in Germany, 169
INDEX

political systems (cont.)
global
  constitutional rights and, 69–101
  courts and, 90–101
hyper-politicization of, 245–46
inclusionary structure of, 5–7
indicators of autonomy of, 26–27
international human rights law and,
  193–96
interpenetration between national and
  international law, 27–28
  in Italy, 169
  in Japan, 169
  in Kenya, 337–39
  in Latin America, 245–46
  loss of differentiation of, 158
  in Portugal, 207
  production of legislation in, 157–58
  reinforcement through international rights
  law, 193–96
  reprivatization of, 158
  rights and, 52–53, 55–56
  in Soviet Union, 214
  in Spain, 207
Popular Participation Law (Bolivia), 296
Portugal
  Constitutional Courts, 202
  corporatist system in, 205–07
  democratic transitions in, 202–11
  external organization of state in
    post-authoritarian, 210–11
  labour laws, 208–10
  political system of pre-transitional, 207
  rise of judicial power in, 203–04
positive rights, 51
post-Thermidorean France, 32
power, as a public phenomenon, 20–21
power, constituent, 38–39
  classical theory of, 33–34
  emergence of doctrine of, 39–41
  eradication of, 382
European constitutions in 19th century,
  44–45
  genealogy of concept of, 34–36
  Jacobin constitution of 1793, 43–44
  litigation in national societies of, 391–92
  monarchical constitution of 1973, 43–44
  multiplication of, 411–17
  national sovereignty, 33–50
  NGOs of, 408
  paradoxes of, 43–46
  popular sovereignty, 45–46
  revolutionary America, 41–42
  sociological significance of, 38–39
  splitting or multiplication of, 382
proportionality doctrine, 97, 396–404
Protocol Relating to the Status of Refugees
  (1967), 85
Prussia, 41, 145
Prussian Civil Code (Allgemeines Landrecht,
  1794), 402
Public Civil Action Act of 1985, 269
Putin, Vladimir, 221–22
R (on the application of Alconbury Developments
  Ltd) v. Secretary of State for the
  Environment, Transport and the Regions
  and other cases [2001], 400
R v. Bow Street Metropolitan Stipendiary
  Magistrate and others, ex parte Pinochet
  Ugarte [1999], 389
R v. Chief Immigration Officer, Heathrow
  Airport, ex p Salamat Bibi [1976], 387
R v. Lord Chancellor ex p Witham [1997], 387
R v. Oakes [1982], 399
R v. Secretary of State for Home Department ex p
  Mohammed Fayed [1996], 387
R v. Secretary of State for the Home Department,
  ex parte Begum [1975], 387
R v. Secretary of State for the Home Department,
  ex parte Daly [2001], 398
R v. Secretary of State for the Home Department,
  ex parte McQuillan [1995], 387
R v. Secretary of State for the Home Department,
  ex parte Phansopkar [1975], 387
R v. Secretary of State for the Home Department,
  ex parte Simms and another [1999], 388
Rawlings, Jerry, 328
Refugee Law, 113
  refugees, 112–13
  Reprapation case (1949), 86, 107
Report on the Protection of Fundamental Rights
  as Community Law is created and
  developed, 378
Reservations to the Genocide Convention
  (1951), 81
Reittig Commission, 281
Rhodesia, 121
rights, 50
  acts of legislation and, 190
  citizens as holders of, 50
  classical constitutional revolutions and,
    59–60
  constituent power and, 56–57
  constitutional
    52–53
  courts and, 90–101
  economic, 133
  as element of constituted power, 57

516
inclusionary function of political system and, 55–56
legislative actors and, 404–11
multiplication of constituent power and, 411–17
negative, 55
political
class conflicts and, 137
inclusionary structure and, 132, 134
as instruments of inclusion, 135–36
as second tier in inclusionary structure, 135
positive, 51
pre-defining of national constituent power, 57–59, 60–61
private parties and, 411–17
production of legitimacy and, 191
in revolutionary America, 53–55, 61–62
as second founding norm of constitutionalism, 55
social and material, 137
as sources of legal authority, 412–13
state as exclusive source of, 54
subjective, 51
transnational, 383, 415, 417–18, 427
Robespierre, Maximilien, 58
Roe v. Wade, 391
Rosendo Cantú et al. v. Mexico [2011], 385
Rothmans of Pall Mall (NZ) Ltd v. Attorney-General, 386
Russia
Administrative Litigation Code (2015), 223, 227
anti-government litigation in, 223–24
autonomy of legal order in, 225–27
cases, 227
Civil Procedure Code (2002), 223
Constitution (1993), 220
Constitutional Court, 219–21, 224, 415
Growing power of judiciary in, 228–29
impact of international law in, 220–21
incidence of, 226
interaction between national and international law in, 227–28
international human rights law and, 415
judicial reform under Putin's presidency, 221–22
legal accountability of state authorities in, 222–23
legal system in, 222–23
Putin's presidency, 221–22
shadow justice in, 228
weaknesses of public order in Soviet Era, 220
Russian Empire, collapse of, 113
Rutli (1975), 375
Rwanda. See also Africa atrocities in, 307
S v. Makwanyane [1995], 322
Salazar, António de Oliveira, 202, 204
Sale v. Haitian Centers Council, 384
Salgoil (1968), 377
Sarney, José, 271
Scandinavia, legislative supremacy in, 93
Schmidberger (2003), 377
self-determination, right to, 122
shadow justice, 228
Siedler v. Western European Union, 109
Sieyès, Emmanuel-Joseph, 34–36, 44, 48
Simmenthal II (1978), 377
single persons, allocation of rights to, 139
Slaght communications inc v. Davidson [1989], 398
Smith and Grady v. UK [1999], 384, 399
Smith, Ian, 123
Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria (2001), 409
social and material rights, 137, 144–45
social inclusion. See also inclusionary structure
crisis of, 130–62
state fracture and inclusionary pressures, 130–36
social movements, 409
societies
decline of corporate life and, 141–43
formation of, 425–26
national, 380
constituent power of litigation in, 391–92
self-originating, 367
stabilization by production of rights, 419
nationalization of, during World War I, 148
pre-national corporate structure and, 139
separation of private-legal sphere in, 141
structures for representing economic interests in, 141–43
Solange I (1974), 375, 384
Solange II (1986), 380
Sosa v. Alvarez-Machain [2004], 393
South Africa, 317–25
apartheid in, 317–18
Bill of Rights (1983), 318
constitution writing in, 319–20
Constitutional Assembly, 319, 321
Constitutional Court, 319–20, 321
decolonization in, 234
domestic jurisprudence and international law in, 322–23
interim constitution in 1994, 318–19
judicial constitutional writing in, 320–21
Labour Relations Act (1995), 324
INDEX

South Africa (cont.)
  occupation of Namibia, 123
  organized labour in, 323–24
  post-colonial period in, 317–18
  rights abuses in, 78
  transition in, 318
  transnational judicial structure building in,
  317–25
South America
  class conflicts in, 137
  systemic transformations in, 234
South West Africa case, 77
Southern Africa, 94
sovereign nation, 130
sovereignty, 31
  constituent power and, 33–50
  European constitutions in 19th century
  and, 44–45
  international human rights law and, 70
  international law and, 88–89, 103–04
  paradoxes of, 43–46
  popular, 45–46
  revolutionary America and, 41–42
  sociological significance of, 38–39
  state, 103–04
Soviet Union
  collapse of, 79, 119
  political system in, 214
  quasi-feudal disaggregation in, 214
  weaknesses of public order in, 220
Spain
  Constitution (1931), 92
  Constitution (1978), 202
  Constitutional Court, 202, 208
  corporatist system in, 205–07
  democratic transitions in, 202–11
  external organization of state in
  post-authoritarian, 210–11
  labour laws, 208–10
  political conditions under Franco, 78
  political system of pre-transitional, 207
  rise of judicial power in, 203–04
  Second Republic (1931–1939), 204
Stamp Act, 58
state constitutions, 46
state sovereignty, 103–04
state-building, 233–34
  in authoritarian states, 170–76
    first stage of formation, 170–71
    second stage, 172–74
    third stage, 174–76
  constitution-making as part of, 172
  in Germany, 170–76
  in Italy, 170–76
  in Japan, 170–76
  states, 293–306
  classical-sociological account of, 420
compensatory, 186
constituted community of, 76
constitutionalism and, 131–32
  crisis of class inclusion and, 136–54
  crisis of legal inclusion and, 154–58
  crisis of social inclusion and, 130–62
  democratic legislatures in, 155–56
  developmental, 253
  as exclusive source of, 54
  expansion of national statehood, 118
  global inclusionary structure and, 116–28
  hyper-politicization of, 253
  as inclusionary legislative centre of
  nationalized societies, 146–47
inclusionary pressures in, 422–24
  mass-democratic inclusion in, 156–57
  paradoxical nature of, 151–52, 153–54
  political rights and, 135–36
  post-colonial, 153
  proliferation of, 116–28
  re-privatization of, 152
  state fracture and inclusionary pressures,
  130–36
transnational constitutional laws and,
  159–62, 420–22
weak statehood
  in Africa, 310–11, 314
  in Ghana, 328
  in post-Mao China, 354–56
  in post-war Italy, 197
  in post-war Japan, 197
Statute of Rome, 80
Statuto Albertino, 172
Stauder v. City of Ulm [1969], 375
Stork (1959), 372
Structural Adjustment Programmes (SAPs),
  300, 301–02
Sub-Commission on the Prevention of
  Discrimination and the Protection of
  Minorities (1947), 115
subjective rights, 51
Sub-Saharan Africa
  class conflicts in, 233
  constitutionalism in, 306–51
  corporatist system in, 313–14
  ethnic conflicts in, 312–13
  inclusionary structure in, 306–51
  international law and state structures in,
  315–16, 347–48
  judicial inclusion in, 315
  neo-patrimonialism in, 311–12
  post-independence states of, 153
  pre-transitional states in, 309–10
  rise of judicial power in, 308–09
  transnational judicial constitutionalism in,
  314–15
  weak statehood in, 310–11, 314
superior courts, as transformers of international law, 191
supra-national jurisdictions, 384
Supremacy Clause, 46
Suzuki v. Japan [1952], 192
Syndical Statute (1943), 250

Taisho democracy, 174
Tarifvertragsgesetz, 189
Tarifvertragsordnung, 176
Tavita v. Minister of Immigration [1994], 386
Teubner, Gunther, 20
Texaco, 394
Third Estate, 34–35, 48
Thoburn v. Sunderland City Council [2002], 388
Togo, 335
Torture Convention, 389
Torture Victim Protection Act, 394
trade courts, 145
trade unions, 141–43
transnational constitutional laws
formation of, 426–29
national foundations of, 159–62
rise of, 11
transnational constitutions, 8
transnational corporations, 409–10
transnational judicial constitution, 159–60, 185–86
transnational judicial democracy, 95
transnational law, 16–17
transnational rights, 383, 415, 417–18, 427
Treatment Action Campaign (2002), 324
Treaty Establishing the European Coal and Steel Community (1951), 373
Treaty on European Union (TEU), 372
Treaty of Rome, 372
Tunisia, 362
Turgot’s edict of 1776, 54

ultra vires, 389, 413
UN Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), 103
United Kingdom
auto-constituent extension of public power in, 413–15
courts, 94
human rights cases in, 386–88
public authority in, 414
United Nations, 105
Charter, 73, 76, 80, 81, 83, 88, 102, 108, 119, 121, 122, 406
Convention on the Elimination of All Forms of Racial Discrimination, 85
Convention on the Reduction of Statelessness, 114

Constitution Relating to the Status of Refugees, 113
Constitution relating to the Status of Stateless Persons, 114
Declaration on Human Rights Defenders (1998), 406
Declaration on Indigenous Rights, 308
decolonization and, 122–23
General Assembly, 122, 405
Human Rights Commission, 72, 80, 342, 410
Human Rights Committee, 412
human rights function of, 107
immunity from suit, 109
legal personality, 86
Torture Convention, 389
Working Group on Indigenous Populations, 294
United Nations Declaration on the Rights of Indigenous People, 294
United Nations Educational, Scientific and Cultural Organization (UNESCO), 72
United Nations High Commissioner for Refugees (UNHCR), 113
United States
American Revolution, 35–36
Declaration of Independence, 46
Federal Constitution (1791), 35, 46, 51, 61, 165
human rights in, 165
Supreme Court, 61, 165
Universal Declaration of Human Rights (1948), 71, 104, 113, 115, 370
Unocal (2002), 394
UPC Telekabel Wien GmbH v. Constantin Film Verleih GmbH and Wega Filmproduktionsgesellschaft mbH, 403
Upper Silesian Convention of the League of Nations, 83
Urrutia Villa v. Ruiz Banger [2009], 282, 385
USA, Constitution, 36, 47, 48, 52, 62, 165

Van Gend en Loos (1963), 373–74
Vanhorne’s Lessee v. Dorrance [1795], 61
Vargas, Getulio, 236, 265, 267, 272
Velasquez Rodriguez v. Honduras [1988], 412
Venezuela
constitution, 235
international law and, 237
judicial constitutionalism in, 297
judicial corruption in, 236
Verdross, Alfred, 75
Vergara Toledo v. Ambler Hinojosa [2010], 282, 385–86
Videla, Jorge Rafael, 252
Vienna Convention on the Law of Treaties, 77, 119
INDEX

Vienna Declaration and Programme of Action (1993), 79, 216
Vienna Declaration and Programme of Action, 51
Volta Aluminium Co Ltd v. Akuffo and Others, 330

Wachauf (1989), 377
Waite and Kennedy v. Germany, 109
weak statehood
in Africa, 310–11, 314
in Ghana, 328
in post-Mao China, 354–56
in post-war Italy, 197
in post-war Japan, 197

Weimar Constitution, 176–77
Weimar Republic, 174, 176–77, 189
West European Empires, collapse of, 119
West German Constitutional Court, 199
Westminster parliament, 156

Wilson, Harold, 121
Wilson, Woodrow, 149
Wilson v. First County Trust Ltd [2003], 398, 400
Wiwa v. Royal Dutch Petroleum Co., 392
World Bank, 108, 300
World Health Organization (WHO), 86
World Trade Organization (WTO), 23, 370–71, 382
World War I, 148

X and Y v. the Netherlands [1985], 412

Yassin Abdullah Kadi and Al Barakaat
International Foundation v. Council of the European Union and Commission of the European Communities [2008], 389

Yeltsin, Boris, 219, 221

zaibatsu, 181, 197
Zaire, 335
Zwangsschlichtung, 177