

## INDEX

Abbott, Joseph 282 role in federal theory 11-12, 22 role of precedent 313 aborigines 181 Adams, Francis 72 role of states 333-4 Adams, Samuel 75-6, 103, 111 of state constitutions 250-2, 263-4, agreement, as basis of treaties/ 329-30, 356-7 conventions 45 by state legislatures 326-9; consent see also compact; covenant of all 329-32 Althusius, Johannes 35-7, 55-6, 69, by state peoples 324-6 80, 213 by unanimous consent 323-4 amendment, constitutional 46-8, Victorian proposal (for right of 245–6, 299–301, 346, 350–7 single house to instigate) 310, (alleged) difficulty 333 311-13, 314-15, 318-20, 322, of amendment clause 353, 355-6 323, 329-32; (claimed) strategic compared with ordinary legislation importance 316-18; ultimate 47–8, 312–13 acceptance 323 consistency with ratificatory/ see also formative basis; majority; representative systems 318-19 referendum debates at 1891 convention 301-4 association, in Althusian theory 36-7 debates at 1897-8 convention Attorney-General (state), office of 308-32 297-8 despite majority opposition 302-7 Austin, John 32, 33, 71, 80, 94-6, 98, electoral options 51-2 99, 120, 121-2 evolution of formula 300, 323-34, Australasian Federation Conference (1890) 73, 149-56 imposition on dissenting states objectives 150 307 range of views expressed 152-4 influences on procedure 52-3, Australasian Federation League 164-5 Australian Constitution 62 - 3legal mechanism 353-5 basis in popular sovereignty 348-9 limitations of provisions 353-5 basis in popular/state consent 31 ministerial discretion 319-23 categorisation (on modern bills for 321 national-confederal axis) 25, parliamentary powers of 235 28 - 9post-imperial procedures 41 conception of federalism 34-5, 334, 368-9 (problems of) nationalist interpretation 122-3 conflicting underlying principles provisions for 11, 48, 51-2



412 INDEX

Australian Constitution (cont.) 315, 316, 318, 321, 328, 332; on debates on content 10, 62, 83, 102-3, electoral districts 234-5; on 158, 187-214 (see also equal representation 195-6, Australasian Federal 220-2, 270; on the High Court Conference, 1890; federal 293-4, 295, 297; moderate/ conventions, 1891/1897–8) mediatory position 189-90, diversity of framers' views 101-2 213-14, 221; on representation division of powers 61 in House 224, 227, 228-9, 231, formative processes 40, 43, 45, 368; on 'reserved powers' 59-61, 63 doctrine 261-4; on states' rights international models 21, 40, 41, 250–1, 272, 280 70-3, 87, 90-2, 337-8 High Court rulings 132, 363, 364, problems of interpretation 12-13, 364 as leader of 1897-8 convention 211, process of composition 6-7, 8, 9-10 268-9; drafting of proposed new preamble 352-5 Constitution Bill 160, 187, source of legally binding status 238-9, 277, 282, 325; 12-14, 345-51 resolutions to convention terminology 1-2, 4, 5 172-3, 191, 206-7, 208-9, 210, for specific citations see Table of 226, 252-3, 254-5, 292 Barton, George Burnett 194-5, 200, 238 statutes see also amendment; federalism, Bathurst Convention (1896) 170 Australian; formative basis Belgium 40 authority, loci of 12, 345-6 Bentham, Jeremy 72, 120 complexity of derivation 42-5 Blackstone, Sir William 33-4, 74, 120 autochthony, distinguished from Bluntschli, Johann 89, 98, 111, 112-13, self-government 299–300 117, 125 Bodin, Jean 32, 36, 80, 98 Bogdanor, Vernon 17, 19, 20 Bagehot, Walter 72, 111, 112 Borgeaud, Charles 72 Baker, Andrew 71 Baker, Richard 88, 91, 102-3, 111-14, Bourinot, John 72, 111 117-18, 134-5, 154 Braddon, Sir Edward 210, 223, 311-12, contributions to constitutional 317 Bradford, M. E. 56 debates 155, 161, 172, 173, 227, Bray, Sir John 159, 161, 251 331; on equal representation 196-7, 236, 249; on the Senate British empire see colonialism; United 199, 203, 239; on state/federal Kingdom powers 258, 259; on Swiss-style Brown, Nicholas 231 Bryce, James 2, 4, 13, 17, 19, 68, 70, executive 113, 174, 189, 201-2, 210-12, 360 78-87, 90, 93, 99, 103, 111, 120, 121, 154, 367, 369 Bancroft, George 71, 103 banking 279 citation in constitutional debates Barton, Edmund 34-5, 69-70, 88, 91, 197-8, 292, 305 duality of theory and practice 81-3, 92, 102, 114, 165 contributions to constitutional 86 debates 159, 163, 170, 203, influence in Australia 34–5, 71, 72–3, 222–3, 243, 265, 289–90; on 78-9, 101, 113, 124, 125, 188, amendment procedures 311, 344, 348–9, 361



INDEX 413

Burgess, John 19, 26-7, 34, 71, 88, 89, contributions to constitutional 96–100, 120, 122–3 debates 159-60, 175, 177, 189, citation in constitutional debates 196; on Commonwealth 219, 295, 316, 326 powers 286-7, 290; on equal representation 249; favouring influence in Australia 5, 72-3, 97, 100, 101, 121-2, 124-5, 127, of states' rights 188-9, 258; on nature of federal system 131-2, 188, 221 150-1, 205; on the Senate Calhoun, John C. 25-6, 71, 110, 112, 203–4; on state/federal powers 120, 123 259, 275-6 California 85 draft constitution (1891) 107-10, Canadian Constitution/federal 129, 187, 192, 217, 225, 233, system 8, 29, 30-1, 51, 256-7, 257, 259, 273-4, 302, 57–9, 113 332 amendment procedures 41, 48, 52, Memorandum (1891) 108-9 58-9 Clark, Manning 69 appeal to colonists 69 Clarke, Matthew 270-1 Australian objections to 151-2, Cockburn, John 88, 187, 337, 368 contributions to constitutional 249-50, 273-4 contrasted with Australian 277, debates 151, 152, 155, 160, 173, 341 - 2189, 197, 199, 202, 210, 223, as disintegrative 40-1 243, 263, 264, 270; on division of powers 61 amendment procedures 305, evolution to independence 58-9 314-15, 316; on centralised executive government 50-1 government 212; favouring of expansion 58 states' rights 188-9, 283; on federal theory 205, 207-8; on formative processes 43, 45, 57–8, 59 (inequality of) state representation state/federal powers 250, 251, 45, 58 262-3, 265 colonies (prior to federation) as model for Australia 70-1, 108-9, 150, 156, 257 aims of federation 141, 144-5 powers of Senate 50 consent to federative process 134-5, ratification procedure 45 182 - 4capital territory, Commonwealth constitutions 142-5 diversity of conditions in 118 power over 280 Carruthers, Joseph 219, 241, 242-3, large vs. small, conflicts of interest 173-4, 314 Central Queensland Territorial and proposed Federal Council: Separation League 169 representation 147; right to centralisation, arguments for/against secede 147-8 representative institutions 67-8 105, 113, 201, 212 Chamberlain, Joseph 341–2 settlement 135-7 Charlottetown Accord (1992) 58–9 see also legislatures; states Clark, Andrew Inglis 88, 91, 102-3, commerce see trade 107-11, 110, 113, 114, 117-18, commonwealth, in Althusian theory 132-3, 163 Australian Constitutional Law Commonwealth, powers 272-91 110 - 11(broad) definition 273-5



414 INDEX

Commonwealth, powers (cont.) Confederate states (in US Civil War) concurrent 283-5, 290 26, 89 confederation (consensus on) need for circumscription 274-5, 276-7, Australian schemes for 148 281-2, 285 compared with federation 30–1, exclusive 278, 285-91, 286; 95 - 6objections to 286; problems/ distinguished from federation 19-20, 29-30, 48-9, 90-1, 116-17 paradoxes of 286–90 executive 276 conferences see Australasian Federation financial 275-6, 279 Conference: Bathurst Convention: imperial, assumption of 300-1, 331 Corowa Conference; federal limitation 275-8, 308 conference; plans for; federal newly acquired territory, legislation convention (1891); federal on 287 convention (1897-8); premiers' transfer of states' to 324, 326-9 conferences see also corporations; disputes; Connecticut 39, 54-5, 83 conservatives see parties (political) executive; law(s); 'race power'; 'reserved powers' doctrine; Constitution Bill (1897-8) 173, 187, 217-18 rivers Commonwealth Bill (1891) 141, on amendment procedures 309–10, 159-61, 187 324–6 on amendment procedures 301-4, compared with predecessor 206 307, 324–5 consideration by colonial legislatures on Commonwealth legislative powers 254, 257–60, 272–7, criticisms 177 passage through Colonial Office 175 286, 288 criticisms by labour movement 162 on state/federal powers 263-4, 277 criticisms in colonial legislatures submission to electorate 176-7 162 - 3constitutional monarchy see monarchy on parliamentary representation 217, constitutions see colonies; states; names 225 - 6of countries (reasons for) failure 161-4 contingency, role in evolution of 'Commonwealth of commonwealths' federal systems 9 86-7, 369 conventions see Australasian Federation Conference; Bathurst opposition to concept 99 compact, role in (con)federation 4, Convention; Corowa Conference; 4-5, 13, 23, 35, 94 federal conference, plans for; Australian rejections of 112, 123-4, federal convention (1891); 132, 154, 260 federal convention (1897-8); premiers' conference in Australian system 184, 273, 308, 334, 342, 349–50 Cooley, Thomas 71, 83 decline of 28-168 Corowa Conference/plan 135, 164-5, 309 shortcomings of theory based on 32, corporations, jurisdiction over 282 34, 343, 349 county, as unit of government 85 in US system 80-1 covenant, theories/processes of 4, 34, compromise, role in constitutional debates/outcomes 68, 245, 323, in Althusian theory 36-7 343 - 4in Australian system 260, 345, 369



INDEX 415

'covering the field' test 291	110, 111, 119–20, 121–2, 124,
Crisp, Leslie F. 180–1	131, 132, 219, 282–3, 294–5,
Crown	297–8
channels of communication with	Dickinson, John 53-4, 151, 213
259, 264	direct election 129, 154, 171, 206-7
colonial prerogatives 268-9	of Senators 208–9
referendum on replacement as	of state governors 263-4
head of state 351-2	see also federal convention (1897–8)
see also monarchy; United Kingdom	disputes, state-Commonwealth
Cunningham, C. D. 72, 103, 111	292–3
customs and excise duties	division of powers, principle of 10,
Commonwealth power over 285	61-2, 119-20, 366-7, 369
redistribution among states 176	as defining feature of federal system
-	17–18, 21–2, 79–80, 323–4
Davies, John 145	limitations 18–136
Davis, John Jefferson 89	presuppositions 19–20
deadlock, resolution of Parliament	Dixon, Sir Owen 70, 345-6, 354
Deakin, Alfred 78, 102, 197, 369	Dobson, Henry 207, 210, 254, 264,
contributions to constitutional	312–14, 319
debates 150, 152-3, 159, 160-1,	Donaldson, John 303
173, 189, 201, 211, 224, 229,	Douglas, Sir Adye 142
236, 258, 264, 268–9, 286, 290,	Downer, John 79, 159, 173, 198-9,
359; on amendment procedures	204-5, 210, 258, 295, 298, 321,
304–5, 306, 310, 322, 327; on	328, 361, 367
equal representation 195-6,	drafting, role in formative process 44,
197–8, 200, 215, 219, 248–9; on	338
magnitude of task 337; on the	Duffy, Charles Gavan 142, 145
Senate 203, 205, 208, 217, 240;	
on state/federal powers 251,	Edwards, Sir James Bevan 148
258, 262–3, 274–6	Elazar, Daniel 28, 55-6
democracy	electoral districts 225
differing conceptions of 216, 227,	equality of 232-3, 235-7, 357-8;
243	rejection of idea 233
direct vs. representative 302, 308-15,	parliamentary power of definition
325	233–5
relationship with federalism 12-13,	electoral system, structure 49, 346-7
81, 206–10, 359	see also direct election; House of
role in Constitution 135, 206-10	Representatives; Parliament;
devolution of power, in federal systems	representative structures;
45–6, 346	Senate
Dibbs, George 159, 160–1, 165–6	Elliot, Jonathan 71
Dicey, A. V. 4, 17, 19, 26, 47, 68, 70, 81,	'embryo states' 266–7
86, 88, 89, 92–6, 94, 151, 218,	Enabling Act(s) 67, 145, 167–71, 179,
291–2, 316, 366–7	181–2, 191, 323, 328, 344
citation in constitutional debates 92,	legal function 171
96, 188, 194–5, 202	proposals for 166–7
influence on Australian theorists 71,	see also Table of statutes for specific
72–3, 92–3, 94, 100, 101, 103,	references



416 INDEX

equality of representation see Senate; states equality of voting power, principle of 232, 357-9 rejection of 235-7 see also House of Representatives European Union 20, 49, 62 exclusivity see under Commonwealth, executive government, appointment/ composition 50-1, 152, 189, 210-13, 360-1 proposals for (Swiss-style) council 109, 113–14, 128–9, 154, 174–5, 201 - 2Federal Commonwealth choice/significance of term 1-3, 334,

345, 350-1, 369 political theory of 3-6, 63, 123-5 federal conference, plans for (in 1850s) 142 - 4derailment 144 federal convention (1891) 73, 149, 158-61 debate on amendment process 300, 301-8, 329-31 debate on legislative power 272-7 debate on Senate's role/powers 191-3, 340, 361 debate on state/federal powers 247–52 debating procedure 190 divisions within parties/state delegations 153-4, 155 election of delegates 59-60, 154-5, organisation (at 1890 conference) 153 - 6

federal convention (1897–8) 73, 149 adjournment 174 contrasted with 1891 convention 206–7

voting system 153-4, 159

debate on amendment process 300, 301–2, 306–7, 308–32; mediatorial role 323 debate on parliamentary

debate on parliamentary representation 226–7, 339

debate on Senate elections/powers 217, 362 debate on state/federal powers 252-5, 260-5, 277-82 debating procedure 190 election of delegates 59, 129, 154, 170, 172, 183-4, 340 proceedings 172-4 resumption 175-6 voting system 153, 183-4 Federal Council, proposals for (1880-3) 146-8 criticisms 149 proposed legislative powers 147 federalism (theories, examples, comparisons) centralisation of power 45-6 complexity 18-136 definitions 22, 24-5, 34-5, 82, 125, 282-3, 342-3 difficulties 115-16 electoral structure 49 five categories (defined by Madison) 21-3, 26-7, 77-8, 107 historical/empirical basis 9 integrative vs. disintegrative 19, 40-1popularity 28-9 principal conceptual frameworks 8 studies of 93-4 subdivision of systems 89 terminology 22 variations between systems 9 federalism, Australian decision-making process 300 disintegrative elements 40-1 early support for 141-2 economic context 7-8 fundamental principles 3-6, 117-18, 191-2, 193-5, 205, 247-55, 271, 282-3, 307-8, 323-4, 340-1, 343-5, 368-9 historically conditioned choices imperial proposals for 138-9 integrative elements 41, 337-8 international models 8, 341-2

nature of new state 4-5



INDEX 417

philosophical context 7-8, 338 Freeman, Edward 4, 68, 70, 71, 72-3, political context 7-8, 338 87-92, 99, 103, 111, 120, 121, as primary organising theme of 213-14, 292, 367 Constitution 6, 338-9 citation in constitutional debates range of definitions 101-33 188, 205, 222, 265 reasons for 67-70 influence on Australian framers 89-92, 101, 109, 124, 235, 342, as response to evils of colonial rule 145 344, 368 system of governments 5-6 Fysh, Philip 192 theoretical basis 11-12, 68-70, 96 see also Australian Constitution Galligan, Brian 6 Fiji, representation at conferences Garran, Robert 92, 102-3, 155 146, 147 The Coming Commonwealth 119-20, financial issues/bills Commonwealth vs. state powers contributions to constitutional 275 - 6debates 164 limitation of Senate powers 201, see also Quick, John and Robert 202-5, 215-16, 237-9, 340, Garran, Annotated Constitution 360-2; amendment vs. of the Australian rejection debate 239 Commonwealth see also taxation General Assembly, proposals for 140 Finer, S. E. 17, 19 Germany 283 Fiske, John 71, 103 federal structure 62, 220 Fitzgerald, Nicholas 199, 203 imperial, Prussian dominance 46 Fitzroy, Sir Charles 140-1 political theory 97, 112-13 formative basis (of federation) 39-40, gerrymandering, prevention of 223, 149, 158, 338-9 234-5 influence on amendment procedures Gierke, Otto von 68 52-3, 62-3, 301-8, 305, Gillies, Duncan 148-9, 159, 192, 251, 308-9, 334, 339, 356 252, 258, 259, 302–4, 305 Glynn, Patrick 211, 221-2, 236, 290, influence on division of powers 62, 339-40 293-5, 297, 311, 318, 327, 342 'Golden Despatch' 139 influence on representation debates Gordon, John 173, 197, 210, 212, 270, 220-2, 339-40, 356 key features 167-71, 181-4 294, 297-8, 299, 330 methods/processes 41-6 government, federal see role in federal theory 11-12, 21 Commonwealth; executive role in law-making 46-7 government; federalism; House of Forrest, Sir John 159, 166, 166-7, Representatives; Parliament; 173, 179, 208, 211, 223–4, 240, Senate 243, 264-5, 269 government, seat of see capital territory Foster, Roger 71 governor, office of Foster, William 105-6, 120 colonial 135-6 franchise, constitutional debates on constitutional provisions 258, 260, see also electoral system; equality 262, 263–5 of voting power; referendums, (proposed) executive power 262-3 ratificatory 209-10 (proposed) state control over 265 see also direct election free trade see trade, interstate



418

governor-general, office of 2-13,

as channel of communication 258-9,

128-9, 140-1

Cambridge University Press 978-0-521-88864-6 - The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution Nicholas Aroney Index More information

INDEX

264-5 Hegel, Georg 98 electoral responsibilities 50 Henry, Patrick 75 Higgins, H. B. 81, 97, 102-3, 114, role in amendment procedure 319-21; refusal to submit 130-3, 228, 369 proposals 320–1 contributions to constitutional Grant, Charles 263 Greece (ancient), city-states 68, 90, 120-1, 222 Greene, Jack 55 Grey, Henry George, Third Earl (Secretary of State for the High Court 294-5, 298; on Colonies) 138-41 representation in House 228, failure of intitiatives 141 230; on the Senate/ Grey, Sir George (governor of New parliamentary deadlocks 239, Zealand) 159, 160, 251-2 240, 241, 243, 244, 361

Griffith, Sir Samuel 34–5, 67–8, 102–3, 113, 117, 118, 128, 146, 206 contributions to constitutional debates 152, 153, 175, 189, 192, 240, 258, 286; on amendment procedures 301–6, 329–31, 332; on responsible government 211, 360; on the Senate 201, 202–3, 205, 217, 361; on state/federal powers 247, 248, 250, 251, 252, 259–60

drafting of 1891 Commonwealth Bill 159–60, 187, 272–7, 288, 307, 325, 332

federal theory 114–18, 193–5 High Court rulings 132, 280, 363, 364, 368

as leader of 1891 convention 115, 159–61

proposals for division of Queensland 156–7, 169 publications 115

Grotius, Hugo (Hugo de Groot) 33 Gummow, William, Justice 13–14, 350–1, 359

Hackett, John 159, 173–80, 198–9, 202, 360 Hamilton, Alexander 34, 53, 54, 71, 74–5, 76, 105, 106, 107, 111 Harrington, James 72 Hayne, Robert Y. 123 Hearn, W. E. 72 debates 188, 189, 210, 237, 279, 285; on amendment procedures 314, 318–19, 321–2, 325–6, 334; on equal representation 196-7, 200, 211–12, 215, 218–21; on the High Court rulings 280-1, 364 opposition to 1897 Bill 176–7 High Court of Australia 291-8 composition 293-5, 298 constitutional provision for 254, 283 importance of role 291, 298, 367-8 jurisdiction 292-3 moves to limit power 295-8 political significance of role 294-5 rulings on constitutional issues 132, 207, 261-2, 280-1, 291, 348-9, 357-9, 363-4, 365 see also Table of cases Hirst, John 277 Hobart, settlement of colony 136 Hobbes, Thomas 32, 72, 80, 98, 120 Hogg, Peter 59 Holder, Frederick 210, 229-30, 253-4, 295-7, 326, 334 House of Assembly, early proposals for 139 House of Representatives in American system 77; criticisms composition 108, 109, 216, 224-37, 347 - 8as house of locality 205, 344, 358 powers 192, 216, 237-9 representation in see separate main heading



INDEX 419

318, 321 role in Westminster system 50 size 358 see also Parliament; Senate; states; equal representation Howe, James 241, 283-5, 316 Howell, Peter 359 Hueglin, Thomas 76 Hume, David 69 immunities, intergovernmental, doctrine of 363-4, 366 imperial Crown/Parliament see United Kingdom inconsistency see law(s) independent political society, minimum size 94-5 industrial disputes, regulation of 281 institutions colonial, role in federal arrangements 9-10 Inter-Colonial Convention (1883) Irving, Helen 144, 164, 170, 171, 181 Isaacs, Isaac 88, 92, 97, 99, 100, 102-3, 114, 130, 132-3 Australian Democracy and Our Constitutional System 132 contributions to constitutional debates 155, 173, 188, 211, 262, 264, 269; on amendment procedures 310, 311-13, 315, 316, 318–19, 321–2, 328, 331, 334; on centralised government 212; on Commonwealth powers 279-80, 286, 289, 290; on equal representation 194-5, 200, 219-20, 270; on the High Court 295, 296; on referendum 213; on representation in House 228, 230-1; on the Senate/ parliamentary deadlocks 223-4, 240, 241, 243 High Court rulings 132, 280-1, 291, 364

role in amendment procedures 317,

Jay, John 105, 111 Jefferson, Thomas 69, 83, 120, 123, 124 Iellinek, Georg 34, 89, 98, 113 judicial review 86, 93, 120, 292-3, 297-8 Just, Thomas 77, 88, 102-7, 112 Kent, James 71, 111, 112 Kimberley, Lord 145 Kingston, Charles 78, 87, 102-3, 128-30, 158, 215 contributions to constitutional debates 195, 197, 203, 230, 241, 258, 264, 290, 294-5, 310; on election of Senators 217; on state/federal powers 248, 252, 274–5, 279, 281, 284 The Democratic Element in Australian Federation 129 presidency of 1897-8 convention role in drafting of Constitution 114, 128-9, 159-60, 166-7, 192, 259, La Nauze, J. L. 78-9, 129, 144-5, 151, 187, 192, 207 Labouchère, Henry 142 labour movement criticisms of Commonwealth Bill 162 impact on national politics 169 lack of representation at 1891 convention 155 proposals for national republic 165 response to premiers' bill 168-9 and social legislation 284-5 Lang, John Dunmore, Rev. 104, 141 law(s), inconsistencies between (federal vs. state) 273, 283, 291 different forms of 284 legislatures, state election of convention delegates by imperial grant of 140 non-interference with 330-1 role in constitutional amendment 326–9; by unanimous consent

329-32



420 INDEX

legislatures, state (cont.) role in passage of Constitution Act 167-8, 179, 183 liberals, divisions between 212 see also parties (political) lighthouses/ships, jurisdiction over Lincoln, Abraham 89 locality/localism/local government see electoral districts; equality of voting power; House of Representatives; self-government, local; towns Locke, John 33-4, 72, 120, 131 Lyne, William 170, 211, 222, 241, 271 Macintyre, Stuart 164 Macrossan, John Murtagh 152, 197-8, 205, 250-1, 359 Madison, James 34, 38, 63, 71, 80, 91, 101, 120, 122 analysis of (American) federalism 21-5, 26-8, 30, 54, 72-3, 100, Australian commentaries 105, 107, 111-12, 124, 125-7, 151 contributions to US constitutional debates 53, 77-8 influence/citation in Australian constitutional debates 188, 190, 221, 344 Maine, Henry 68, 120 majority vote in amendment procedures 306, 309, 333, 350 in drafting/ratification process 47, 184; unanimous commitment to 45

fears of tyranny by 105-6

Marshall, John 71, 110, 120

341, 350

May, Thomas Erskine 72

and representative structures 49,

Martin, Luther 23, 24, 33-4, 53, 54

McIlwraith, Sir Thomas 146, 159, 199,

McHugh, Michael, Justice 348–9

McMinn, W. G. 181 Mill, John Stuart 71, 72 monarchy, institution of 1-2, 106, 342 Montesquieu, Charles-Louis de Secondat, baron de 34, 68-9, 72, 73-4, 76, 77, 80, 90, 105, 111 definition of 'Confederate Republic' 106, 369 Moore, W. Harrison 146, 355 Moreton Bay 136 Morgan, Hank 162 Morris, Gouverneur 54 Moses, Bernard 72 Munro, James 159, 160, 192, 201, 203, 249, 252, 259, 302 Murray (River) 278-9 nation-state(s) in federal theory 82-3 nationalist theory of 97 unitary nature 5 nationalism constitutional characteristics 23-4, 29-30 expression in constitutional debates 188-9, 206-7, 245; on amendment procedure 323, 333–4; on Commonwealth powers 278-81; on equal representation 196-7; on parliamentary deadlock 244 objections to 132–3 role in modern federalism 29 shortcomings of analytical approach based on 30-1, 34, 343 theoretical expressions 96-100, 342; by Australian theorists 114, 121-8, 130-3 US Constitution analysed with reference to 26–7, 80–1 see also states' righters; names of individual proponents especially Higgins, Isaacs Nelson, Hugh 166-7, 169 New England 83-5

McMillan, William 155, 159, 211, 218,

316

223, 224, 230, 249, 254, 259, 305,

248



INDEX 421

New Jersey plan 53-4 Parliament (Federal) New South Wales bicameral structure 3, 49, 150 composition 190, 216 colonial history 135-6 desire for river control 278-9 disagreement/deadlock between electoral divisions 136, 285 houses 13–14, 190–1, 201, other colonies' suspicions of 165-6 237, 240-4, 310, parliamentary/legislative committees 322-3, 339, 350-1, 361-2 141 - 3dissolution 240-4, 322-3 prominence in moves towards exercise of imperial parliamentary federation 163 powers 300, 329-32 proposed amendments to premiers' importance of constitutional debates bill 168-9 on 244-6 proposed union with Victoria 165-6 limitation of powers 248-52, 253-5, 362-4 response to 1897 Commonwealth Bill 174, 176-7, 178 (planned) supervisory role 301 separatist movements 137, 139-40 'preponderating influence' of one territorial extent 136 house 194-5 new states 266-71, 357 role in amendment procedures admission from outside territory 308–15, 318 see also Commonwealth; House of 267, 269 formation by separation 267-9 Representatives; Senate representation in Senate 270-1 Parliament (imperial) see United New Zealand Kingdom decision not to join federation 183 parliaments, colony/state see representation at conferences 146, legislatures 147, 149, 159 parties (political) nexus see representation divisions between 188 framers' forebodings concerning 197-8, 359-60 O'Connor, Richard contributions to constitutional internal divisions/cross-alliances debates 163, 173, 211, 226, 155, 359 227-8, 253, 280, 289-90, 292, role in Parliament 359-60 296, 314, 316-17, 359 Paterson, William 53 High Court rulings 132, 280, 363, Patterson, Sir James 165 364, 368 Peacock, Alexander 230, 285 O'Loghlen, Sir Bryan 163 pensions, debate on 283-5 'one man, one vote' principle 160, people 209-10 benefit of, as aim of government original states 255-6, 324-6, 356 218 - 19consent, requirement of 30-1, 253 definition 344; for amendment/ Parkes, Henry 134, 141, 146, 148-9, 162, 163 referendum purposes 319 contributions to constitutional delegation of powers 31 debates 199-200, 226, 232, representation 31 235, 251 vesting of power in 2-13, 31-2, 346-9; motions to 1890 conference 150, 153 as state-based 3, 4, 6, 348-9 resolutions to 1891 convention 159, see also peoples of the states; 191-3, 204, 247-8, 250-1, 255 sovereignty



INDEX

422

people's conferences/conventions see Bathurst; Corowa peoples of the states as foundation of federation 313, 332-3, 360 (principle of) Senate representation 3, 195, 197, 221, 225–6, 341, 344 relationship with people of the nation 305 role in parliamentary deadlock 240 Philadelphia Convention (1787) 23, 24–5, 42–3, 56, 75, 149, 212–13 Phillip, Arthur, Captain 135-6 philosophy (of federalism) 8 see also federalism, Australian: philosophical context Piddington, A. B. 168, 210 Playford, Thomas 192, 251, 304-5 Poore, Benjamin Perley 71, 103 Port Phillip 136, 137, 139 power, configuration of 61-2, 246, 362 - 8role in federal theory 11-12, 21 see also Commonwealth; division of power; Parliament; 'reserved powers' doctrine; states premiers' bill (1895) 167-9 premiers' conference (1895) 166–7 premiers' conference (1899) 178 and amendment procedures 310, 320, 323, 325 premiers' conference (1900) 179-80 Privy Council 128–9 property, power to acquire on just terms 280, 365 Proudhon, Pierre-Joseph 69 Pufendorf, Samuel 33

Queen see Crown
Queensland 118, 137
absence from 1897–8 convention
114–15, 169, 175–6
demands/plans for subdivision
156–7, 169, 178, 268–9;
proposed legislature 156–7;
representational implications
270

exceptional constitutional provision 224 - 7opposition to federation 144 response to 1897 Commonwealth Bill 178 Quick, John 92, 102-3 contributions to constitutional debates 152, 173, 211, 230; on amendment procedure 327; on equal representation 215, 221; on the franchise 210 Corowa resolution 164-6 Digest of Federal Constitutions 119 Quick, John, and Robert Garran, Annotated Constitution of the Australian Commonwealth 99, 119-28, 138, 142, 144, 145, 155, 169, 234, 238 accuracy/consistency 231, 266 on amendment procedure 326 approach to sovereignty 121-8 on 1891 Commonwealth Bill 164-5 on Commonwealth legislative powers 285, 288-9 on 1897-8 convention 167, 176 federal theory/definitions 3-6, 8, 19, 35, 101, 125, 177 influences 88, 94, 97, 100 on ratification procedure 160 on referendum results 180 on state continuation 265-6, 356-7 on state representation/rivalry 140, 141, 153, 173, 175 quota system see House of Representatives

'race' power, debates on 283, 286–91
problems of exclusivity 286–7, 290
radical democracy 128–30
railways, administration/regulation
281, 331
Randolph, Edmund 53
ratification
role in formative process 44–5
see also referendums
referendum(s), (proposed)
constitutional provisions for
213–14



INDEX 423

referendum(s), (proposed) role in law-making 46-7 constitutional provisions for US compromise over 54-5 (cont.) see also formative basis; states in amendment procedures 299-300, republic 104 303, 306-7, 308-15; dual 'crowned', Australia as 342 (federal/intra-state) 318; labour proposals for 165-6 obstacles to 109-10 following passage of law in both houses 309-10; following 1999 referendum on 351-2 passage of law in single house 'reserved powers' doctrine 249-50, 311-12; objections to 312, 257-8, 261-2, 275, 280-1, 363-6 arguments for 365-6 314, 339 criticisms 364-5 legal appeal to 295-7 opposition to 235 responsible government 1-2, 6 to resolve parliamentary deadlock constitutional debates on 189-91, 201, 240–4 192-3, 210-14, 215; arguments see also Crown; republic against 201-4; arguments for referendums (ratificatory, 1898–1900) 205, 360-1; consensus against 10, 13, 45, 59, 183, 340, 346 (1891) 198; consensus in favour (1897-8) 216, 238-9, 339-40 franchise 181, 347 impact on amendment debates 314 relationship with constitutional outcome/implications 180-1 amendment 319-23 relationship with federalism procedure/results 176 provision in Constitution Act 167-8 359-62 Reid, George 163, 166, 170, 177 theoretical commentaries 112, 118 contributions at 1897-8 convention see also executive; United 211, 224, 230, 232, 239, 241, Kingdom, parliamentary 265, 283-4, 290, 310, 318-19, government 326, 361 'rigidity' (of constitution) 47-8, 52 'yes-no' speech 149, 168, 176, 239 plans for avoidance 316-18 representation see House of rivers, jurisdiction over 261, 278-9 Representatives; new states; Rousseau, Jean-Jacques 120 Senate; states Royal Commission (1870) 145 rule of law 1 representation (in House of Representatives) definition/structure 224-37, 340 Sawer, Geoffrey 155 minimum 233 self-government proportionality to population 53-4, aspirations for 137-8 225-7, 230, 232-3, 307, 358 colonial, commencement of 137 quota vs. nexus 227-31, 232, 358 conflict with rule from Westminster representative structures constitutional debates on 190, 191-3 as founding principle of federalism constitutional provisions for 10 112, 117–18, 141, 207–8, 253, direct 44 299, 324, 341-2, 368-9 implications for sovereignty imperial commentary 138-42 theory 350 local 82-3, 86-7, 134-5, 137-9, 207, influences on 52-3, 62-3 299-300, 329, 331-2, 368-9 representative government 1-2 presupposition of entitlement role in federal theory 11-12, 21 to 115



424 INDEX

Senate	Spain 40
composition 48, 109, 217-24, 347-8	colonial rule 121
elections to 195, 199, 208-9, 216-18,	special majority
222–4, 340	required in ratification referendums
equality with House of	168, 176
Representatives 237–8	requirement for constitutional
limitation of powers 199–204,	change 47–9, 48–9, 51–2, 333
215–16, 237, 244	Spence, Catherine Helen 172
nomenclature 224–7	state (national entity) see nation-state
refusal of supply (1975) 50, 361–2	'states' righters' 52, 188–9, 245, 278–81
representative function 344,	prevalence over nationalists 195–6
359–60	see also nationalism
see also financial bills; Parliament;	states (units of federation)
responsible government; states;	autonomy 8–9, 248, 251, 277–8,
equal representation	344–5
separation of powers 2–14, 87, 113	constitutions 250–2, 256–66 (see also
	amendment)
Service, James 146	continuation under federal system
Sidgwick, Henry 30, 71 Smith, Goldwin 72, 103, 111, 152	101 2 247 50 255 66 299
	191–2, 247–50, 255–66, 288,
Smith, William, Lt-Col. 205	353–4, 356–7, 362; of laws 288
Solomon, Vaiben Louis 231–2, 321	equal representation 130, 131–2,
South Australia 137	140, 183, 194–200, 215, 218–22,
proposals over river jurisdiction	245, 248–9, 270–1, 325–6, 358
278–9	equality in formative processes 49
response to 1897 Commonwealth	functions/powers 10
Bill 174–5	immunities/privileges 349
and 1850s conference plans 142, 143	large vs. small 238, 304
sovereignty 17	legislative powers 272–91
alternative approaches 33	minimum representation (in House
avoidance of concept 32, 34–8;	of Representatives) 231–2
benefits 37–8; in practice 245,	nomenclature 152, 249-50, 257
343, 350	position under Constitution 332–3
centrality to nationalist theory 98-9	as pre-existing/necessary to federal
as indivisible 28, 168	structure 2, 4, 43–4, 57–8, 247,
limited conception 55-6	256–8, 268, 338–9, 362
loci, in Australian federal order	(problems of) proportional
12-14; popular 346-9; state	representation 140
349–50	protection of own interests 158
modern use, origins of 32-3	secession, constitutional
nationalist interpretations 122	requirements for 350
objections to theory 54-5, 80, 96,	shared commitment to federation
349–50	282-3, 307, 323-4, 341, 344-5,
political theory based on 33-4,	349–50
121–8	structuring of electoral system
political theory prior to 35-7	around 49
significant elements 32–3	subdivision 267 (see also
unitary 31–2, 333–4	Queensland)
universal theory of 74, 94-6, 123	surrender of territory 266-7



INDEX 425

taxation bills 238 territorial integrity 192-3, 250, Taylor, Henry D'Esterre 164 355-6 Taylor, John 17 vesting of sovereignty in 349-50 voice in constitutional amendment territorial integrity, principle of see 300, 333-4 under states see also colonies; embryo states; Thynne, Andrew 160-1, 201, 275-6 Tocqueville, Alexis de 39, 68-9, 72, legislatures; new states; original states; representation; United 79, 111 States Constitution Todd, Alpheus 72, 103, 113 Stephen, James 139-40 towns, as units of government Stephens, Alexander 67 Stirling, James, Captain 136 trade Story, Joseph 26-7, 71, 107, 111, 120, interstate 277, 280 124, 221 intra-state 365-6 structuring, role in formative process Trenwith, William 176, 209-10, 211, 42, 43-4, 338 229, 283, 284–5, 290 Stubbs, William, bishop 87 Tucker, St George 25-6, 27 Swiss Constitution/federal system 8, 25, Turner, George 167, 209-10, 211, 228-31, 236, 241, 243-4, 289 28, 43 amendment procedures 48, 51-2, unanimity (of states) 303, 305–6, 309, 312, 321–2 as condition of federation 46-7, 48, cantons' territorial integrity 52 compared with US 85, 91-2 51, 301, 338–9, 340–1, 349–50 criticisms 120 in ratification of Constitution division of powers 61 45, 46 executive government, conciliar 50, unitarianism 93 212 (see also Baker, Richard; United Kingdom executive; as model for authority over Australian colonies Australia below) 70-1, 109, 127-8, 134, 150, 330, formative processes 43, 45 341-2, 366-7 as integrative 40 Colonial Office 175 as model for Australia 41, 70, colonial rule 137; constrasted with 108, 109, 113, 126-7, 129, 154, Spanish 121 189, 201-2, 210-11, 303, 304-5, devolution of power to dominions 306-7, 337, 342, 343, 360-1 331 - 2ratification procedure 45 evolution of political system Sydney Morning Herald 105-6 213-14 Syme, David 72 parliamentary government 50-1, 93, Symon, Josiah 67, 211, 220, 222, 241, 94; compared with US 81-2, 84, 264, 265, 270, 290, 291, 293-4, 85, 91-2, 329-30; as model for 296-7, 367 Australia 238 comments on amendment role in passage of Constitution Act 171, 180 procedures 310, 311-13, 317, termination of authority 60-1, 138, 319, 327, 332 345-6 United States Civil War (1861-5) 28-9, Tasmania 137, 143-4 response to 1897 Commonwealth 69, 89 see also Confederate states Bill 175, 177, 262–3



> 426 INDEX

United States Constitution/federal Victoria system 8, 28, 73-8 electoral representation 228 amendment procedures 48, 51, 56-7, 77-8, 301-2, 322 analyses 79-87, 89, 99-100, 103-4, 112-13 (see also Madison, James) centralisation 44 classification by units of government 83–6 combination of national and federal elements 24-8, 30 comparison of founding statutes 25-6, 28 concept of sovereignty 33-4 conception of federalism 34-5 criticisms 81-2, 83, 86, 91, 316 debates on 53-7 division of powers 61, 93, 194-5 electoral system 50, 56; election of senators 20, 56, 217 evolution 83 federalism 77, 203 formative processes 42–3, 45, 59 incorporation of local units 85-6 influences on 56 as integrative system 40 key characteristics 21-4 merits 86-7 middle states 85 as model for Australia 41, 70, 87, 104-7, 108-9, 126-7, 150-2, 156-7, 194, 200, 217, 225-6, 233, 238, 301–2, 329–30, 337, 342, 343 party politics 197-8 ratification: opposition to 75; procedures 56 representative structures 77 'reserved powers' doctrine 249-50 243, 253, 264, 265, 293-4, 298, 315, 319, 322-3 residential qualification for election 82-3 women, voting rights 172, 181, 209 role of state legislatures 43, 57 Wrixon, Henry 159, 202, 203, 204-5, southern states 85 258, 263, 360 state autonomy 25, 106 state constitutions 54-6, 107

parliamentary/legislative committees 142 - 4proposal on amendment procedure see under amendment proposed union with New South Wales 165-6 response to 1897 Commonwealth Bill 174, 176-7 Virginia plan 53-4, 124 voting (at federal conventions), individual vs. bloc 153 see also equality of voting power Walker, James 211, 268-9 Warden, James 124 Webster, Daniel 111, 112 Wentworth, William Charles 141-2 West, John, Rev. 142 Western Australia 153, 183 attempted secession 259 colonisation 136, 137 regional separatism 170 response to 1897 Commonwealth Bill 179-80 Westminster system see responsible government; United Kingdom, parliamentary government Wheare, K. C. 17, 18, 19, 20, 26, 88 Whitlam, Gough 50 Willoughby, Westel 34, 71, 120, 122 - 3Wilson, James 24, 33-4, 53, 71, 77, 120, 122, 126, 188 Wilson, Woodrow 71 Wiltshire, James 141 Wise, Bernhard Ringrose 150-1, 207, 211, 212-13, 221, 236-7, 240, 241,

Zuckert, Michael 54, 151