abortion, legalisation of 35
Act of Settlement 1701 27, 30, 147, 209
Acts of Parliament
  challenges to legality 105–13
  compatibility with treaty obligations 152
  enforceability of ‘incompatible’ provisions 155–6
  judicial interpretation of privileging in deference decisions 122, 163–4
see also compatibility (with Convention rights; Declarations of Incompatibility)
administrative discretion 77–8
  separation of powers implications 78
adoption 179
advertisements, political/religious 173–4
Allan, T.R.S. 25–6, 40, 125–7, 128, 140, 142, 153
Allison, J.W.F. 18–19, 220
Anti-Terrorism, Crime and Security Act 2001 98
Appellate Jurisdiction Act 1876 209, 216
armed forces, deployment of 100–01
Asylum and Immigration (Treatment of Claimants etc) Bill 2004 110–11
asylum seekers/policy 110–11, 179
Attorney-General, office of 19
Australia
  breach of confidence, case law 187–8
  human rights legislation 43–4
Bagehot, Walter 225
Baird, Vera, QC, MP 224
Barber, N.W. 14
Barendt, Eric 14, 15–16, 20, 24, 40
Beatson, Jack 194–5
Bellamy, Richard 139, 227
Bentham, Jeremy 37
Bill of Rights Act 1990 (NZ) 42–3
bill(s) of rights
  (alleged) disenfranchisement of electorate 36–8, 39, 41, 120
  judicial constraints 119–20
  objections to 35–9, 52–4, 151
  parliamentary model 42–4
  support for 39–42
Bingham, Lord 27, 44, 57, 60–1, 64, 93, 98–9, 106, 127–8, 134, 154, 157, 174–5, 196, 216, 231, 233–4
Blair, Tony 2, 245
Blunkett, David, MP 209
Bogdanor, Vernon 242
Borrego Borrego, Judge 82–3, 84
Bradley, Anthony 152
branches of government
  degree of interaction 12–13
  disagreements between 51–2, 197
see also dialogue principle
  inequality 22–4
  institutional characteristics 124–5
  mutual restraints 11–12
  overlap between 11, 141
  realignment of relative powers 89–90, 107–9
  specification of roles 90, 123–5
see also functions; personnel
breach of confidence 186–91, 201–2
development of new test 188–9
further developments 189–91
test for (pre-HRA) 187–8
see also misuse of private information

Bridge, Lord 64
British constitution see UK constitution
Brooke LJ 187
Brown, Gordon 2
Brown of Eaton-under-Heywood, Lord 237
Brooke-Wilkinson, Lord 95
Bulger, Jamie 75–6
Bushell, Allison 51–2
Butler-Sloss, P 186
Buxton LJ (formerly Sir Richard) 184, 186, 189–90
Campbell, Tom 53, 57, 151, 169, 176
Canadian Charter of Rights and Freedoms 42, 51–2, 53
‘Chancellor’s foot’ metaphor 148, 154
Charter of Rights and Responsibilities Act 2006 (Vic) 43–4
children
abuse 224
care 161
Children Act 1989 161
Clapham, Andrew 60
Clark, Charles, MP 223–4
Clayton, Richard, QC 159
Clyde, Lord 158
Coke, Lord 109
Collins, Lord 176
common law 6, 27–8, 35, 89, 112, 146, 180, 181–203, 247
control of Acts of Parliament 109
human rights protections 249–50
implications of HRA for 183–91
influence of Convention rights 186–9, 201–2
judicial independence and 209–11
judicial review and 248
parliamentary sovereignty and 181
procedural fairness of 232–9
recognition of creative judicial role 182–3
resistance to proportionality principle 62
test for impartiality 238–9
updating 182–3
Commons, House of, relative power with Lords 109–10
Communications Act 2003 46, 174
compatibility (with Convention rights) 46–8, 105, 150, 153–4, 193
c Judicial power of review 154–68, 176–7
ministerial statements of 172–3, 174–5
reluctance to scrutinise for 126–7
see also Declarations of Incompatibility; European Convention…; ‘mirror principle’; public bodies
constitutional reform 2–3
objectives 219
preliminary drafts/debates 219–20, 243
see also judicial independence; Lord Chancellor; Supreme Court
Convention rights
courts’ ability to influence 146, 181
creative interpretation 199–202, 203; areas of greater freedom 200–1; limitation of possibilities 195–6; ‘reasonably foreseeable’ criterion 200; types of 199
divergences between domestic and international versions 194–5, 247; tendency to downplay 195–9
domestic law in 192–9; dual status 193–4
domestic standards as 193–4
engagement 136–7, 141–2
horizontal application
see horizontality
influence on common law 186–9, 201–2
<table>
<thead>
<tr>
<th>Index</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>justiciability 91–2</td>
<td>269</td>
</tr>
<tr>
<td>'more generous interpretation' rule</td>
<td>194–5</td>
</tr>
<tr>
<td>obligation on public authorities to comply with</td>
<td>47–8</td>
</tr>
<tr>
<td>parliamentary power to legislate in contravention of 112–13</td>
<td>112–13</td>
</tr>
<tr>
<td>responsibility for enforcement</td>
<td>34, 120–1, 125</td>
</tr>
<tr>
<td>see also compatibility; 'mirror principle'</td>
<td></td>
</tr>
<tr>
<td>Cooke, Lord 131, 167–8</td>
<td></td>
</tr>
<tr>
<td>Cornes, Richard 83</td>
<td></td>
</tr>
<tr>
<td>counter-terrorism policies 223–4</td>
<td></td>
</tr>
<tr>
<td>Countryside Alliance 105–6</td>
<td></td>
</tr>
<tr>
<td>courts</td>
<td></td>
</tr>
<tr>
<td>disagreements with legislature</td>
<td>51–2</td>
</tr>
<tr>
<td>institutional characteristics 73</td>
<td></td>
</tr>
<tr>
<td>institutional independence 6</td>
<td></td>
</tr>
<tr>
<td>obligations, as public bodies 189</td>
<td></td>
</tr>
<tr>
<td>powers of statutory interpretation 6</td>
<td></td>
</tr>
<tr>
<td>treatment of separation of powers doctrine 31</td>
<td>31</td>
</tr>
<tr>
<td>see also judicial review; judiciary</td>
<td></td>
</tr>
<tr>
<td>Craig, Paul 249</td>
<td></td>
</tr>
<tr>
<td>Crime (Sentences) Act 1997 156–8, 160</td>
<td></td>
</tr>
<tr>
<td>Cullen, Lord 233, 235–6</td>
<td></td>
</tr>
<tr>
<td>damages see public authorities death penalty, abolition 35, 74</td>
<td></td>
</tr>
<tr>
<td>Declarations of Incompatibility 46, 49–50, 105, 146, 154, 168–76, 197, 247</td>
<td></td>
</tr>
<tr>
<td>contribution to constitutional politics 172–6</td>
<td></td>
</tr>
<tr>
<td>criticisms 168–70</td>
<td></td>
</tr>
<tr>
<td>declining of request for 173–6</td>
<td></td>
</tr>
<tr>
<td>dialogic interpretation 170</td>
<td></td>
</tr>
<tr>
<td>examples in practice 156–7, 164–6</td>
<td></td>
</tr>
<tr>
<td>(lack of) legal weight 47</td>
<td></td>
</tr>
<tr>
<td>measure of last resort as 168–9</td>
<td></td>
</tr>
<tr>
<td>non-binding nature, implications of 46–7, 50–1, 155</td>
<td></td>
</tr>
<tr>
<td>non-compliance 56–7, 171–2; lack of remedy 171–2; rarity of 58–9, 170–1</td>
<td></td>
</tr>
<tr>
<td>political significance 58</td>
<td></td>
</tr>
<tr>
<td>potential difficulties 169–70</td>
<td></td>
</tr>
<tr>
<td>defence policy/measures, privilging of 122</td>
<td></td>
</tr>
<tr>
<td>deference 5–6, 96–7, 115, 117–19, 120–1, 172, 246–7</td>
<td></td>
</tr>
<tr>
<td>areas of doubtful applicability 159</td>
<td></td>
</tr>
<tr>
<td>autonomous vs. integrated nature 128–9</td>
<td></td>
</tr>
<tr>
<td>balancing with judicial review requirements 128–9</td>
<td></td>
</tr>
<tr>
<td>distinguished from restraint 120–1</td>
<td></td>
</tr>
<tr>
<td>excessive 126–7</td>
<td></td>
</tr>
<tr>
<td>'figleaf for non-justiciability' as 123, 125–8</td>
<td></td>
</tr>
<tr>
<td>Human Rights Act and the 121–3, 163–8</td>
<td></td>
</tr>
<tr>
<td>part of multi-part process as 129</td>
<td></td>
</tr>
<tr>
<td>principles governing applicability 121–3</td>
<td></td>
</tr>
<tr>
<td>problems of theory 119, 126</td>
<td></td>
</tr>
<tr>
<td>relationship with proportionality 135–9</td>
<td></td>
</tr>
<tr>
<td>self-restraining function 121</td>
<td></td>
</tr>
<tr>
<td>'servility', overtones of 123–5</td>
<td></td>
</tr>
<tr>
<td>variable standards 164</td>
<td></td>
</tr>
<tr>
<td>de Lolme, Jean-Louis 23</td>
<td></td>
</tr>
<tr>
<td>Denning, Lord 149</td>
<td></td>
</tr>
<tr>
<td>Department for Constitutional Affairs 50</td>
<td></td>
</tr>
<tr>
<td>De Smith, S.A. 9–10</td>
<td></td>
</tr>
<tr>
<td>detention (without trial) 73, 98</td>
<td></td>
</tr>
<tr>
<td>outside UK 101–2</td>
<td></td>
</tr>
<tr>
<td>Devlin, Lord 182</td>
<td></td>
</tr>
<tr>
<td>devolution 2, 19, 25, 108, 150, 213</td>
<td></td>
</tr>
<tr>
<td>dialogue principle 51–2, 56–9, 170</td>
<td></td>
</tr>
<tr>
<td>Diplock, Lord 10, 62, 63, 96–7, 129–30</td>
<td></td>
</tr>
<tr>
<td>discrimination 34–5</td>
<td></td>
</tr>
<tr>
<td>DNA evidence 134</td>
<td></td>
</tr>
<tr>
<td>domestic confidence actions 187</td>
<td></td>
</tr>
<tr>
<td>Donaldson, Sir John (later Lord) 116–17</td>
<td></td>
</tr>
<tr>
<td>Doyle, Arthur Conan, Silver Blaze 238–9</td>
<td></td>
</tr>
<tr>
<td>Duffy, Peter 194–5</td>
<td></td>
</tr>
<tr>
<td>Dyson LJ 133</td>
<td></td>
</tr>
</tbody>
</table>
Eady J 190

Economics see resource allocation; social/economic policy

Engagement, questions of 136–7, 141–2

Jurisdiction 136–7

European Communities Act 1972 150

European Convention on Human Rights and Fundamental Freedoms 1950 3, 5, 33, 37, 60–3, 253

Amendment of laws to comply with 65, 156–7, 161, 167

Commitment to rule of law 60–1

Decisions of enforcement bodies 54–6

Division of obligations between branches of government 70–1

(Implied) requirement of separation of powers 61, 78–9, 84–5

Non-adherence to constitutional theory 61, 78, 84

Objections 37

Qualified articles 66–70, 122

UK accession/membership 35, 58, 108, 193, 248

see also Convention rights

European Court of Human Rights 34, 35, 46, 54–6, 58, 60–3, 70–1

Articulation of state obligations 184

Cases brought against UK 65, 66–7, 80–1

Declarations of incompatibility and 170–1

Insistence on separation of roles 74–6, 84–5, 229

Latitude given to national legislatures 71–3, 117, 201

see also Margin of appreciation

Obligation on national courts to take rulings into account 54–6, 69, 191–2; discretion over implementation 195

Rulings on administrative decisions 76–8

see also Table of Cases

European Parliamentary Elections Act 1999 107

European Union/Community 2, 25, 150

Ewing, Keith 31–2, 50

Executive, unchecked power of 107–8, 109–10

Diminution 113–14

Fair trial, right to 73, 75–9

Falconer, Lord 220, 224

Feldman, David 228

Fenwick, Helen 69, 73, 118

Fordham, Michael 111

Foreign relations, and justiciability 101–3

France 12

Frankfurter J 147

Fredman, Sandra 34, 125, 135

Freedom of expression, right to 37, 67–8, 173–4, 179

Functions (of governmental branches) division 15–16, 70–4, 118, 141;

Specific ECHR requirements 73–4

Overlap 11–12, 17–18, 82–4, 125

Reasons for division 19–20

Gardiner, Lord 149

Gearty, Conor 50–1, 120, 155–6, 158, 168

Gill, Lord 232–3, 238

Goldsworthy, Jeffrey 58–9, 173

Government, structure of 125

Greene, Lord 62, 63

Griffith, J.A.G. 23, 28, 29, 37, 38, 151, 153, 177

Grosz, Stephen 194–5

Guantanamo Bay 101–2

Hailsham, Lord 109

Hale, Baroness 68, 70, 91–2, 108–10, 137–8, 191, 197, 200

Hardie, Lord 232–6, 238

Harris, D.J. 77–8

Hart, H.L.A. 147–8

Hartley, T.C. 28, 29

Hewart, Lord 27

Hickman, Tom 56, 69, 170

Hiebert, Janet 41, 46, 51, 119–20
'high' policy issues, justiciability 90, 99–100, 104
Hobhouse, Lord 164–5
Hoffmann, Lord 35, 97, 109–10, 123–5, 137–8, 193–4, 200–1, 217, 241
Hogg, Peter 51–2
Holmes, Oliver Wendell 182
Home Rule Act 107, 247
Home Secretary, role in sentencing 74–6, 156–7, 229–31
Hood Phillips, Owen 10
Hope, Lord 24, 47–8, 49, 72–3, 107, 118, 121–2, 152, 158, 159, 164, 198, 202, 233–4, 238, 239
horizontality (of rights enforcement) 183–6, 201–2
absence, arguments for/against 184
direct effect, arguments for/against 184–5
indirect, via common law 185–6, 189
House of Commons Disqualification Act 1975 19, 27–8, 209
House of Lords 149–50
Appellate Committee 28, 213–14, 216, 225, 246
reform projects (pre-2005) 216, 217–18
Select Committee on the Constitution 207–8, 223–4, 243
see also Law Lords; Table of cases
House of Lords Act 1999 217
human rights
broader debates 179–80
clash with national security/public interest 35–6, 42, 67–8, 97–9, 133–5
constraints 38–9, 66–70
indirect effects of litigation 179–80
legislative enforcement 34–5
limitations on jurisdiction 108–9
objections to judicial responsibility 37; on procedural grounds 38–9
political vs. legal responsibility for 34, 35–42, 151
stages of review 46
statutory protection 42–4
UK reluctance to enforce 35
see also Convention rights; Human Rights Act
(alleged) failure of implementation 126–7
breach of confidence and 190–1, 202–3
Declarations of Incompatibility and 169–70, 172–3
design 44–6, 151–4, 163–8, 174, 178–9
dialogic interpretation 56–9, 170
impact on justiciability issues 91–2, 94, 97–9, 108–9
impact on statutory interpretation 151, 178; integration of rights concerns into legislative process 46–8
interpretive mechanisms 48–9
judicial independence and 213
judicial review and 132–5; of legislation 154–68, 247
(perceived) weaknesses 171–2
potential repeal 248–53; ability of provisions to survive 252–3
preliminaries/debates 34–5, 173, 183
 provision of statutory protection 44
realignment of government powers 89–90, 115, 247
relationship with common law 181, 183–91, 247, 249–50
relationship with separation of powers 50, 118–19, 231, 244
responsibility for implementation 45–6
specifying of roles for government branches 90, 116–17, 140–1
supervision from Strasbourg 54–6
treatment of deference 121–3, 135–6
see also Convention Rights;
Declarations of Incompatibility;
deference; justiciability;
legislative role of judiciary;
'mirror principle'; Parliamentary sovereignty; proportionality
Human Rights Act 2004 (ACT) 43–4
Hunt, Murray 65–6, 70–1, 185
Hunting Act 2004 105–6, 107
Huscroft, Grant 53
Hutton, Lord 61, 158, 241–2
Iacobucci J 52
impartiality (of courts/tribunals) 78–84, 207–8
circumstantial approach 80–2, 233, 235, 236
common law protections 209–10
defined 79–80
fair process and 232–42
‘real possibility of bias’ criterion 233–5
‘strict separation’ approach 80, 82–4, 236
‘tacit consent’ criterion, implications of 238–9
independence see judicial independence
Iraq, legality of invasion 100–1
Irvine, Lord 29, 44–5, 49, 58, 151, 202, 214–15
Jennings, Ivor 15, 21, 22, 243
Joint Committee on Human Rights 47, 57, 171, 178–80, 214–15
Joint Committee on Parliamentary Privilege 208
Jowell, Jeffrey 63, 112, 127
Judicial Appointments Commission 3, 6, 222
Judicial Committee of the Privy Council 62, 225
judicial independence 26–30, 78–9, 85, 207–44
broadening of interpretation 212
common law and 209–11
compatibility with democracy 98–9
constitutional importance 25–6, 30, 207, 210–11, 221–2, 227–9
conventional support for 209–11, 213–14
distinctive characteristics 207–8
(fears of) compromise 153–4, 196, 214, 216–17, 223–4, 240; guards against 154
functional 208
individual dynamic 207–8
influence on legal decision-making 228
institutional 208–18, 242–4, 246; obstacles to 210–12
legislative provisions 27–8, 242–4, 246
pressures for increased autonomy 212–14, 248
qualifications 28–30
structural 207–8
under-theorisation 243–4
judicial review 140, 141–2, 247, 248–9
administrative decisions of 74, 76–8, 115
applicability to all statutory/prerogative measures 92–3, 178
criticisms of ECHR findings 65–6
expansion of remit (post-HRA) 5, 89–90
in individual rights cases 64
limitations (pre-HRA) 89
standards of 61–3, 132–5, 249
see also Convention Rights; strong form judicial review
judiciary
appointments 222
constraints on 119–21; human rights decisions 59
empowerment at expense of elected branches 115
process, importance of 139–40
prohibition on political activity 27–8, 209–10
removal 146–7
resistance to executive pressure 223–4
right to overturn legislative/executive decisions 36–8, 39–42
see also courts; judicial independence; legislative role of judiciary; statutory interpretation
justiciability 5, 90–104, 113–14
armed forces, deployment of 100–1
dual meaning 90–1
foreign relations and 101–3
‘high’ policy issues 99–100, 104
national security matters 96–9
INDEX

resource allocation 93–6
see also non-justiciability doctrine
juveniles, sentencing of 75–6

Kavanagh, Aileen 156, 170, 177, 195, 251
Keene LJ 187
King, Jeff 92
Kirkwood, Lord 238
Klug, Francesca 89, 119

Lange, David 217
Law Lords, dual role 17–18, 216–18
conventional support for 216
Laws LJ 94–5, 104, 122–3, 249
Le Sueur, Andrew 222
legislation see Acts of Parliament;
legislative role of judiciary;
Parliament

Legislative and Regulatory Reform Act 2006 19
legislative role of judiciary 17, 145–50,
172–6, 247
application of Convention rights in
199–202
common law and 182–3
limitations on 181, 182
objections to 146–7, 178–80
relationship with judicial
independence 212, 240
see also statutory interpretation
legitimacy, of legal process 227
Lloyd, Lord 29
Locke, John 14
Lord Chancellor, office of 28–30, 214,
216
2005 reforms 3, 6, 221–3
concordat on 220, 222–3, 243
incumbent’s sitting as judge 214–15
multiple roles 18, 213–15; arguments
presented in favour 215, 219–20
proposed abolition 219–20

Lord Chief Justice, reform of office 221,
222–3, 226
Loughlin, Martin 36, 37, 57

Madison, James 13, 14, 24
Magna Carta (1215) 27, 209

Malleson, Kate 211, 223
margin of appreciation 69–70, 71–3,
117–19, 195, 201, 250
inapplicability to domestic rights
adjudications 117–18
Marnoch, Lord 232
Marshall, Geoffrey 9, 12, 30, 90–1, 148
Martens, Judge 71
Matrimonial Causes Act 1973 164–6
Matthews, Paul 238
Millett, Lord 112
‘mirror principle’ 192, 202–3
advantages 197
disadvantages 197–9
tendency towards 195–7
misuse of private information, tort of
188, 190
see also breach of confidence
Montesquieu, Charles-Louis de
Secondat, baron of 13–14
Munce, Lord 250
Munro, Colin 22
Murder (Abolition of Death Penalty)
Act 1960 74
murder, determination of time to be
served 74–6, 156–8, 229–31
Mustill, Lord 229
National Assembly for Wales 19
national security, questions of 90,
96–9, 113–14, 166
see also human rights
Neuberger, Lord 138
Nicholls, Lord 106, 161, 162, 163, 176–7,
189, 194, 233
Nicol, Danny 55, 159, 247
non-justiciability doctrine 90, 105–13
judicial rejection 108
reduced applicability 92–3, 103–4,
113–14, 166, 246
relationship with deference 125–8
officials, allocation of decisions to 228
Oliver, Dawn 214
ouster clause 110–11

Pannick, Lord 118
parallel analysis 188–9
Parliament
assumption of judicial functions 17–18
dilution of legislative role 17
division of powers with Crown 21–2
right to override judicial decisions 178, 251–2
see also Acts of Parliament; parliamentary sovereignty; statutory interpretation
Parliament Act 1911 2, 105–6, 107
Parliament Act 1949 2, 105–6, 107
parliamentary sovereignty, doctrine of 20–6, 145–6, 251–2
constitutional importance 20–1, 25, 31
degree of judicial oversight, differing views on 106–10
implications for other branches 22–4, 123
( implied) restraints on 23, 24–6, 127–8, 150, 166–8
relationship with judicial law-making 148–9
‘replacement’ 245
treatment in Human Rights Act 34, 44–5, 46, 48–9, 112, 116–17, 118, 145–6
Patten, Lord 214
personnel (of governmental branches), overlaps between 11, 18, 232–6, 239
(in)compatibility with judicial impartiality 80–4, 208; proximity test 81–2
Phillips, Lord 1, 95, 223
Phillipson, Gavin 69, 73, 118, 185–6, 190
planning permission 240–2
politics
 courts’ examination of issues relating to 5–6
relationship with law 5–6, 212
see also judiciary; legislative role of judiciary; national security; social/economic policy
Poole, Tom 132, 133–4, 138, 179–80, 248
prerogative legislation, subject to judicial review 96, 113
Prevention of Terrorism Act 2005 178
prison
disciplinary proceedings 236–9
inmates, voting rights 175–6
privacy, right to 183, 186–91, 202–3
‘reasonable expectation’ criterion 188–9
see also breach of confidence; misuse of private information
procedural fairness
case law 232–9, 240–2
time 239–40
process, importance of 139–40
application in qualified rights cases 66–70
balancing of society/individual needs 133–4
evidential burden 68
influence on construction of ECHR
relationship with deference 135–9
standard of review demanded 132–5
three-stage test 130–1; isolation of one stage 134–5
proximity test 81
public bodies
assessment of Convention compatibility 137–9
award of damages against 95–6
enforcement of Convention against 92–3, 136–7
justification obligations 135, 137
obligation to comply with Convention rights 47–8, 183, 184–5, 187–8, 193
public finance, decisions on allocation of 63–4
Rawlings, Rick 110–11
‘red light’ vs. ‘green light’ legal theory 14
Reed, Lord 213
Reid, John, MP 197, 224
Reid, Lord 147, 167, 181–2
Representation of the People Act 1983 175–6
resource allocation
accountability/legitimacy issues 94–5
competing claims 95
justiciability 90, 93–6, 166
Reynolds, Albert 217
Rodger, Lord 128, 162–3, 236
Roskill, Lord 96, 99
Royal Commission for Reform of the House of Lords 218
rule of law 25–6, 60–1, 108, 252
Saunders, Cheryl 12
Scarman, Lord 64, 147
Scotland, appointment procedures 213
Scotland Act 1998 213, 232
Scott, Lord 194
Secretary of State for Constitutional Affairs 219
Secretary of State for the Environment, Transport and the Regions, challenge to powers/impartiality 240–2
Sedley LJ (formerly Sir Stephen) 10, 22, 187
sentencing 179, 224
involvement of executive in 74–6, 156–8
‘second serious offence’ criterion 157–8
separation of powers
alternative labels 16–17
contemporary interpretations 31–2, 244
criticisms 9–10, 18–19, 30
dominance of legislature 22–4
efficiency mechanism as 14–15
fair process by 239–42
increasing constitutional significance 245–6, 252–3
institutionalisation 219
jurisprudence 229–31
limitation of governmental powers 12

multi-faceted nature 16
normative potential 6, 24–6
objectives, divergent views on 13–16
partial separation/agency theory
polarisation of views 9–10
practical requirements 10–13
problems of definition/application 3–4
‘pure’ theory 10–12
relevance 4–5, 9–10, 16–17, 18–19
theory of 5
threats to 153
see also branches of government;
British constitution
Serious Fraud Office 31
sexual history, adducing in rape cases 158–61
Sexual Offences (Amendment) Act 2000 107
Simon J 163
Simonds, Lord 149
Slynn, Lord 158, 241
social/economic policy, national freedom to decide on 71–2, 122–3, 166
see also resource allocation
South Africa 39
squatters, rights of 179
statutory interpretation, judicial 57–8, 147–50, 172, 176–80, 251–2
breath of courts’ discretion 162–3
concern over consequences 175
departure from literal wording of statute 149, 160–3, 176–8
engagement with judicial expertise 164–8
HRA under 152–4
impermissibility where statute would be rendered meaningless 160
invalidation through 156–60
literal approach 177–8
see also legislative role of judiciary
Stevens, Robert 10, 145, 210, 217, 242
Steyn, Lord 28, 68, 107–10, 130–1, 149, 158–9, 160, 168–9, 223, 229–31
stop and search, powers of 134
Index

276

Strasbourg see European Court of Human Rights
Straw, Jack, MP 44–5, 46–7
strong form judicial review 36–42
avoidance 45
indirect production 52–4, 118
practicalities 40–2
support for 39–42
substantive formalism 145, 181
Sullivan J 197
Supreme Court
establishment 1, 3, 6, 33, 219, 225–7
independence 246
jurisdiction 227
objectives 226–7
personnel 225–6
projected constitutional influence 226–7
structural independence 225
Supreme Court Act 1981 209
Sweeney, Craig 224, 243

Taylor, Lord 103–4
Terrorism Act 2000 134
Thomassen, Judge 81
Tierney, Stephen 193
Tomkins, Adam 19–20, 21–2, 231, 244
Trade Union and Labour Relations Act 1974 31
transsexuals 164–6, 179
treaties
obligations under 152
power to enter into 102–3
tribunals 17
Tsata-Nikolovska, Judge 82–4

UK constitution 228
developments 245–6
flexibility 17–18
nature of development 1–2;
practice-before-theory 21–2
relationship with separation of powers 4–5, 16–20
written, possibility of 2
United States 12, 39
Bill of Rights 43, 45
constitution 12
strong form judicial review 52
UK representations to 101–2
unreasonableness, Wednesbury test 61–2, 63–6, 131–2, 142
relationship with proportionality
Vile, M.J.C. 9, 10–11

Wade, Sir William 184–5, 186
Wakeham Commission 216, 217–18
see also Royal Commission on Reform of the House of Lords
War Crimes Act 1991 107
Welsh Church Act 107, 247
Wier, Lord 232
Woodhouse, Diana 216–17
Young, Alison 156
Youth Justice and Criminal Evidence Act 1999 158–60
Zagrebelsky, Judge 81