Index

Abebe, S 418
abortion rights 302–3, 440–51
Abrams, J 291, 292, 296, 297, 298
Abrams, K 58
Africa, female genital mutilation 426
African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 98, 418
African National Congress (ANC) see South Africa, women and constitution-making, African National Congress (ANC)
African Union (AU), African Women’s Decade 2010–20 120
Afsaruddin, A 417
ageing population and voting rights 153–4, 155–8
Ahmed, L 417
Al Ali, Z 108, 125
Albertyn, C 6, 47–80, 93
Algeria 143–4, 145, 150–51, 405
alien status 394–6, 397–8, 402
Allen, D 295
Allen, M 4, 7–8, 195–217
allegiance, nationality as 391, 399
Alonso, A 27
Altman, A 469
Amar, A 2, 513, 514
An-Na‘īm, A 88
Anagnostou, D 8, 255, 268–89, 338, 339, 340, 351
Anderson, E 300
Andrew, C 189
Annesley, C 177
Ansolabehere, K 452
Antić Gaber, M 335, 336, 337
apartheid policy and racial inequality, South Africa 48–9
Arato, A 22–3, 63, 74
Arbour, L 494
Arendt, H 404–5
Argentina 169, 171, 177, 178, 296, 299, 492
Armstrong, A 102
Ashe, M 416
Askew, I 426
‘Athens Declaration’ supporting gender parity 283, 324
Augustine, P 452
Augustine-Adams, K 392
Aung, T 2
Australia
Aboriginal sovereignty 359
Commonwealth Electoral Act 156–7
Constitution and gender equality 151–2
Constitution-making, women’s role in 1–2
federal law and treaty-making and implementation 148, 149
feminist engagement with social programmes 189
formalism and fixed-meaning approach 233
franchise with no race or sex exclusions, South Australia 170
indigenous women and constitutional recognition see indigenous women and constitutional recognition, Australia
legal pluralism and family law 183
literacy test and right to vote 168
national federation 169
Sex Discrimination Act 151–2
sex of leaders, central and regional governments 178
voting rights 156–7, 179
women judges 299, 304–5
women’s citizenship equality 400
women’s representation in central and regional governments 177
Australia, cases
Austin v Commonwealth 305
Castlemaine Tooheys Ltd v South Australia 305
Kartinyeri v Commonwealth 159, 305, 366
Lange v Commonwealth 160
Mabo v Queensland (No 2) 359
Monis v The Queen 246
Mulholland v Australian Electoral Commission 305
Newcrest Mining (WA) Ltd v Commonwealth 159
Permanent Trustee Limited v Commissioner of State Revenue 305
Roach v Electoral Commissioner 160
Street v Queensland Bar Association 304
Tasmania v Commonwealth 160
Austria 169, 171, 177, 178, 184

Backhouse, C 295
Baer, J 246
Baer, S 125, 300, 310–11
Baines, B 3, 9, 83, 167, 190, 231, 269, 271, 290–319, 415, 463
Baker, W 295
Baldwin, M 392, 398
Balkin, J 245
Ballington, J 65
Bamford-Addado, J 299
Banda, F 84, 102
Barak-Erez, D 300, 308–9, 311
Barendt, E 475, 476
Barker, J 372, 374
Barnard, C 255
Barnes, T 98, 99, 100
Barrera, A 422
Barry, B 431
Bastarache, J 303
Bartlett, K 222, 223, 242, 243, 295, 300

Bateup, C 88, 93
Baudino, C 282
Bauer, G 98, 100, 300
Baum, M 335
Beall, J 53
Beccalli, B 332
Beck, C 449
Becker, H 427
Beckwith, K 175
Beer, L 516, 517, 520
Beevi, F 299, 300, 305
Begum, S 305–6
Behnke, N 169, 183
Behrendt, L 382
Beijing Declaration and Platform for Action (Beijing Platform) 109–10, 324–5
Belgium
conditional marital nationality laws 397
consociational democracy 282
constitutional amendment processes 326–7
gender quotas 281–3, 325, 341–4
judicial office quotas 179, 180, 343
legal pluralism and family law 183–4
multi-national federation 169
parity democracy 281–2
sex of leaders, central and regional governments 178, 281
women’s movement’s efforts to change state architectures,
Flanders 171
women’s representation in central and regional governments 177
Bell, C 25, 109, 126
Bell, V 310
Benin 299, 495
Prisque Z. Hossou Djossou v Plan International Benin 495, 498
Bennett, T 379
Benz, A 169, 183
Beramendi, P 163
Bereni, L 283, 328
Berger, L 300
Bergsson, B 21
Berkin, C 513, 514
Berkovitch, N 402
Beveridge, F 256
Birenbaum, J 69
Black, C 246–7
Blackstone, W 393
Blasi, V 474
Blokker, P 21
Blount, J 4, 13, 125
Böckenförde, M 120, 121, 125, 128
Bodnar, A 336
Bohlzendal, C 189
Böhn, S 158
Boivin, M 295
Bond, E 179
Bond, Jade 11, 438–62
Bond, Johanna 6, 81–106, 418, 421
Bonnie, R 157
Boonstra, H 447, 457
Borgmann-Prebil, Y 261
Borrows, J 370, 373
Bosnia-Herzegovina 169, 178
Botswana 89, 98, 300, 312
Boyle, C 295
Brace, P 447
Brandt, M 33, 34, 118
Brazil 150, 156, 157–8, 169, 177, 178, 299, 451
Bredbenner, C 244, 392
Brems, E 247
Brison, S 463, 467, 469
Britton, H 100
Britz, G 310–11
Brock, P 364
Brodsky, G 3, 483, 489, 494
Brown, A 25–6
Brown, K 126
Bowen, D 166
Budlender, D 72
Buechler, S 454
Bulgaria 291, 312
Bunch, C 95
Burchard, S 98, 99, 100
Burma 2, 413
Burton, P 300
Burundi 299
Bushell, A 448
Butt, S 306
Cahn, N 125
Cairney, P 24
Calabresi, G 453
Cameron, J 473
Canada
abortion rights 171, 223, 442–3, 448, 452, 453
British North America Act 1, 231–2
Charter of Rights and Freedoms 180, 234, 272, 303, 368, 370, 371, 375, 452, 471–2, 474–5, 489, 490, 494
citizenship applications and rights 225–6
competing constitutional values and proportionality 239
desertion laws, pre-family law reform 164
divorce control 180
federal law and treaty-making 148–9
feminist engagement with social programmes 189
gender and division of powers 185–7
hate speech prohibition 477–8
Indian Act 168, 372, 407
indigenous peoples’ sovereignty 359
indigenous women and constitutional recognition see indigenous women and constitutional recognition, Canada
judicial gender parity 291
judicial office quotas 179–80
Legal Education and Action Fund 180
legal pluralism and family law 184
marital nationality laws 392, 396
multi-national federation 169, 170
multiculturalism 415, 419–20
pornography regulation 471–5
poverty and gender inequality 489
proportionality test in equality claims 224
Quebec 27, 36, 187
same-sex marriage campaigns 185, 186–7
sex of leaders, central and regional governments 178, 179
social and economic rights 489, 490, 494
unemployment law 229
women judges 299, 303–4
women’s representation in central and regional governments 177, 180

Canada, cases
Action travail des femmes v Canadian Railway Co. 245
Andrews v Law Society of British Columbia (Andrews) 303, 304
B. (R.) v Children’s Aid Society of Metropolitan Toronto 303
Benner v Canada (Secretary of State) 225–6, 228
Blencoe v British Columbia (Human Rights Commission) 303
Bliss v Attorney General of Canada 229, 244
Brooks v Canada Safeway 244
Canada (AG) v Lavell 407
Carter v Canada 303
Edwards v Canada 180, 231–2
Egan v Canada (Egan) 304
Eldridge v British Columbia (Attorney General) 494
Godbout v Longueuil (City) 303
Gosselin v Attorney General (Quebec) 494, 497
Human Rights Commission (Sask) v Engineering Students’ Society 478
Irwin Toy v Quebec 474
Kahkewistahaw First Nation v Taypotat 303
Law v Canada 242, 303
Little Sisters Book and Art Emporium v Canada 472, 473, 474
McKinney v University of Guelph 304
Miron v Trudeau 304
Native Women’s Association of Canada v Canada 372–4
New Brunswick (Minister of Health and Community Services) v G. (J.) 303
R v Butler 246, 472–3, 474, 476
R v Kapp 303
R v Keegstra 471, 477
R v Lavallee 242
R v Morgentaler 223, 242, 303, 438, 442–3, 448, 453
R v Oakes 471
R v Turpin 304
Thibaudau v Canada 304
Thompson Newspapers 471
Tremblay v Daigle 456
Withler v Canada 242
care work of parents, and citizenship 261–3
Carey, J 22
Carlaw, L 332
Cassese, A 146
Cassola, A 181–2, 184, 196–7
Celis, K 171, 285
Cepeda, M 440, 445, 446
Chang, W 119, 123, 125, 323
Chanok, M 52, 84, 86, 102
Chappell, L 174–5, 189
Charlesworth, H 126, 145–6, 361
Charrad, M 35
Chaskalson, M 61
Chatzi, C 278
Chemerinsky, E 470
Chesterman, J 363
children, exposure to ‘indecent’ material 471
children’s nationality 404, 405
Chile 171, 451
Chinkin, C 126, 361
Cichowski, R 254, 270
citizenship concerns 211
contribution to legitimacy of democratic participation 294
engendering 261–3
fiscal constitution and social citizenship 187–90
citizenship and nationality 387–409
alien status 394–6, 397–8, 402
allegiance, nationality as 391, 399
anti-Semitic laws in Germany and Italy 402
bilateral naturalization treaties 391–2
children’s nationality 404, 405

Helen Irving - 9781784716967
Downloaded from Elgar Online at 02/04/2019 06:26:44AM
via free access
Index 529

conditional marital nationality laws 392–3, 396–8
constitutional recognition 403–4
Convention on the Nationality of Married Women 402, 403
coverture and conditional marital nationality laws 393–4
dual nationality 390, 396–7, 406
Hague Nationality Convention 388, 397, 401–2
history 387–94
international law organisations 400–402
legal challenges 398–400
marriage effects and husband’s nationality 389–92, 398–9
marriage and employment and welfare 395
and nation-state sovereignty 390
nationality under common or customary law 391, 393
statelessness 396–7, 404–5
United Nations Convention on the Nationality of Married Women 388
United Nations Universal Declaration of Human Rights 388
wartime and enemy aliens 395–6, 402
and women’s suffrage 394, 398
civil society
involvement, Tunisia 34, 35
South Africa, constitution-making 48, 52, 53, 54–5, 56, 57, 58, 63–4, 65, 66, 67–70, 71, 72, 73, 74
UN practices in promoting gender-responsive constitution-making 117–18
Claassens, A 377, 380–81
Clark, J 119
class action cases 308–10
Clayton, A 98, 99, 100
Clement, D 452
Cock, J 74
Cohen, J 416

collective rights, and individual rights, tensions between 361
Colombia 445–6, 448, 452, 453–4, 492
Abortion Case 438
common law see customary law
community rights and customary and religious laws 182–3
‘community standards of tolerance’ test and homophobic prejudice 472–3
comparative constitutions and gender equality 149–52
Conaghan, J 298
constitution-making, participatory see participatory constitution-making
Constitutional Convention (Europe), equality and gender equality as core values 258–9, 260
constitutional convergence, reproductive rights 446–51
constitutional courts, names of women judges 299
constitutional democracy, patriarchy and constitutional origins 508–9, 510, 511
constitutional divergence, reproductive rights 439–46
constitutional framing of equality 272–3
constitutional interpretation and reform 337–44
constitutional non-convergence explanation, reproductive rights 452–4
constitutional opportunity structures 271–2
constitutional recognition, citizenship and nationality 403–4
constitutional reform, current, Sub-Saharan Africa 98–100
constitutional reforms, enabling 327–34
constitutional responses, social and economic rights 489–95
constitutionalizing gender equality 256–61
Constitutions and gender

constitutions with aspirational social and economic rights 492–4
constitutions incorporating social and economic rights via international law 495
constitutions with women’s rights 495
containment strategy, women judges on constitutional courts 291, 296–7
Contiades, X 125
Cook, R 300
Coppel, J 253
Corder, H 61
Cossman, B 473
Cott, N 392
Cottrell Ghai, J 216
Coulthard, G 358
Council of Europe 260
Council of Europe (CoE), Gender Equality Strategy 120–22
court’s (Spain) constitutional interpretation of women’s citizenship 344–7
courts’ preliminary reference process 255
coverture, legal doctrine of 166, 174, 187, 393–4, 513–14
Cowan, R 298
Crawford, B 300
Croatia 299
Cuba 448
cultural change, promoting internal 423–6
cultural rights, South Africa 55, 59, 62, 63
cultural values, gender equality clashing with 119
custom, and legal pluralism see religion, custom, and legal pluralism
customary law
codification of, South Africa 377–8
and community rights, federal constituptions 182–3
constitution-making, South Africa 61–2, 63, 92, 93–4
culture and customary law as patriarchal systems 96
evolving 380–81
hybridity 491–2
and legal pluralism 417–18, 421, 427, 428, 429
nationality under 391, 393
recognition of, South Africa 376–7
South Africa 376–7, 380–81
Sub-Saharan Africa see Sub-Saharan Africa, gender and post-colonial constitutions, African customary law
customary marriage, indigenous women, South Africa 378–80
Cyprus 117, 299
Czechoslovakia 392
Daase, C 128
Dahlerup, D 286
Dann, P 108, 125
Dauvergne, C 405
Davies, M 242
Davis, D 52, 61, 230, 485
Davis, M 9–10, 357–86
Dawuni, J 298, 299, 300
Day, S 4, 483, 489, 494
De Búrca, G 257
De Cruz, P 165
De Jesus, L 451
De Pauw, L 1
Dean, R 447
death penalty prohibition for pregnant women 141
Delaney, P 452
democracy transition, South Africa 48–52
Denmark 299
Deveaux, M 416
Devins, N 455
Dickens, B 300
dignity concept, pornography regulation 475
Dines, G 467
Diop, N 426
divorce legislation, US patriarchalism 512
Dixon, B 443
Dixon, M 140, 147
Dixon, R 11, 312, 438–62
Dobbin, F 243
Dobrowolsky, A 4, 25, 35, 74, 171, 269, 271, 272, 273, 369, 375
Dodson, P 362
Donà, A 331, 332, 333, 350, 351
Doran, I 155
Douglas, H 242, 295, 300
Douglass, F 516
dual nationality 390, 396–7, 406
dualist and monist states, variations between 146–7
Dworkin, A 466, 469, 470
Dworkin, R 463, 468–9

East Africa, Intergovernmental Authority on Development (IGAD) 120
East Timor 118
Ebrahim, H 52, 64, 67, 68
economic dependants, women as 188–9
economic and social rights see social and economic rights
Ecuador 422, 451
education right 484, 485, 491–2
education to promote change 426, 428
Egypt 117, 299, 405
El Salvador 451
electoral lists, ‘zipper system’ 32–3, 39
Elkins, Z 21
Elson-Roessler, S 1
Elster, J 23
Ely, J 237–8
Emancipation Commission, South Africa 54, 58, 59, 68–9
employment 141, 254–6, 305, 395, 484, 487, 492
enemy alien wives 402
engendering citizenship, EU 261–3
Enright, M 300
Epp, C 454
equal pay principle, EU 253–5
equal treatment without regard to gender differences, EU 273
Erdman, J 300, 448
Erk, J 173
Escobar-Lemmon, M 165, 167–8, 177
Eskridge, W 453
Espírito-Santo, A 334, 335

Esposito, J 416
EU Charter of Fundamental Rights 257–8
EU Committee of Women’s Rights in the European Parliament 255
EU Equal Treatment in Employment Directive 254–6
EU Equality Directive 339
EU Parental Leave Directive 255
EU Pregnant Workers Directive 255
Eurocentrism 97
Euromed Feminist Initiative IFE-EFI 5
European Commission for Democracy through Law (Venice Commission (VC)) 121–2
European Convention on Human Rights (ECHR) and gender equality 260–61
European Court of Human Rights
equality rights and social context 224–5
Handyside v United Kingdom 476
Stec and Others v The United Kingdom 497
Taylor v United Kingdom 497
European Court of Justice (ECJ)
Baumbast v Secretary of State for the Home Department 262
Carpenter v Secretary of State for the Home Department 262
Dano v Jobcenter Leipzig 263
Defrenne v SABENA 254
Dekker v Stichting Vormingscentrum voor Jong Volwassenen 255
Eckhard Kalanke v Freie Hansestadt-Bremen 286
Hauer v Land Rheinland-Pfalz 265
Marschall v Land Nordrhein-Westfalen 286
Martínez Sala v Freistaat Bayern 261
Rutili v Minister for the Interior 265
Zambrano 262–3
Zhu & Chen v Secretary of State for the Home Department 262
European Human Rights Reports (EHRR), Evans v UK 240
European national constitutions, gender equality and parity 268–89
Constitutions and gender

Athens conference and declaration on parity democracy 283
Charter of Fundamental Rights 270
constitutional barriers 273
constitutional framing of equality 272–3
constitutional opportunity structures 271–2
contestation over formal and substantive equality 271–5
equal treatment without regard to gender differences 273
feminism 269–70, 276–83
and international norms of substantive gender equality 283
positive action schemes 274, 278–9
potential of extending positive measures to other disadvantaged groups 274
quotas and preferential treatment 270, 275, 276, 277–8
Treaty of Amsterdam and gender equality 270
European Social Charter 484–5
European Union constitutionalism 252–67
and Brexit 264
care work of parents and citizenship 261–3
constitutionalizing gender equality 256–61
courts’ preliminary reference process 255
duplication of sex equality guarantees in Charter and existing EU law 258
engendering citizenship 261–3
equal pay principle 253–5
Equal Treatment in Employment Directive 254–6
EU Charter of Fundamental Rights 257–8
European Convention on Human Rights (ECHR) 260–61
gender equality competence 253–6
Parental Leave Directive 255
Pregnant Workers Directive 255
transnational coalitions 255
Treaty of Amsterdam and gender mainstreaming 256–7
Treaty of Lisbon and gender equality 259, 260
welfare tourism 263
women’s position in the workplace 255
European Women’s Lobby (EWL) 255
Everatt, D 72
Ewelukwa, U 86
exclusionary clauses, Sub-Saharan Africa 81–2, 86, 89–99
expert advice, private actors involved in providing 123–4
Fallon, R 223
Falsafi, S 416
family law, and legal pluralism 165–6, 168, 183–4
‘Famous Five’ see Persons Case
Farha, L 484
Farrell, D 21, 32
federal constitutions 163–95
community rights and customary and religious laws 182–3
constitutional rights protections 181–5
federal and regional state levels, division of powers between 164
‘federalism advantage’ 172–3
federation types 168–71
feminism and federalism interactions 173, 188–90
fiscal constitution and social citizenship 187–90
founding or significant reform, categorization by 169–70
gender and division of powers 186–7
gendering mechanisms 171–3
and international human rights 185
legal pluralism and family law 165–6, 168, 183–4
methodological nationalism bias 165
multi-national federations 169
national (mono) federations 169, 172
and policy-making and power 171–2, 173, 174–5
Free speech law, pornography regulation 473–5
Freedom right and security of the person, South Africa 71–2
Freidenvall, L 286
French, J 418
Frewer, L 23
Friedman, N 3
Friedman, S 55
Froch, K 245
Fuchs, G 452
Gale, F 364
Galli, G 164
Gambala, M 117
Gambia 89, 98, 299
Gamble, B 40
Gana, R 357
Gardiner, J 364
Gardner, M 392
Gaspard, F 328
Gates, H 468
Gaudron, M 299, 301, 304–5, 307
Gelber, K 11, 463–81
Gender
abolition considerations 298
differences, significance in judicial decision-making 293
discrimination, and patriarchy 513–14
and division of powers, federal constitutions 185–8
gap in public and political life, Ireland 30–32, 38–9
mainstreaming 109–10
and social and economic rights 486–90
gender equality
before transition 53–5
clashing with religious or cultural values 119
competence, EU 253–6
effects, pornography regulation 468–9, 473–4
and political participation 167–8
public/private divide and gender equality 166–7, 174, 182–3
quota use 170–71
same-sex marriage campaigns 184–5
self-rule for minority territorial communities 182, 187–8
sex of leaders, central and regional governments 177–9
spatial aspects of federal arrangements 174–5
women as economic dependents 163, 166, 188, 189
women’s income levels 189
women’s involuntary geographic mobility 188–9
women’s judicial presence 179–80
women’s participation and representation in political institutions 175–81
women’s political representation effects 164–5
written or unwritten 166–7
Feinberg, M 392
feminism 145–6, 173, 188–90, 269–70, 276–83, 292–7, 300–301
feminist pluralism see gender equality, interpretation, and feminist pluralism
Fenna, A 168, 173, 182–3
Ferrari, A 300
Fiji 117–18
Fineman, M 95
Finkelman, P 515–16
Finland 449
Finnemore, M 64
Fitzpatrick, E 454
Flavin, J 447
Flexner, E 454
formal and substantive equality, contestation over 271–5, 276
Foster, S 502
France 166, 174, 280–83, 325, 327–40, 389, 390, 397, 448
Franceschet, S 170, 171, 177
Fraser, N 225
Fraser, R 502, 503
Fredman, S 482, 488–9
Index 533
entrenching and defending, South Africa 59–63
Equality Foundation and sexual orientation discrimination, South Africa 61
EU Court of Justice involvement 255
feminist critiques of international human rights framework 145–6
guarantees, Japan 521
inequality and poverty issues 482–4
international law and national constitutions 138–46
in plural legal systems 414–18
in private sphere, South Africa 70–72
right to 487, 488–9, 494
rights cases, women judges on constitutional courts 303–4
see also parity
gender equality, interpretation, and feminist pluralism 221–51
asking the woman question 222–3, 231
citizenship and gender bias 228
‘common law’ and gender equality 236–7, 238
‘common sense’ acceptance concerns 227–30
competing constitutional values and proportionality 238–9
dominance analysis of male-female relations 239–40
epistemic humility and willingness to change interpretations over time, need for 226–7
evolving social understandings 231–3
fixed-meaning approaches 233–5
gender bias 227–8
interpretive principles 222–40
judicial review minimalism as interpretive theory 236–7
judiciary gender 222–3
law and its operation in and on society, contextualized understanding 223–5
legal process and judicial review 237–8
multi-valenced interpretation 240–41
negative examples 227–30
purposive interpretation 238–40
reasonable man/person/woman standard 226
reconstructive effects of language and law 225–6
and social sciences research 224–5
substantive theories of gender equality 239–40
gendered achievements, South Africa 57–9
gendered nature of constitution-making, South Africa 63–5
gendering mechanisms, federal constitutions 171–3
Genovese, E 514, 515
Gerapetritis, Y 279, 340
Germany
abortion rights 438, 443–5, 447, 452, 454
anti-Semitic laws 402
Basic Law 2, 148, 277, 278
feminist engagement with social programmes 189
gender quotas 325
Law of Nationality, marriage and citizenship 390
legal pluralism and family law 184
national federation 169
pornography regulation and freedom of expression 475
quotas and preferential treatment of women 277–8
religious dress cases 310–11
sex of leaders, central and regional governments 178
women judges 299, 310–11
women’s policy agencies (WPAs) 171
women’s representation in central and regional governments 177
Ghai, Y 164
Ghana 85, 87–8, 299
Gillette, J 447
Ginsburg, R Bader 2, 9, 290–91, 294, 297–301, 454
Ginsburg, T 14
Ginwala, F 48, 54, 55, 58, 71
Index 535

Girard, P 392
Glenn, H 244
Gluck, J 33, 34
Goetz, A 74
Goldblatt, B 11, 70, 71, 406, 482–500
Goldfarb, S 4
Goldsworthy, J 233, 245
Gorance, P 243
Gordon, B 2
Gordon, L 243
Graham, M 363
Gray, G 171, 172, 364
Gray, S 447
Graycar, R 295, 304
Greece 278–9, 283, 299, 325, 327, 337–41, 449
Green, J 357, 358, 371, 372, 375
Greenawalt, K 473
Grenfell, L 235, 418
Grzymala-Busse, A 40
Guadagnini, M 332
Guinea-Bissau 299
Hacker, M 244
Hafner-Burton, E 256, 257
Hague Nationality Convention 388, 397, 401–2
Hale, B 223, 291, 293, 295, 299, 301, 305–6, 307, 308
Hallward-Driemeier, M 86
Hannum, H 140
Harris, B 376, 378
Harris, C 28
Hart, H 466
Hart, V 4, 35, 74, 171, 269, 273
Hasan, T 86
Hassim, S 51, 53, 54, 56, 58, 63, 65, 66, 74, 75
Hasstedt, K 457
Hatchard, J 84, 85, 89
hateful speech based on gender, pornography regulation 477–8
Haussman, M 167, 171
Hayet, E 308–9, 312
Haynes, D 125, 126
health, right to 487
Heinen, J 451
Hélie, A 416
Hellum, A 86
Hermanns, M 310–11
Herrberg, A 126
Hessebon, G 482
Heuer, J 1
Higgins, T 95, 418
Hirschl, R 246, 309, 455
Hirshman, L 290, 300
Hoekstra, V 179
Hogg, P 303, 448
Holden, A 447
homophobic prejudice, ‘community standards of tolerance’ test 472–3
Hooghe, L 176
Horn, P 66, 76
Hornsby, J 468, 469
Hosen, N 306
Hoskyns, C 259
Howard, J 244
Htun, M 166, 183, 191
Hudson, V 166
Hueglin, T 182–3
human rights 96, 136–7, 141–2
EU Court see European Court of Human Rights
and federal constitutions 185
indigenous women and constitutional recognition 360–61
Office of the High Commissioner on Human Rights (OHCHR) 114, 117
reproductive rights see reproductive rights
right to freedom and security of the person, South Africa 71–2
rights protection expansion, South Africa 68–9
state accountability, Sub-Saharan Africa 96
treaties 484–5, 486, 487–8, 495
United Nations Human Rights Council 403–4, 488
Constitutions and gender

Universal Declaration of Human Rights (UDHR) 140, 388, 404, 484
Hungary 390, 451
Hunt, J 364
Hunter, R 224, 292, 294–5, 300, 301
Ibhawoh, B 87
Iceland 19, 38, 39, 325
Immergut, E 171–2
incentives for alternative system, and legal pluralism 427–8
income, women’s income levels 189
India
  constitutional judgments by women judges sitting as first and only woman justice 305, 312
  diverse federation structure 169, 182–3
  female judge appointment 299
  Human Rights Law Network 493
  legal pluralism 183, 421–2
  pornography regulation 476
  sex of leaders, central and regional governments 178
  social and economic rights 484–5, 490, 492–4, 495
  women’s representation in central and regional governments 177
India, cases
  Court on Its Own Motion v Union of India 498
  Environmental & Consumer Protection Foundation v Delhi Administration 492, 498
  Government of A.P. v P.B. Vijayakumar and Another (Vijayakumar) 305
  Jaitun v Maternal Home 498
  Laxmi Mandal v Deen Dayal Harinagar Hospital 495, 498
  Mohammad Ahmed Khan v Shah Bano Begum 433
  Olga Tellis v Bombay Municipal Corporation 484–5, 493, 497
  PUCL v Union of India 493, 498
  Sarkar v State of West Bengal 476
  Vishaka v State of Rajasthan 493–4
  indigenous groups
  court testimony offered by indigenous African population 84
  religion, custom, and legal pluralism 420, 422–3
  indigenous women and constitutional recognition 357–86
  anthropologists’ role in recognition of indigenous peoples 364
  colonization, sovereignty and recognition 359–60
  individual and collective rights, tensions between 361
  informal power of Aboriginal women 364
  international human rights law 360–61
  self-determination right 360–61, 363, 367–8
  UN Declaration on the Rights of Indigenous Peoples 357, 361
  indigenous women and constitutional recognition, Australia 361–7
  Aboriginal Land Rights (Northern Territory) Act (ALRA) 364
  Aboriginal and Torres Strait Islander Heritage Protection Act 366
  Constitution exclusion, early 362
  domestic violence issues 367
  Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) 363, 365
  Heritage Protection Act 366
  Hindmarsh Island Bridge Act 366
  land rights 363–5
  National Congress for Australia’s First Peoples 365
  Northern Territory, ‘Little Children Are Sacred Report’ 366–7
  Recognition Project 365–7
  indigenous women and constitutional recognition, Canada 367–75
  Assembly of First Nations (AFN) 368, 371, 372, 374
  Charlottetown Accord and Aboriginal women’s participation 371–5
Index 537

constitutional recognition 368
individual rights versus collective rights 370
‘Inherent Right of Self-Government Policy’ 367–8
Meech Lake conference 370–71
National Action Committee on the Status of Women 369
Native Women’s Association of Canada (NWAC) 368, 369, 370, 372–4
Royal Commission on Aboriginal Peoples (RCAP) 367
self-determination 367–8
self-government and gender 369, 370, 372
treaty-making 367–8
indigenous women and constitutional recognition, South Africa 375–81
Bill of Rights 377, 380, 381
Black Administration Act 376, 380
codification of customary law 377–8
customary law 376–7, 380–81
customary marriage 378–80
Magistrates Court Act 376
individual and collective rights, tensions between, indigenous women 361, 370
Indonesia 299, 306–7
Indrati, M F 299, 306–7, 308
inheritance rights, Sub-Saharan Africa 90–95
Inoue, K 516, 517, 518, 519, 520
institutional contact, benefits of, and legal pluralism 426–7
institutional design and political theory 22–3
Inter-American Commission on Women 402
International Covenant on Civil and Political Rights (ICCPR) 139–42, 146, 153
International Covenant on Economic, Social and Cultural Rights (ICESCR) 139–40, 141, 142, 146
International Criminal Court (ICJ)
Gabcikovo-Nagymaros Case (Hungary v Slovakia) 160
Legal Consequences for States of the Continued Presence of South Africa in Namibia 160
International IDEA, and Constitution Assessment for Women’s Equality 5, 123, 195–217, 200
accessibility issues 200
challenges to effective engagement in constitution building 197–9
constitutional reform process and effective outreach 205–6
design and development 199–202
entry into force of constitution, processes following 206
as entry point to ongoing dialogue 205
as gender audit tool 199
gender-inclusive drafting style 202
implementation 204–7
and inclusion of women’s rights in constitutions 196–7
international agreements and comparative constitutional practice 199–200
Myanmar constitution building 213–14, 215
Myanmar constitution building, Nationwide Ceasefire Agreement 213
national challenges, addressing 198–9
newly promulgated constitutions 206
and participatory constitution-building processes 196, 197, 198
path dependency concerns 198
primary users, gender equality advocates 205, 206–7, 211–12
scrutiny of traditional constitutional issues 204
and sustainable democratic processes 195–6, 198–9
Constitutions and gender

International IDEA and Constitution Assessment for Women’s Equality, Nepal constitution building 207–13
advocacy agenda on constitutional implementation 211–12
citizenship concerns 211
Committee for Citizen Relations and Public Opinion Collection 210
Comprehensive Peace Accord (CPA) 207
Constituent Assembly elections 208–11
Interim Constitution 209
National Women’s Commission 211
political participation 211, 212, 213
‘positive discrimination’ recognition 212–13
quota system 209, 212, 213
rights of women and gender equality 212–13
violence prohibition 212
Women’s Caucus 208, 209, 210–11
international institutions, constitution-making and gender 107–31
Beijing Declaration and Platform for Action (Beijing Platform) 109–10
gender equality clashing with religious or cultural values 119
gender mainstreaming 109–10
impact of support programmes 118–19
intergovernmental and non-governmental organisations 122–4
international actors in peace processes 116–17
Office of the High Commissioner on Human Rights (OHCHR) 114, 117
peace and security sector reforms 111–12, 113, 116–17, 120
private actors involved in providing expert advice 123–4
programmes for women’s political empowerment 118
regional institutions 119–22
UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 109, 114, 116
UN Department of Peacekeeping Operations (DPKO) 113
UN Department of Political Affairs (DPA) 112–13, 116
UN Economic and Social Council (ECOSOC) 109
UN gender-responsive constitution-making assistance 109–12
UN institutions and gender-responsive constitution-making assistance 112–19
UN practices in promoting gender-responsive constitution-making 115–19
UN practices in promoting gender-responsive constitution-making, engagement with women’s groups in civil society 117–18
UN Women 114–15, 116, 118
UNDP Guidance Note on Constitution Making Support 111, 113–14, 117, 118
women’s rights focus 118
International Labour Organisation (ILO) 484, 495
International Law Commission (ILC) 145
international law and national constitutions 135–62
comparative constitutions and gender equality 149–52
conventions’ ‘reservations’ and ‘declarations’ 142–4, 145
death penalty prohibition for pregnant women 141
domestic legal systems 146–9
gender equality 138–46
human rights incorporation effects 136–7
impaired or breached human rights 141–2
individual complaints procedures 142
International Covenant on Civil and
Political Rights (ICCPR) 139–42, 146, 153
International Covenant on Economic,
Social and Cultural Rights
(ICESCR) 139–40, 141, 142, 146
marriage consent 141
monist and dualist states, variations
between 146–7
mothers’ rights before and after
childbirth 141
Sharia law interpretation issues 143,
144–5
Universal Declaration of Human
Rights (UDHR) 140
voting rights 152–8
international law organisations
400–402
International Women’s Suffrage
Alliance 398
Iraq 2, 169, 177, 178, 183
Ireland 40, 299, 313, 397
participatory constitution-making see
participatory
constitution-making, Irish
Constitutional Convention
Irving, H 1–15, 74, 125, 136, 152, 167,
180, 202, 203, 216, 242, 269, 271,
272, 273, 387–409
Isaac, A 168
Islamic constitutionalism 416–17, 420,
421, 430
Sharia law 143, 144–5, 415, 419, 430
Islamist-secular divide 33, 37, 38
Israel 299, 308–10, 421–2, 449
Kol Barama Radio Ltd v
Kolech-Religious Women’s
Forum (Kol Barama) 308–10
Italy 40, 325, 331–4, 402
Itzin, C 467
Jackson, V 3, 8, 125, 221–51, 439
Jaeger, R 277, 286
Jagwanth, S 230, 308
Japan 2, 397
patriarchy see patriarchy and
constitutional origins, post-war
Japan
Jenson, J 344
Jiagge, R A 299
Johnson, T 450
Johnstone, R 448
Jones, C 358
judicial reform 35, 72–3, 341–4
women judges see women judges on
consitutional courts
Jung, C 485, 490, 497
justiciable rights 485, 491–2
Kagan, E 290, 301
Kaganas, F 70
Kalev, A 243
Kamatali, J 300
Kamin, D 449
Kang, A 299
Kang, J 12, 501–24
Kapousy, C 448
Kapotias, P 339
Karlawish, J 157
Karpin, I 305
Karpowitz, C 38
Katyal, N 245
Katz, E 125
Kay, H 302
Keller, H 112
Kendall, S 125, 128
Kende, M 230
Kenney, S 290, 293–4
Kenny, M 25, 171
Kentonridge, S 199
Kenya 89, 98, 118, 206, 451
Kerber, L 392, 393, 512, 513–14
Kerns, L 243
Kim, J 245
Kincaid, J 173
King, A 467
King, J 485
Kirby, M 426
Kittilson, M 179
Klimes, M 26
Klugman, B 72
<table>
<thead>
<tr>
<th>540 Constitutions and gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knop, K 408</td>
</tr>
<tr>
<td>Kohen, B 292, 295–7, 301</td>
</tr>
<tr>
<td>Kome, P 4</td>
</tr>
<tr>
<td>Koukoulis-Spiropoulos, S 258, 286, 339, 340</td>
</tr>
<tr>
<td>Krook, M 99, 282</td>
</tr>
<tr>
<td>Kruuse, H 380</td>
</tr>
<tr>
<td>Kuenyehia, A 83</td>
</tr>
<tr>
<td>Kukathas, C 431</td>
</tr>
<tr>
<td>Kynlicka, W 413, 415</td>
</tr>
<tr>
<td>Lacey, W 6–7, 135–62</td>
</tr>
<tr>
<td>La Forest, J 303</td>
</tr>
<tr>
<td>Lamarche, L 487, 497</td>
</tr>
<tr>
<td>Lamer, A 443</td>
</tr>
<tr>
<td>Land, C 364</td>
</tr>
<tr>
<td>land rights, indigenous women, Australia 363–5</td>
</tr>
<tr>
<td>Landau, D 21, 440, 445, 446, 492</td>
</tr>
<tr>
<td>Landes, J 174</td>
</tr>
<tr>
<td>Lang, S 171</td>
</tr>
<tr>
<td>Langer, L 447</td>
</tr>
<tr>
<td>Langford, M 484, 485, 486</td>
</tr>
<tr>
<td>Langton, M 364, 367</td>
</tr>
<tr>
<td>Langton, R 468, 469</td>
</tr>
<tr>
<td>Latvia 291, 299, 312</td>
</tr>
<tr>
<td>Lauterpacht, H 146</td>
</tr>
<tr>
<td>Lawrence, S 295</td>
</tr>
<tr>
<td>Lederer, L 467</td>
</tr>
<tr>
<td>legal challenges, citizenship and nationalities</td>
</tr>
<tr>
<td>398–400</td>
</tr>
<tr>
<td>legal incorporation v accommodation</td>
</tr>
<tr>
<td>420–23</td>
</tr>
<tr>
<td>legal pluralism 85–7, 165–6, 168, 183–4</td>
</tr>
<tr>
<td>and religion see religion, custom, and legal</td>
</tr>
<tr>
<td>pluralism</td>
</tr>
<tr>
<td>legal systems, domestic, and international law</td>
</tr>
<tr>
<td>146–9</td>
</tr>
<tr>
<td>Lehner, W 83</td>
</tr>
<tr>
<td>Lemaitre, J 451</td>
</tr>
<tr>
<td>Leon, M 255</td>
</tr>
<tr>
<td>Lépinard, E 280–81, 328, 349</td>
</tr>
<tr>
<td>Lesotho 81, 82, 89, 98, 299</td>
</tr>
<tr>
<td><em>Masupha v Senior Resident Magistrate</em> 81, 106</td>
</tr>
<tr>
<td>Levy, J 432–3</td>
</tr>
<tr>
<td>L’Heureux Dubé, C 295, 304, 494</td>
</tr>
<tr>
<td>Liberia 299, 413, 427</td>
</tr>
<tr>
<td>Libya 117</td>
</tr>
<tr>
<td>Lieenberg, S 4, 486</td>
</tr>
<tr>
<td>Liede, L 143</td>
</tr>
<tr>
<td>Lino, D 360</td>
</tr>
<tr>
<td>Lister, R 261</td>
</tr>
<tr>
<td>Lithuania 448–9</td>
</tr>
<tr>
<td>Lobo, B 405</td>
</tr>
<tr>
<td>Lokar, S 336</td>
</tr>
<tr>
<td>Lombard, C 417</td>
</tr>
<tr>
<td>Lombardo, E 344</td>
</tr>
<tr>
<td>London, P 242</td>
</tr>
<tr>
<td>Loughlin, M 502</td>
</tr>
<tr>
<td>Lovecy, J 282</td>
</tr>
<tr>
<td>Lucas, L 196, 202</td>
</tr>
<tr>
<td>Ludsinf, H 125</td>
</tr>
<tr>
<td>Lutz, D 14</td>
</tr>
<tr>
<td>Luxembourg 291</td>
</tr>
<tr>
<td>Lynch, G 238</td>
</tr>
<tr>
<td>McBain, H 231</td>
</tr>
<tr>
<td>Mc Candless, J 300</td>
</tr>
<tr>
<td>McCann, M 454</td>
</tr>
<tr>
<td>MacDonald, K 357</td>
</tr>
<tr>
<td>Macdondald, L 190</td>
</tr>
<tr>
<td>Macedonia 448–9</td>
</tr>
<tr>
<td>Macfarlane, E 448</td>
</tr>
<tr>
<td>McGlynn, C 300</td>
</tr>
<tr>
<td>McGowan, M 468</td>
</tr>
<tr>
<td>McHugh, P 359, 367, 378</td>
</tr>
<tr>
<td>McIntyre, W 303, 304</td>
</tr>
<tr>
<td>Mc Ivor, S 358, 374, 375</td>
</tr>
<tr>
<td>MacKay, F 25</td>
</tr>
<tr>
<td>MacKinnon, C 97, 110, 125, 237, 239–40, 243, 246,</td>
</tr>
<tr>
<td>466, 468–9, 470</td>
</tr>
<tr>
<td>McLachlin, B 291</td>
</tr>
<tr>
<td>Mc Lean, K 496</td>
</tr>
<tr>
<td>McNeil, K 370, 371</td>
</tr>
<tr>
<td>McMahon, P I</td>
</tr>
<tr>
<td>Madonsela, T 62</td>
</tr>
<tr>
<td>Mahlmann, M 311</td>
</tr>
<tr>
<td>Mahoney, K 473, 477</td>
</tr>
<tr>
<td>Maingi, G 98</td>
</tr>
<tr>
<td>Maitra, I 468</td>
</tr>
<tr>
<td>Maki, J 516, 517, 520</td>
</tr>
<tr>
<td>Malawi 299</td>
</tr>
<tr>
<td>Malaysia 169, 172, 177, 178, 183, 184</td>
</tr>
<tr>
<td>Malik, M 306</td>
</tr>
<tr>
<td>Malla Dhakal, R 209</td>
</tr>
<tr>
<td>Maluleke, J 378, 379–80</td>
</tr>
<tr>
<td>manliness see patriarchy and constitutional origins</td>
</tr>
<tr>
<td>Manzini, M 69</td>
</tr>
<tr>
<td>Marais, H 51</td>
</tr>
<tr>
<td>Markovits, I 12</td>
</tr>
<tr>
<td>Marks, G 176</td>
</tr>
<tr>
<td>Marks, M 32–3, 34, 35, 38</td>
</tr>
<tr>
<td>Martin, O 127</td>
</tr>
<tr>
<td>Marx Ferree, M 277</td>
</tr>
<tr>
<td>Mashhour, A 417</td>
</tr>
<tr>
<td>Masupha, S 81</td>
</tr>
<tr>
<td>Mateo Diaz, M 270</td>
</tr>
<tr>
<td>Matrix, S 402</td>
</tr>
<tr>
<td>Mauritius 89</td>
</tr>
<tr>
<td>Mazey, S 257</td>
</tr>
<tr>
<td>Mazo, E 215</td>
</tr>
<tr>
<td>Mbatha, L 70, 71</td>
</tr>
<tr>
<td>Mbembe, A 97</td>
</tr>
<tr>
<td>Meintjes, S 70, 71, 74</td>
</tr>
<tr>
<td>Mettler, S 190</td>
</tr>
<tr>
<td>Mexico 169, 171, 177, 178, 190, 450</td>
</tr>
<tr>
<td>Meyer, D 452</td>
</tr>
<tr>
<td>Millard, E 280</td>
</tr>
<tr>
<td>Miller, C 398, 400, 401</td>
</tr>
<tr>
<td>Miller, J 302</td>
</tr>
</tbody>
</table>
Constitutions and gender

Nepal

constitution building see International IDEA and Constitution Assessment for Women’s Equality, Nepal constitution building Lakshmi Dhikta v Nepal 449

Netherlands 325, 448 F. M. M. C., W. P. M. B. and A. J. C. A. v Regional Health Insurance Foundation 495, 498

Neto, L 351
Neuman Wipfler, A 298
New Zealand 299, 392, 422–3, 449
Newman, C 26
NGOs 122–4
Nhlapo, T 62
Ni Aoláin, F 126
Nielsen, P 166
Niger 299
Nigeria 169, 176, 177, 183, 185, 299
non-discrimination guarantees, Sub-Saharan Africa 82–3
non-essentialist argument for more women judges 293–4
‘non-sexism’ principle, South Africa 49–50, 54–5, 60–61, 69–70
Norberry, J 364
Norton, M 1
Norway 325
Nyrinkwaya, J 300
Nussbaum, M 305, 312, 420, 433, 452
Obiora, L 185
obscenity concept, pornography regulation 465–6, 470, 471
O’Connell, K 305
Office of the High Commissioner on Human Rights (OHCHR) 114, 117
Okin, S 416, 431
Okoth-Ogendo, H 238
O’Connor, S Day 290, 299, 301–2, 307
O’Donoghue, A 300
O’Leary, S 262
O’Neil, A 253
Oomen, B 378
O’Regan, C 55
O’Regan, K 3, 308, 311
O’Reilly, M 126
Organization of American States (OAS) 120
Organization for Security and Co-operation in Europe (OSCE) 121
O’Rourke, C 126
O’Sullivan, H 295
O’Sullivan, M 75
Otto, D 487, 488
Otto, J 416, 417
Paffenholz, T 116
Page, D 392
Pakistan 169, 177, 178, 228, 300, 312 Sharifan v Pakistan 228
Palici di Suni, E 282, 350
Pantelidou-Malouta, M 340
parity 274–5, 276, 283, 292–7, 324–5, 328–9, 334–5 see also gender equality participation and representation in political institutions 175–81 participatory constitution-making 19–46 democratic constitutionalism 19 inclusiveness and sustainability of constitution 21 increased legitimacy of the constitution 20–21, 22 majoritarian capture of referendums, concerns over 39–40 participation as alternative to representative democracy 21 political theory and institutional design 22–3 in post-conflict situations 21 quality of deliberations in referendums 37 referendums on ‘moral issues’ 40 and self-government 20–21 sovereignty issues 23–4 and substantive decisions 22 success evaluation 35–40
Index 543

and unilateral exercises of power 21
participatory constitution-making, Irish Constitutional Convention 28–32
constitutional recognition of same-sex marriage 29, 36
gender gap in public and political life 30–32, 38–9
role of women in the home 29–30, 31
support for carers 31
participatory constitution-making, Scotland Independence Referendum 23–8
campaign strategies 26–7
cross-party mobilization and gender equality agenda 25–6, 36
gender gap in public and political life 30–32, 38–9
grassroots mobilization 27, 36
negative campaigning 26–7
voter turnout 24
participatory constitution-making, Tunisian Constitution-making process 32–5
advancement of women’s rights and equality issues 32–3, 34–5, 37
civil society involvement 34, 35
Islamist–secular divide 33, 37, 38
Jasmine Revolution 32
judicial reform 35
Personal Status Code reform 35
public involvement and focus groups 33–4, 35, 38
‘zipper system’ electoral lists 32–3, 39
Pastorelli, S 300
Pateman, C 324
patriarchy, parity and feminism
proposals to end judicial patriarchy 292–7
patriarchy and constitutional origins, America’s patriarchialism and colonialism 508–12, 514–16
challenge to patriarchy in the home 512
and constitutional democracy 508–9, 510, 511
denouncement of monarchy 508–10, 517–18
divorce legislation 512
and popular sovereignty 509
presidential elections 510
patriarchy and constitutional origins, Britain’s patriarchialism 501–8
America’s censuring of parliament 511–12
monarchical expectations and obedience, justification for 506–8, 510–11
patriarchal king and disintegration of authority (16th century) 503–5
and popular sovereignty 505–6
patriarchy and constitutional origins, post-war Japan 516–21
gender equality guarantees 521
Meiji Constitution and imperial power 517–19, 521
US creation of new constitution 519–21
Payandeh, M 112
peace and security sector 111–12, 113, 116–17, 120
Pedersen, H 299
Pellet, A 145
‘Persons Case’ (Canada) 1, 232
Peru 451
Peters, A 278
Philippines 299, 451
Phillips, A 416
Phillips, O 84, 90
philosophical foundations, pornography regulation 468–9
Pimentel, D 418
Pinter, B 448
Piscopo, J 170
Poland 40, 325, 336–7, 451
policy-making and power 171–2, 173, 174–5
544  Constitutions and gender

political citizenship in new European constitutionalism 323–56
‘Athens Declaration’ supporting gender parity 324
Beijing Platform for Action and equal participation in decision-making 324–5
constitutional amendment processes 326–7
constitutional interpretation and reform 337–44
constitutional reforms, enabling 327–34
court’s (Spain) constitutional interpretation 344–7
Declaration on Equality of Women and Men 324
overcoming formal equality in the political domain 331–4
parity concept 324–5, 328–9, 334–5
political citizenship in new European constitutionalism, gender quotas 325–6, 327–34
Aristotelian approach 337–41
corporate board, private and semi-public decision-making bodies quotas 329–30, 333–4, 346
pre-emptive constitutional reforms 334–7
reinforcing reform to back interpretive judicial turn 341–4
and socialist connotation, overcoming 335–7
political empowerment 118
political participation 99–100, 167–8, 175–81, 211, 212, 213
political representation effects, federal constitutions 164–5
political rights, women denied, and patriarchy 513–14
Pollack, M 256, 257
Portat, M B 299
pornography regulation 463–81
civil remedies for women harmed by pornography 469–70
‘community standards of tolerance’ test and homophobic prejudice 472–3
constitutional question 464–6
content neutrality requirement 470–71
dignity concept 475
equality effects 468–9, 473–4
exposure of children to ‘indecent’ material 471
free speech law and constitutional values 473–5
hateful speech based on gender 477–8
influence in constitutional law 469–73
liberty to make sexuality-defining choices 469
morality and ‘tendency to corrupt’ focus 475–6
obscenity concept 465–6, 470, 471
philosophical foundations 468–9
and sexual violence 466–7, 472
sexualization of subordination of women 466–7, 470
speech concept and freedom of expression 464–5, 468, 470, 471–2, 475, 476–7
Portet, S 451
Portugal 325, 334–5
positive action schemes 274, 278–9
‘positive discrimination’ recognition 212–13
Posner, E 455
post-colonial institutions see Sub-Saharan Africa, gender and post-colonial constitutions
Pottie, D 51, 63
poverty issues and gender inequality 482–4
Powell, L 302
Prada, E 448, 453
pre-emptive constitutional reforms, and gender quotas, EU 334–7
preferential treatment and quotas 270, 275, 276, 277–8
Prempeh, H 87, 88, 89

Helen Irving - 9781784716967
Downloaded from Elgar Online at 02/04/2019 06:26:44AM
via free access
primary users, gender equality advocates 205, 206–7, 211–12
private actors involved in providing expert advice 123–4
private sector, equality and rights, South Africa 70–72
Privy Council (UK) 232
proportional representation (PR) effects, South Africa 65
public funding, reproductive rights 447
public involvement and focus groups, Tunisia 33–4, 35, 38
public/private divide and gender equality 166–7, 174, 183
Puerto Rico 299
Quack, S 123, 128
quota system 99, 170–71, 209, 212, 213, 270, 275, 276, 277–8
European constitutionalism see political citizenship in new European constitutionalism, gender quotas
Qvortrup, M 40
racial inequality 48–9, 97
Rackley, E 244, 292, 293, 300
Réaume, D 236, 241, 244, 300
Reding, V 259
referendum 37, 39–40
Scotland see participatory constitution-making, Scotland
Independence Referendum
regional institutions 119–22
religion
community rights and customary and religious laws 182–3
gender equality clashing with religious or cultural values 119
religious dress cases 305–6, 310–11
religious marriages, women judges on constitutional courts 306
religion, custom, and legal pluralism 413–37
constitutional design features 418–23
consultation and participation recommendations 428–9
cultural change, promoting internal 423–6
customary law 417–18, 421, 427, 428, 429
education to promote change 426, 428
gender equality issues in plural legal systems 414–18
incentives for alternative system, creation of 427–8
indigenous groups 420, 422–3
institutional contact, benefits of 426–7
Islamic constitutionalism 416–17, 420, 421, 430
legal incorporation v accommodation 420–23
minority cultural communities 416
multiculturalism 415–16, 421
sharia arbitration 415, 419, 430
single group or many different groups of population, and use of alternative system 419–20
reproductive rights 438–62
abortion access and capital 'C' Constitutionalism 450–51
abortion rights 440–46
abortion rights, viability approach 441–2
constitutional convergence 446–51
constitutional divergence 439–46
constitutional non-convergence explanation 452–4
first trimester abortion, safe, legal but limited 446–50
public funding 447
right to life on the part of the foetus 450–51
South Africa 71–2, 73
repugnancy clause, Sub-Saharan Africa 86
Resnik, J 4
Richer, K 448
Riker, W 170
Rikkila-Tamang, L 210
Ritter, G 163
Roberts, C 1
Robson, R 302
Constitutions and gender

Rodden, J 187
Rodríguez Ruiz, B 274, 275, 277, 324, 328, 345, 350
Romania 291, 299
Rönning, M 255
Rosa, S 492
Rose, K 1
Rosenberg, S 309
Ross, M 254, 261
Rowe, G 23
Rowse, T 364–5
Rubenstein, K 242, 245
Rummery, K 27, 41
Russell, D 467
Russia 169, 177, 178, 179
Rwanda 98, 291, 299, 300
Ryan, M 502
Sabsay, D 120, 121, 125, 128
Sacksofsky, U 277
Salhi, Z 143
Salmon, M 512, 514
same-sex marriage 29, 36, 184–5, 227, 235
Sanchez Fuentes, M 450
Sanger, C 447
Sankey, Lord 232
Saur, B 171
Sawer, M 179, 180, 185–6, 369, 375
Sayers, F 357
Sayette, H 458
Scalia, A 184, 233, 302
Schauer, F 465, 474, 475
Scheffler, E 299
Scheppke, K 242, 243
Schneider, E 244
Schochet, G 503, 505, 507
Schultz, U 300
Schulz, P 408
Schwarzenbach, S 2
Scofield, K 422
Scott, J 174, 328
Scott Jones, B 446
security sector reforms 111–12, 113, 116–17, 120
self-determination right 360–61, 363, 367–8
self-rule for minority territorial communities 182, 187
Selišnik, I 335, 336, 337
Senegal 299
Serbia 291, 312
sex discrimination cases 255, 302, 304, 308–10
sex of leaders, central and regional governments 177–9
sexualization of subordination of women, pornography regulation 466–7, 470
Seymour, H 53
Shachar, A 246, 309, 415, 416
Sharia law 143, 144–5, 415, 419, 430
see also Islamic constitutionalism
Sharpe, R 1
Shaw, G 300
Shaw, J 257, 262, 263
Shearer, I 152
Shelmon, B 14
Shepherd, L 119
Sieder, R 422
Siegel, R 9, 285, 302, 441, 450, 452
Sierra Leone 89, 118, 299
Simeon, R 164, 177
Simpson, A 304, 305
Sklar, K 224
slaves’ status, and patriarchy 514–16
Śledzińska-Simon, A 336, 337
Slinn, P 102
Slovakia 291
Slovenia 325, 335–6
Smith, D 364
Smith, G 22
Smith, L 4
Smith, M 184–5
Smith, P 2
Smythe, D 377
social and economic rights 482–500
constitutions and gender constitutional responses 489–95
constitutions with aspirational social and economic rights 492–4
constitutions incorporating social and economic rights via international law 495
constitutions with women’s rights 495
and gender 486–90
international human rights treaties 484–5, 486, 487–8, 495
justiciable rights 485, 491–2
poverty issues and gender inequality 482–4
right to education 484, 485, 491–2
right to equality 487, 488–9, 494
right to health 487
and states’ legal traditions 485
substantive equality 488–9
worker rights and rights to social security 484, 487, 492
socialist connotation, gender quotas 335–7
Soekito, S W W 299
Solum, L 233
Song, S 416, 433
Sotomayor, S 290, 300, 302
South Africa
abortion rights 450
Black Administration Act 92–3, 380
colonisation, 359
constitutional protection for women’s rights 92, 152
cosnstitutional rights to culture and equality 93–4, 152
customary law and gender equality 89, 417–18
customary law, recognition 376–80
equality rights and contextual features 224
feminist advocacy campaign 93, 94–5
hate speech prohibition 477, 478
indigenous women and constitutional recognition see indigenous women and constitutional recognition, South Africa
and international law responsiveness 147
originalism and fixed-meaning approach 234–5
prison release and presidential pardon to mothers 229–30, 308
sex of leaders, central and regional governments 178, 179
sexual orientation and unfair discrimination 234–5
social and economic rights 486, 489, 491–2
women judges 298, 299, 307, 308
women’s representation in central and regional governments 177
South Africa, cases
Alexkor Ltd v Richtersveld Community 377
Bhe v Khayelitsha Magistrate 76, 92–3, 94, 101, 106, 380, 384
Brink v Kitshoff 234, 242
Christian Lawyers Association v Minister of Health 450
Department of Education, Free State Province v Welkom High School/ Harmony High School 491–2, 497
Grootboom 152, 486
Harksen v Lane 242, 245
Khosa v Minister of Social Development 497
Mazibuko and Others v City of Johannesburg 492
Minister of Home Affairs v Fourie 235
Motsoatsoa v Roro 384
Mthembu v Letsela 379, 384
National Coalition for Gay and Lesbian Equality v Minister of Justice 234–5
President of Republic of South Africa v Hugo 229–30, 234, 242, 244, 245, 246, 308
Roberts and Others v Minister of Social Development 492, 497
Shibi v Sithole 106
Shilubana v Nwamitwa 380, 384
Sonke Gender Justice Network v Malema 478
South African Human Rights Commission v President of the Republic of South Africa 93, 106
548  \textit{Constitutions and gender}

\textit{Thibela v Minister van Wet en Orde} 384

\textit{Treatment Action Campaign} 491, 497

South Africa, women and constitution-making 47–80
acceptance of majority rule 51
apartheid policy and racial inequality 48–9
Bill of Rights 52, 59, 61, 62, 63, 68, 71, 73, 92–3, 94
and civil society 48, 52, 53, 54–5, 56, 57, 58, 63–4, 65, 66, 67–70, 71, 72, 73, 74
Commission for Gender Equality 62–3, 66, 72
Congress of Traditional Leaders (CONTRALESA) 62
Constitutional Assembly versus Multi-Party Talks (MPT) 67–8
Convention for a Democratic South Africa (CODESA) 49–50, 55–6, 59, 60–61, 65
cultural rights 55, 59, 62, 63
customary law 61–2, 63, 92, 93–4
Equality Foundation and sexual orientation discrimination 61
equality and rights in the private sphere 70–72
Final Constitution 66–73
formal participation concerns 64
fundamental principle and core right of gender equality 48, 51
gender equality before transition 53–5
gender equality, entrenching and defending 59–63
gendered achievements 57–9
gendered nature of constitution-making 63–5
judiciary representivity 72–3
lobbying and bilateral agreements 64
Multi-Party Talks (MPT) 51–2, 57–9, 61–3, 64–5
National Network on Violence against Women 71
'non-sexism' principle 49–50, 54–5, 60–61, 69–70
proportional representation (PR) effects 65
Record of Understanding 51
reproductive rights 71–2, 73
right to freedom and security of the person 71–2
rights protection expansion 68–9
sunset clauses 52
transition to democracy 48–52
two-stage model of constitutional change 47
women’s impact evaluation 73
Women’s National Coalition 62
women’s place in transition (1990–94) 53–66
South Africa, women and constitution-making, African National Congress (ANC) 48, 49–51, 53–9, 64–9, 71, 72
Commission on the Emancipation of Women 68–9
Constitutional Guidelines 54–5
COSATU Gender Forum 66
Emancipation Commission 58
‘Statement on the Emancipation of Women’ 54, 59
unbanning of 49
Women’s Charter 56, 57, 68
Women’s League (ANCWL) 56, 66
Women’s National Coalition (WNC) 57, 58–9, 64–5, 68, 69
women’s and reproductive health 66
sovereignty issues 23–4, 359–60, 390, 505–6, 509
Spain 169, 171, 177, 178, 184, 225, 325, 327, 344–7, 390
Spiner, B 155
Spann, G 455
Spitz, R 61, 64, 74
Sri Lanka 299
Sripati, V 107, 115
Staggenborg, S 452
Stanchi, K 300
statelessness 396–7, 404–5
Steady, F 434
Steele, J 358
Steinberger, H 121
Stock, W 467
Stockemer, D 175
Stone, A 11, 463–81
Strauss, D 231, 236, 455
Strossen, N 467, 473, 477
Studer, B 392
Sub-Saharan Africa, gender and 
post-colonial constitutions 81–106 
constitutional reform, current 98–100 
culture and customary law as 
patriarchal systems 96 
exclusionary clauses 81–2, 86, 89–99 
independence constitutions 87–8 
inheritance rights 90–95 
international norms and gender 
quotas 99 
international women’s organizations’ 
initiatives 99 
non-discrimination guarantees 82–3 
political engagement of individual 
women, increase in 99–100 
political power transition effects 99 
post-independence constitutional 
reform 88–95 
state accountability for human rights 
96 
Sub-Saharan Africa, gender and 
post-colonial constitutions, 
African customary law 83–7 
conflict resolution 86 
and court testimony offered by 
indigenous African population 
84 
interpretation issues 83–4 
repugnancy clause 86 
as source of pride and unity 86–7 
Sub-Saharan Africa, gender and 
post-colonial constitutions, 
colonial rule 83–7 
and constitutionalism 85 
elitism and authoritarian governance 
84–5 
legal pluralism creation 85–7 
racism and Eurocentrism effects 97 
substantive equality 271–5, 276, 488–9 
Sullivan, K 3, 4, 272 
Sunder, M 96 
sunset clauses, South Africa 52 
Sunstein, C 236, 245 
support programmes, impact of 118–19 
sustainable democratic processes 
195–6, 198–9 
Suteu, S 5, 19–46 
Sweden 325, 448 
Switzerland 169, 177, 178, 186, 389, 
392, 448 
Syria 117 
Tabli, L 392, 395 
Tatalovich, R 452, 453 
Taylor, C 359 
Taylor-Robinson, M 165, 167–8 
Terreblanche, S 51 
Thames, F 179 
Thipe, T 58 
Thiruvengadam, A 482 
Thomas, D 95 
Thomas, W 453 
Thornton, M 312 
Tierney, S 23–4, 37, 42 
Timmer, A 247 
Tirosh, Y 243 
Toland, J 518 
Tolley, E 176, 179 
Toomey, S 185 
Totten, C 275, 276, 286 
Treaty of Amsterdam 256–7, 270 
Tremblay, M 175, 358 
Tripp, A 99 
Truesdale, C 239, 242 
Tsliotis, C 278 
Tuladhar, I 211 
Tunisia 117, 118, 206 
Constitution-making process see 
participatory 
constitution-making, Tunisian 
Constitution-making process 
Turpel, M 369 
Tushnet, M 13, 223, 439 
Uganda 87–8, 99, 495 
Center for Health Human Rights and 
Development & 4 others v 
Nakaseke 495, 498 
UK 
‘Brexit’ 264
citizenship law and marriage 390
common law doctrine of *coup de foudre* and gender rights 166, 174, 187, 393
diversity among the senior judiciary, call for more 293
Enclosure Movement, England 504
European Communities Act 147
gender quotas 325
Human Rights Act 147, 476
and international law responsiveness 147
IVF implantation of women’s fertilized eggs 240
judicial gender parity 291
Married Woman’s Property Act 393
Nationality and Status of Aliens Act 395, 397
Naturalization Act, and citizenship and marriage 389, 390–92, 393–4, 400
Northern Ireland, abortion, and right to life on the part of the foetus 451
Obscene Publications Act 475–6
obscenity law 465
patriarchialism see *patriarchy and constitutional origins, Britain’s patriarchialism*
Poor Law 504
pornography regulation 475–6
Scotland Independence Referendum see *participatory constitution-making, Scotland Independence Referendum*
Sex Disqualification (Removal) Act 394
wartime and enemy aliens 395–6
women judges 299, 305–6
women’s activism for constitutional change within leftist parties 171
women’s movement’s efforts to change state architectures, Scotland 171
women’s suffrage 394
UK, cases
*DPP v Whyte* 476

*R. (Begum) v Governors of Denbigh High School (Begum)* 306
*Regina v Hicklin* 465, 466, 476
*S.B., R. v Denbigh High School* 306
UN, gender-responsive constitution-making assistance 109–19
international institutions, constitution-making and gender 109, 114, 116
UN Convention on the Nationality of Married Women 388, 402, 403
UN Convention on the Rights of All Migrant Workers and Members of Their Families 155
UN Convention on the Rights of the Child 155
UN Convention on the Rights of Persons with Disabilities (CRPD) 155
UN Declaration on the Rights of Indigenous Peoples 357, 361
UN Department of Peacekeeping Operations (DPKO) 113
UN Department of Political Affairs (DPA) 112–13, 116
UN Development Project (UNDP) 111, 113–14, 117, 118
UN Economic and Social Council (ECOSOC) 109
UN Human Rights Council 403–4, 488
UN International Covenant on Economic, Social and Cultural Rights (ICESCR) 484, 486, 487–8
UN Open Ended Working Group on Ageing (OEWGA) 154, 155–6
UN Special Rapporteur on Violence against Women 71
UN Women 4, 89, 114–15, 116, 118, 121, 165, 166, 216
Universal Declaration of Human Rights (UDHR) 140, 388, 404, 484
Index 551

Upreti, M 449
Urdang, S 53

US
abortion rights 171, 440–42, 446–7, 452, 454
Bill of Rights history and women as ‘domestic dependents’ 163
‘Brandeis briefs’ 224
Cable Act and marital denaturalization 396
citizenship and gender bias 228
congressional federation power 176
disability benefits exclusion and sex discrimination 229
Equal Rights Amendment to the US Constitution 1
Expatriation Act, and citizenship and marriage 389, 391, 394, 398–9
family law reform issues 168
federal states and equal rights amendment (ERA) 167, 184, 185
freedom of speech 464
gender bias cases 227, 228
gender discrimination protection 513
gender and division of powers 187
judicial review minimalism as interpretive theory 236
legal doctrine of coverture 513–14
legal pluralism and family law 184
legal process and judicial review 237
literacy tests and right to vote 168
Meese Report on pornography 466–7
national federation 169
National Woman Suffrage Association 394
Naturalization Act, marriage and citizenship 390, 391, 392
obscenity law 465
originalism and fixed-meaning approach 233–4, 235
paternalism and colonialism see patriarchy and constitutional origins, America’s
paternalism and colonialism pornography regulation 469–71, 474, 475
rational segregation 236
right to vote history 168
same-sex marriage campaigns 184–5, 235
sex of leaders, central and regional governments 178
sexual harassment prohibition and ‘reasonable person’ standard 226
slaves’ status 514–16
social and economic rights 484
state laws requiring married women to assume their husband’s last name 225
treaties, binding nature, and judicial interpretation 147–8
women judges 290–91, 294, 297–301, 302–3
women’s representation in central and regional governments 177
US, cases
Abrams v United States 474
Adkins v Children’s Hospital 232–3, 244
American Booksellers v Hudnut 246, 469–70
Ankenbrandt v Richards 228
Ashcroft v ACLU 471
Ayotte v Planned Parenthood of Northern New England 302, 456
Barber v Barber 228
Bethel School District v Fraser 471
Bowers v Hardwick 244
Bradwell v Illinois 227–8
Brown v Board of Education 236, 484
Caroline Products 474
City of Akron v Akron Center for Reproductive Health (Akron) 302, 441
Craig v Boren 246, 513
Eisenstadt v Baird 452
Ellison v Brady 226, 243, 244
FEC v Pacifica 471
Forbush v Wallace 225
Foster v Neilson 160
Frontiero v Richardson 242
Geduldig v Aiello 229, 244
Goesart v Cleary 243
Gonzales v Carhart 302, 442, 446
Constitutions and gender

Grayned v Rockford 470
Griswold v Connecticut 452
June Medical Services v Gee 447
Mackenzie v Hare 244, 398–400
Maher v Roe 457
Marbury v Madison 299
Miller v Alabama 244
Miller v California 465, 466, 470
Mississippi University for Women v Hogan 302
Nguyen v INS 228
Obergefell v Hodges 184, 235, 244
Oncale v Sundowner Offshore Services 226, 243
Planned Parenthood of Southeastern Pennsylvania v Casey 224, 302, 441, 442, 446, 447
Planned Parenthood v Rounds 447
Plessy v Ferguson 236
Police Department of Chicago v Mosely 470
R.A.V. v City of St Paul 246, 470
Reed v Reed 2, 184, 242, 243, 513
Reno v ACLU 471
Roe v Wade 242, 302, 303, 438, 440–41, 442, 452
Sable v FCC 471
Sei Fujii v State of California 160
Shanks v Dupont 407
Snyder v Phelps 246
Stromberg v California 464
Texas Medical Providers Performing Abortion 447
Tinker v Des Moines Independent School District 464
Town of Castle Rock v Gonzales 234
United States v Morrison 234
United States v Virginia 243–4, 245
US v Virginia 302
Webster v Reproductive Health Services 441
West Coast Hotel v Parrish 244–5
Whole Woman’s Health v Hellerstedt 302, 446–7
Women’s Medical Professional Corporation v Taft 447

Valiente, C 344, 345
Van der Leest, K 4
Vance, C 467
Varney, S 72
Vazquez-Mellado, S 458
Venezuela 169, 178
Verge, T 27, 171, 344, 345
Vickers, J 7, 163–95, 231, 369, 375
Vienna Convention 142–4, 145
violence issues 71, 212, 367, 466–7, 472
Vogel 448
Volpp, L 396
voting rights 24–5, 27–8, 36, 37, 152–8

Wachtel, E 4
Wall, D 295
Walter, J 504
Warren, C 432
wartime and enemy aliens 395–6, 402
Watts, R 167, 186
Waylen, G 32, 74
Webber, J 371
Weinrib, L 473
Weinstein, J 463, 473, 477
Weitz, T 446
Weldon, S 166, 183, 191
welfare rights 395, 484, 487, 492
welfare tourism 263
West, C 468
West, R 246
Wharton, L 447, 457
Whisnant, R 246
White, L 186–7, 189, 190
Widner, J 20, 21, 125
widow’s dower rights 514
Wildman, S 244
Wilkinson, J 238
Wilkinson, M 26
Williams, G 383
Williams, M 179, 294
Williams, S 2, 10, 136, 170–71, 181, 269, 272, 273, 294, 413–37, 463
Williams, W 246
Wils, O 126
Wilson, B 223, 299, 301, 303–4, 307, 443

Helen Irving - 9781784716967
Downloaded from Elgar Online at 02/04/2019 06:26:44AM
via free access
Wilson, S 290
Wing, A 83
Wittke, C 4, 6, 107–31
women judges on constitutional courts 179–80, 290–319
abortion cases 302–3
affirmative action programme for women in public employment 305
all-women constitutional courts proposal 297–301
citizenship and equal representation 294
class action cases 308–10
comparison of inclusion of women on juries with their exclusion from judicial benches 294
constitutional judgments by women judges, more than one woman on same constitutional court 307–11, 308–11
constitutional judgments by women judges sitting as first and only woman justice 301–7
constitutional judgments from a feminist perspective 300–301
containment strategy 291, 296–7
equality rights cases 303–4
and feminist self-identification 295
gender abolition considerations 298
gender differences, significance in judicial decision-making 293
judge appointments 299–300
non-essentialist argument for more women judges 293–4
parity and feminism proposals to end judicial patriarchy 292–7
religious dress cases 305–6, 310–11
religious marriages cases 306
sex discrimination cases 302, 304, 308–10
United States Supreme Court (USSC), proposal for nine female judges 290–91, 294, 297–301
women’s suffrage 394, 398
Wood, G 511, 512, 517
Yeh, J 119, 123, 125
Yemen 116–17
Yotopoulou-Maragopoulou, A 278, 286, 351
Young, K 3, 485
Young, M 489
Young, O 467
Zahar, M 119
Zambia 86, 89, 98
Zarrugh, A 35
Zartner, D 185, 191
Zemmni, S 33
Ziemet, I 1143
Zimbabwe 89–92, 90–91, 98, 118
Magaya v Magaya 90–92, 106, 384
‘zipper system’ electoral lists, participatory constitution-making, Tunisian Constitution-making process 32–3, 39