

INDEX

A v. Secretary of State for the Home Department, 312-13, 318 A v. UK, 329 ACT New Zealand, 76, 84-6, 88 Criminal Investigations (Bodily Samples) Amendment Act 2009 and, 210-11 election manifestos for, 187-8 Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 and, 164-6 Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010 and, 113-14 ESO regimes and, 194-6 Garrett's resignation from, 218 law and order agenda of, 95-6, 187 Misuse of Drugs (classification of BZP) Amendment Bill 2007 and, 134 opposition to Misuse of Drugs Amendment Bill 2010, 143-4 Parole (Extended Supervision Orders) Amendment Act 2009 and, 201-2, 205 penal populism and, 195 Sentencing and Parole Reform Act 2010 and, 216-17, 225, 227 Sentencing and Parole Reform Bill 2009 and, 92 Sentencing and Parole Reform Bill 2010 and, 96 SST and, 218 Adoption and Children Act (UK), 367 Alexander, Marc, 195-6 Allan, James, 48 Anderton, Jim, 128, 131-2, 142

Animal Defenders International, 352 Anti-Terrorism, Crime and Security Bill (UK), 305-17 civil liberty protections under, 312 - 13compatibility with ECHR, 306-7, 316 - 17compatibility with Human Rights Act 1998, 306-7, 310-11 Conservative Party and, 317 control orders for, 313-17 House of Lords' review of, 309-10 indefinite detention issues in, debates over, 311-13 JCHR review of, 308-9, 311-13 judicial review of, 315 Labour Party and, 317 Newton committee review of. 311 - 13opposition to, 307-8 parliamentary review of, 308-11 passage of, 315-16 political purpose of, 306-7 rights-protection amendments to, 309 - 10A v. Secretary of State for the Home Department and, 312-13 Armstrong, Hilary, 279 Attorney General, responsibilities of in Canada, 73 under HRA, 74-5 under NZBORA, 51-2, 72-3, 97-110 Attorney General reports on Criminal Investigations (Bodily Samples) Amendment Act 2009, 209 - 10on Electoral Act 1993, 163



464 INDEX

Attorney General reports (cont.) for Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, 162-3 ESOs and, 191-4 on legislative bills, 275-6 for Misuse of Drugs (classification of BZP) Amendment Bill 2007, 129 - 30on Parole (Extended Supervision Orders) Amendment Act 2009, for Parole (Extended Supervision) and Sentencing Amendment Bill 2003, 190-4response to R. v. Hansen, 129-30 aversive constitutionalism, 34 bills of rights and, in origins of, 34-5 in New Zealand, 34-5 Bakshi, Kanwaljit Singh, 213 Bassett, Michael, 37, 41 Belcher, Joseph, 200-1 Belcher v. Chief Executive of the Department of Corrections, 66, 200-1, 204benzylpiperazine (BZP), reclassification of, 124-6 criminalization of, 134 EACD influence on, 124-6 Bercow, John, 358 bicameral government system, in UK, Human Rights Act 1998 influenced by, 403 bill of rights. See also Commonwealth model, for bill of rights; Human Rights Act; Human Rights Act 1998; hybrid approach, for bill of rights; parliamentary rights model, for bill of rights; weak-form model, for bill of rights; specific bills of rights aversive constitutionalism as influence on, 34-5 in Canada, 1-2, 248-9

NZBORA, 1 purpose of, 1 A Bill of Rights for New Zealand - A White Paper (Palmer, G.) final reports, 43-4 interim reports, 37-41 public opposition to, 42-3 Treaty of Waitangi and, 44 bills. See legislative bills, decisionmaking for Bingham, Thomas (Sir), 244 Blackburn, Robert, 255-6 Blair, Tony, 238, 245, 259, 265 calls for resignation of, 322 identity card legislation under, 371 Terrorism Bill 2005-2006 and, 318 - 19Blunkett, David, 238-9, 264-5, 307-8 BNA Act. See British North America Boateng, Paul, 245 Bolger, Jim, 46 Electoral Act 1993 and, 160 NZBORA under, 50-61, 93 Boscawen v. Attorney General, 63-4, 66-7 section 7 reports for, 178 Boston, Jonathan, 86, 88, 119-20 British North America (BNA) Act (Canada), 42, 49 Brittain, Leon (Sir), 242, 244 Broadcast Advertising Clearance Centre, 352 Bromwich, Tessa, 134 Brown, Gordon, 322-4 Butler, Andrew, 52 BZP. See benzylpiperazine

Cameron, David, 238–9, 265, 281, 394 response to *Scoppola v. Italy*, 387 support for same-sex marriage, 347–8, 363, 368 on voting rights for prisoners, 385–6, 388

Canada. *See also* Canadian Charter of Rights and Ergedoms

Rights and Freedoms Attorney General responsibilities in, 73 bill of rights in, 1–2, 248–9

Ulli 01 Tights III, 1-2, 246-9

functions of, 401–2 legislative review of, 2–15



INDEX 465

BNA Act in, 42, 49 Constitution Act in, 65 Department of Justice Act in, 60-1, 73 Supreme Court in, 60, 62, 73, 163 Canadian Bill of Rights, 2, 4, 248-9 global influence on, 252-3 Human Rights Act 1998 influenced by, 253-4 legislative rights review of, 252-3 NZBORA compared to, 44, 253-4 Canadian Charter of Rights and Freedoms, 2 Department of Justice Act and, 60 limitations clauses in, 62-3 NZBORA compared to, 39, 48-50, 62 - 3Cash, William, 373-4 Chahal v. UK, 306 Charter of Rights and Freedoms (Canada), 2, 249 judicial review of, 2 legislative review of, 4 NZBORA compared to, 48-50 Charters, Claire, 90, 178-9 Chauvel, Charles, 166, 214-15 Children, Young Persons and their Families Amendment Act (New Zealand), 75, 99 Chrétien, Jean, 45 Churchill, Winston, 348 Citizen Initiated Referendum (CIR), 24, Labour Party and, 94-6 with MMP representation, 186 New Zealand National Party and, Parole (Extended Supervision) Amendment Act 2004 and, 198 penal populism and, 94, 186 Civil Contingencies Bill (UK), 294 civil liberties under Anti-Terrorism, Crime and Security Bill, 312–13 under Counter-Terrorism Act, 323-4 under TPIMs Bill, 325 Civil Partnership Act (UK), 347-8, 354-61. See also same-sex

compatibility issues under, 359-61 Conservative Party response to, 358 criticism of, 358, 361 ECHR compatibility, 367-8 House of Lords' response to, 357-8 Human Rights Act 1998 and, influence on, 366-71 introduction of, 356-7 JCHR compatibility, 358-61 Labour Party (UK) support for, 356-7, 359, 367-8 legal challenges to, 362-3 Liberal Democratic Party support for, 368 marriage rights under, 360-3 next of kin identification under, 355 parliamentary review of, 369-70 passage of, 359 public reaction to, 361-2 purpose of, 354 redefinition of partnerships under, rights of ownership under, 354 transfer of property ownership under, 354-5 Civil Union Act (New Zealand), 79-80 Civil Union Amendment Act 2007 (New Zealand), 178 Clark, Joe, 49 Clark, Marie, 94 Clarke, Charles, 318, 321, 373, 375 Clarke, Ken, 383-4 Clarke, Kenneth, 298-9, 337 Clegg, Nick, 278, 330, 340-1, 374, closed material proceedings (CMP), 298 Justice and Security Bill of 2012 and, 336-7, 341 coalition governments. See also Conservative Party in New Zealand, 13, 402-3 TPIMs Bill and, 330-1 Collins, Judith, 92, 167, 199, 219, 226, 228 - 30Commonwealth Immigrants Act (UK), 242

marriage legislation



466 INDEX

Commonwealth model, for bill of confidence and supply agreements, rights, 6 100-9, 157for Gardbaum, 8-9 penal populism and, 188 in New Zealand, 77-9 Conservative Party (UK) Communications Act 2002 (UK), Anti-Terrorism, Crime and Security Bill and, 317 Animal Defenders International and, Local Government Act and, 279, 352 355 - 6ban on political advertising and, opposition to Human Rights Act 348 - 91998, 242 Broadcast Advertising Clearance opposition to Marriage (Same Sex Centre under, 352 Couples) Bill, 364-5 draft version of, 349 response to Civil Partnership Act, ECHR compatibility, 349-50, 352 Electoral Commission report on, response to identity cards bills, 373 351 - 2response to voting rights for prisoners, 347, 378-9, 381-9 government rejection of alternatives to, 353-4 security bills sponsored by, 305-6 House of Lords' response to, 352 Constitution Act (Canada), 65 Human Rights Act 1998 and, constitutional engineering, under compatibility with, 348, 352-4 NZBORA, 75 Independent Television Authority constitutional reform in New Zealand, 33 and, 348 NZBORA as, 37-8 JCHR compatibility with, 349, 352-3 Labour Party support for, 353 constitutional supremacy principle, Law Lords' response to, 352 110 legislative review of, 350-3 constitutional theory, Human Rights political objectives of, 348 Act 1998 and, 239-40 risk-based assessment of, 353 control orders section 19(1)(b) reports for, 350-1, for Anti-Terrorism, Crime and Security Bill, 313-17 353 compatibility JCHR and, 314 TPIMs Bill and, 325-36 of Anti-Terrorism, Crime and Security Bill, 306-7, 310-11, types of, 313 316 - 17Controlling and Regulating Drugs: for Civil Partnership Act, 359-61 A Review of the Misuse of Drugs contestation of, 280-91 Act 1975, 140-1 for general legislative bills, 268-74, Cosgrove, Clayton, 211, 224 404 - 5Council of Europe, 378–81 for Human Rights Act 1998, 252-4, Counter-Terrorism Act (UK), 305, 270 - 4322 - 5civil liberties under, 323-4 JCHR challenges to, 280-1, 283-91, 293-4, 302-3 JCHR critique of, 323 legislative review of, 15–25 Criminal Injuries Compensation for New Zealand legislative bills, Scheme (UK), 367 404 - 5Criminal Investigations (Bodily Samples) Act 1995 (New Zealand), section 19(1)(b) reports and, 279 for UK legislative bills, 404-5 210, 213



INDEX 467

Criminal Investigations (Bodily Samples) Amendment Act 2009 (New Zealand), 208-16 ACT New Zealand and, 210-11 Attorney General report on, 209-10 Committee of the Whole House stage of, 214-16 early stages of, 208-9 Finlayson on, 211 Green party and, 211-12, 214 justice and electoral committee for, Labour party and, 210-11, 214 Maori party and, 211-12 New Zealand Human Rights Commission and, 212-13 New Zealand Law Society and, 212 - 13parliamentary review of, 210–12 penal populism and, 210-11 proposed amendments to, 214-15 third reading of, 215 Criminal Investigations (Bodily Samples) Amendment Bill (New Zealand), 158, 177, 185, 202, 208 Criminal Justice Act 2003 (UK), 321 Criminal Justice Amendment Act (New Zealand), 79-80 Cullen, Michael, 23, 91, 129-32, 178 Cumper, Peter, 353 Dalziel, Lianne, 166, 170, 199, 211 Davis, David, 383 Davis, Fergal, 304 De Londres, Fiona, 304

Davis, Fergal, 304
De Londres, Fiona, 304
declaration of inconsistency
in Canada, 68
in NZBORA, 64–6, 69
Department of Justice Act (Canada),
60–1, 73
Dicey, A. V., 239
Diefenbaker, John, 4
disenfranchisement, of prisoners,
377–91. See also voting rights, for
prisoners
in Ireland, 378
in Scotland, 378
voting rights and, 377–9

Dismore, Andrew, 297
Douglas, Roger, 44, 50
Draft Enhanced Terrorism Prevention
and Investigation Measures Bill
(UK), 332–3, 336
Dunne, Peter, 158
Dyson, Ruth, 228–9

EACD. See Expert Advisory Committee on Drugs
East, Paul, 47, 51–2
ECHR. See European Convention of Human Rights
Eden Park Trust Amendment Bill (New Zealand), 98
Electoral Act 1956 (New Zealand), 160–1
Electoral Act 1993 (New Zealand), 163, See also Electoral

Electoral Act 1993 (New Zealand), 160, 163. See also Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 Electoral Amendment Act (New Zealand), 75, 99

Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (New Zealand), 159–69, 176 ACT New Zealand and, 164–6 Attorney General reports for, 162–3 as breach of NZBORA, 166 contemporary penal theory and, 159–60 Finlayson review of, 162–3, 167

Green party opposition to, 166 Labour party opposition to, 166 Law and Order Committee report on, 167–70 lottery system selection of, 161–2 New Zealand National party and, 164–6 as populist measure, 165

Quinn and, 161–2, 164, 167, 172 section 7 reports and, 165–7 select committee allocations and, 164 SOs and, 164

Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010 (New Zealand), 98 ACT New Zealand and, 113–14



468 INDEX

Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010 (New Zealand) (cont.)

MMP as influence on, 115–16 New Zealand National party and, 114

parliamentary review of, 115–16 SOs and, 185

Electoral Commission (UK), 351–2 Electoral Finance Bill 2007 (New Zealand), 177–8

electoral reform, through NZBORA, 82–93

Epp, Charles, 370

Erdos, David, 33, 245-6

ESOs. See extended supervision order regimes

European Convention of Human Rights (ECHR)

on Anti-Terrorism, Crime and Security Bill, compatibility with, 306–7, 316–17

Civil Partnership Act and, 367–8 Communications Act 2002 and, compatibility with, 349–50, 352

compatibility with legislative bills, parliamentary review of, 346–7 HRA and, 14

Human Rights Act 1998 and, 235, 246–8, 250–1, 257–8, 270, 301

prisoners' rights under, 346 same-sex marriage rights under,

367–8 voting rights for prisoners and, 347, 377–8, 388–9

Ewing, Keith, 240, 315, 399–400 Expert Advisory Committee on Drugs (EACD), 124–6, 140–1, 158–9

extended supervision order (ESO) regimes

ACT New Zealand and, 194–6 Alexander on, 195–6 amendment of Parole Act, 193 in Attorney General reports, 193 as form of punishment, 200–1 Green party debate on, 194–6

Labour party and, 196 New Zealand First and, 194-6, 199 New Zealand Law Society and, 197 New Zealand National party support of, 194–6

NZBORA and, inconsistencies with, 191-4

under Parole (Extended Supervision) Amendment Act 2004, 190

Parole (Extended Supervision Orders) Amendment Bill 2014 and, 207

Tanczos and, 195–6 United Future New Zealand

United Future New Zealand debate on, 194–6

Feldman, David, 9, 135–6, 252, 277, 294 Fenwick, Helen, 307

Finlayson, Christopher, 23, 76, 92, 207 Criminal Investigations (Bodily

Samples) Amendment Act 2009 and, 209-11

on Misuse of Drugs Amendment Bill 2010, 141

review of Electoral (Disqualification of Sentenced Prisoners)

Amendment Act 2010, 162–3, 167 section 7 reports and, 109–10, 191

on Sentencing and Parole Reform Act 2010, 224

first past the post (FPP), 86 Foreshore and Seabed Act, 90, 178–9 Ngatia Apa v. Attorney General and,

91, 178
Foreshore and Seabed Bill 2004 (New

Zealand), 177
Fourth Labour Government (New Zealand)

Bill of Rights Bill under, 45 NZBORA and, 37-50, 113

Royal Commission on the Electoral System, 116

FPP. See first past the post Friedman, Milton, 44

Gardbaum, Stephen, 3, 7–9, 220, 255, 396, 409–10

on Commonwealth model for bills of rights, 77–9

on constitutional engineering, 75



INDEX 469

defense of NZBORA, 80-1 on political rights review, 3-4 Gardner, Edward, 242 Garrett, David, 166, 205, 218 resignation from ACT New Zealand, Gearty, Conor, 240, 310-11 Geddis, Andrew, 36-7, 189 criticism of NZBORA, 51 Geiringer, Claudia, 65-6, 68-9, 80, 115, 136, 208 Gender Recognition Act (UK), 366 - 7Germany, parliamentary rights and, 17 Goff, Phil, 95, 189 Goudie, Sandra, 166, 169-70, 219 Graham, Bill, 46 Grayling, Chris, 386 Green party, 84-6 Criminal Investigations (Bodily Samples) Amendment Act 2009 and, 211-12, 214 ESO regimes and, 194-6 Misuse of Drugs (classification of BZP) Amendment Bill 2007 and, 132, 135 opposition to Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, opposition to Misuse of Drugs Amendment Bill 2010, 143 Parole (Extended Supervision Orders) Amendment Act 2009 and, 205 Greens and M.T. v. the United Kingdom, 382 Grieve, Dominic, 380, 385 Griffiths, Jane, 356 Guidelines on the New Zealand Bill of Rights Act 1990, 56-61

Harman, Harriet, 283 Havers, Michael (Sir), 242 hegemonic preservation theory, 33–4 Hide, Rodney, 218 Hiebert, J., 237 Hirst, John, 377-8 Hirst v. the United Kingdom, 163, homosexuality, discriminatory legislation against, 354-6. See also Civil Partnership Act; same-sex marriage legislation, in activist groups' response to, 355 - 6under Local Government Act, 279, 355 - 7National Council for Christian Standards in Society and, 355 House of Commons, in UK legislative review by, 397-8 TPIMs Bill review and, 335-6 House of Lords (UK) criticism of identity cards bills, 374 - 5Reform Bill 2012-2013, 278, 382 response to Civil Partnership Act, 357-8 response to Communications Act 2002, 352 review of Anti-Terrorism, Crime and Security Bill, 309-10 Howard, Michael, 239, 318-19, 322 Howarth, Gerald (Sir), 359, 365 Human Rights Act (HRA) (New Zealand), 1 Attorney General responsibilities under, 74-5 bill proposals and, consistency with, central purpose of, 8 ECHR and, 14 judicial review of, 3 legislative review of, 5-6, 20 ministerial reports for, 9-10 NZBORA and, 64, 77 parliamentary democracy and, 77 Human Rights Act 1998 (UK), 110, 127, 393-5. See also legislative bills, decision-making for;

security bills, parliamentary

review of



470 INDEX

Human Rights Act 1998 (UK) (cont.) Anti-Terrorism, Crime and Security Bill compatibility with, 306-7, bicameralism as influence on, 403 British constitutional theory and, bureaucratic evaluations of, 270-4 bureaucratic processes influenced by, Canadian Bill of Rights as influence on, 253-4 citizens' rights under, 235-6 Civil Partnership Act influenced by, 366 - 71common law and, 239-40 Communications Act 2002 and, compatibility with, 348, 352 - 4compatibility reports for, 252-4, compatibility requirements of, 411 Conservative Party opposition to, culture of compliance, 255 ECHR and, 235, 246-8, 250-1, 257-8, 270, 301 functions of, 401-2 identity cards legislation compatibility with, 373-4, 376 - 7JCHR and, 262, 291-2 judicial remedies under, 249-50 judicial review of, 237, 248-50, 300 - 1Justice and Security Bill of 2012 compliance with, 343-4 Labour Party opposition to, 242, 245 - 6legislative bills influenced by, 397-400 legislative drafts and, 236-7 legislative rights review of, 237-8, 250 - 9Liberal Party and, 242 Marriage (Same Sex Couples) Bill influenced by, 366-71 NCCL and, 254

parliamentary review of, 237, 250, parliamentary sovereignty and, 257 - 9political criticism of, 238-9, 265 political origins of, 235-8 political resistance to, 238-50 political rights review and, 237 proposed repeal of, 265 R. v. A. and, 268 reporting requirements under, 253 - 4as rights protection model, 259-60 rights-compliance under, 408-9 risk aversion under, 287, 301 risk taking under, 301-2 risk-based assessment of, 302 section 19(1)(b) reports for, 278-9, 287 - 9, 292TPIMs Bill compatibility with, 326–7 voting rights for prisoners influenced by, 390-3 Hunt, Murray, 256 Hutchinson, Paul, 143 hybrid approach, for bill of rights, 6 identity cards, legislation for under Blair, 371 Conservative Party response to, 373 development of, 371 House of Lords' criticism of, 374-5 Human Rights Act 1998 and, 373-4, 376 - 7Identity Document Act, 376 JCHR scrutiny of, 371-4 Labour Party (UK) response to, 373 National Identity Registry and, 371-2, 376 political criticism of, 375-6 in UK, 371-7 Identity Document Act (UK), 376 Immigration Appeals Commission Act of 1997 (UK), 337-8 Income Tax Bill 2002 (New Zealand), 191 indefinite detention, in security bills in Anti-Terrorism, Crime and Security Bill, 311–13



INDEX 471

for foreign nationals, compared to UK citizens, 311 in Prevention of Terrorism Bill, 311, Independent Television Authority, 348 International Covenant on Civil and Political Rights, 166 Interpretations Act (New Zealand), 68 Iraq War, legality of, 277 Ireland, disenfranchisement of prisoners in, 378 JCHR. See Joint Committee on Human Rights Jeffries, Bill, 45 Jenkins, Roy, 242 Joint Committee on Human Rights (JCHR), 76-7, 185, 291-300 Cabinet Office Guidelines influenced by, 295-7 Civil Partnership Act compatibility, 358-61 CMP for, 298 Communications Act 2002 and, compatibility with, 349, 352 - 3compatibility challenges by, 280-1, 283-91, 293-4, 302-3 control orders and, 314 creation of, 291-2 criticism of TPIMs Bill, 325, 327, 333 - 5critique of Counter-Terrorism Act, government transparency influenced by, 294 as government watchdog, 299 Green Paper reports, 297-8 Human Rights Act 1998 and, 262, 291 - 2identity cards legislation and, 371-4 Justice and Security Bill of 2012 and, 337 - 44legislative bill assessment by, 292-3, 296-301 Marriage (Same Sex Couples) Bill and, 364

review of Anti-Terrorism, Crime and Security Bill, 308-9 review of Prevention of Terrorism Bill, 314-15 voting rights for prisoners and, 379-81, 391 Jones, Dail, 198-9 Joseph, Keith (Sir), 242 Jowell, Tessa, 349 judicial censure, 266-8, 287 judicial review alternative models of, 73-4 of Anti-Terrorism, Crime and Security Bill, 315 of Canadian Charter of Rights and Freedoms, 2 forms of, 6 of HRA, 3 of Human Rights Act 1998, 237, 248-50, 300-1in New Zealand, 403-4 of NZBORA, 3, 40 political dissent from, 2-3 of Terrorism Bill 2005-2006, 319-20 in UK, 403-5 Justice and Electoral Committee (New Zealand) composition of, 213 on Parole (Extended Supervision) Amendment Act 2004, 197-8 Justice and Law Reform Select Committee reports, 41-4 Justice and Security Bill of 2012 (UK), 298, 305, 336-42 CMP and, 336-7, 341 committee stage of, 341 compliance with Human Rights Act 1998, 343-4 human rights issues with, 341-2 JCHR review of, 337-44 legislative review of, 337-8 Liberal Democrat support for, 342, 344 origins of, 340 parliamentary review of, 337 passage of, 342 PII and, 339 purpose of, 338

negative reports by, 300



472 INDEX

Kam, Christopher, 10
Kavanagh, Aileen, 8, 19, 257, 316–17, 325–6
Keith, Kenneth, 33
Key, John, 86, 91–2, 95–6, 109, 123.
See also New Zealand National Party
Kidd, Douglas, 47
Kinnock, Neil, 245
Klug, Francesca, 244
Kōkiri, Te Puni, 222

Labour party (New Zealand), 34. See also Fourth Labour Government; Wilson, Margaret CIR and, 94-6 Criminal Investigations (Bodily Samples) Amendment Act 2009 and, 210-11, 214 ESO regimes and, 196 Manifesto 2011, 95 opposition to Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, 166 penal populism and, 188 Sentencing and Parole Reform Act 2010 and, 224-5

Couples) Bill, 364–5 Labour party (UK). See also Anti-Terrorism, Crime and Security Bill

support of Marriage (Same Sex

support for Misuse of Drugs

Amendment Bill 2010, 143-4

Bill
Anti-Terrorism, Crime and Security
Bill and, 317

Justice and Security Bill of 2012 and,

opposition to Human Rights Act 1998, 242, 245–6

passage of Civil Partnership legislation, 347–8

on prisoner voting rights, 347 response to identity cards legislation, 373

response to Local Government Act, 356

response to voting rights for prisoners, 347, 378–9 security bills sponsored by, 305–6 support for Civil Partnership Act, 356–7, 359, 367–8 support for Communications Act 2002, 353

LAC. See Legislation Advisory Committee

Lacey, Nicola, 186–7 Lange, David NZBORA under, 36, 50 resignation of, 44, 70

Law and Order Committee reports on Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, 167–9

majoritarianism and, 169–70 law and order parties, in New Zealand ACT New Zealand, 95–6, 187 New Zealand National Party, 95–6

New Zealand National Party, 95–6 political costs of, 188

Law Lords (UK)

Prevention of Terrorism Bill and, 326

response to Communications Act 2002, 352

TPIMs Bill and, 326-7

legal compatibility issues.

See compatibility, legal
Legislation Advisory Committee

(LAC), in New Zealand, 117–18 legislative bills, decision-making for,

263–91. See also security bills, parliamentary review of

Attorney General reports on, 275–6 bureaucratic evaluations in, 270–4 for Civil Partnerships, in UK, 347–8 cohesive political parties as influence on, 263

compatibility concerns for, 268–74, 404–5

ECHR compatibility and, parliamentary review of, 346–7 evidence-based approach to, 298–9 government incentives for, 264–9 Human Rights Act 1998 as influence on, 397–400



INDEX 473

JCHR assessment of, 292-3, 296-301 judicial censure and, 266-8, 287 lack of transparency in, 289 legislative review of, 274-7 legislative rights review for, 263-4 parliamentary cabinet as influence on, 274-7 risk aversion as part of, 287, 301 risk-based assessments of, 302, 353 for same-sex marriage, in UK, 347 - 8section 19(1)(b) reports for, 278-9, 287 - 9in Westminster-based parliamentary systems, 263 legislative review of bills of rights, 2-15 of Canadian Bill of Rights, 4 of Charter of Rights and Freedoms, 4 of Communications Act 2002, 350-3 compatibility assessments for, 15-25 by House of Commons, 397-8 of Human Rights Act 1998, 5-6, 20, 237-8, 250-9 judicial approach to, 17 of Justice and Security Bill of 2012, 337-8 majority principle for, 16-17 of NZBORA, 5, 20 legislative rights review, 396-7 of Canadian Bill of Rights, 252-3 of Human Rights Act 1998, 237-8, 250 - 9for legislative bills, 263-4 of NZBORA, 252 Lester, Anthony, 243 Lewis, Tom, 353 Liberal Democratic Party (UK), 321-2, 330, 335 Justice and Security Bill of 2012 and, 342, 344 response to voting rights for prisoners, 382 support for Civil Partnership Act, 368 Liberal Party (UK), 242 limitation clauses, in NZBORA, 35, 62-3 Local Government Act (UK), 279, 355-6

activist groups' response to, 355-7 Labour Party (UK) response to, 356 Solicitors Family Law Association and, 357 Locke, Keith, 211 Lundberg, Thomas Carl, 136 Maclennan, Robert, 242-3 Major, John, 11–12 majoritarianism, Law and Order Committee and, 169 Malone, Ryan, 86, 122 Maori Party, 86 Misuse of Drugs (classification of BZP) Amendment Bill 2007 and, support of Misuse of Drugs Amendment Bill 2010, 143-4 Marriage Act (New Zealand), 79-80 Marriage (Definition of Marriage) Amendment Act 2013 (New Zealand), 178 Marriage (Same Sex Couples) Bill (UK), 363 - 6compatibility with JCHR, 364 Conservative party opposition to, 364-5 Human Rights Act 1998 as influence on, 366-71 Labour party (UK) support of, 364-5 marriage rights. See also same-sex marriage legislation, in UK under Civil Partnership Act, 360-3 under Marriage Act, 79-80 under Marriage (Definition of Marriage) Amendment Act 2013, 178 May, Theresa, 265 McGuire, Anne, 358-9 McLeay, Elizabeth, 86 members of parliament (MPs) in New Zealand, 12 in UK, 11-12 voting behaviors of, 11-12 Ministry of Justice and Crown Law Office, in New Zealand, 179-81 minority governments

under MMP systems, 13



474 INDEX

minority governments (cont.) in New Zealand, 123 Parole (Extended Supervision Orders) Amendment Act 2009 and, 206 SOs by, 123 Misuse of Drugs Act 1975 (New Zealand), 25, 113-16 amendments to, 114 classification of controlled substances under, 123-4, 139-40 Controlling and Regulating Drugs: A Review of the Misuse of Drugs Act 1975, 140-1 EACD and, 124-6, 140-1, 158-9 Law Commission review of, 145 - 59legislative history of, 114-15, 171-2 MMP as influence on, 146 New Zealand Human Rights Commission's influence on, 114 New Zealand Law Society and, 114 NZBORA and, 114, 146, 171 parliamentary debate over, 130-9 parliamentary review of, 115-16 penal populism and, 172-3 Psychoactive Substances Act and, 158-9 R. v. Hansen and, 126-8 reclassification of BZP under, 124-6 A Review of the Misuse of Drugs Act 1975, 145 SCNZ rulings for, 126-8 select committees and, 130-9 Misuse of Drugs Amendment Act 2005 (New Zealand), 125 R. v. Hansen and, 127 Misuse of Drugs (classification of BZP) Amendment Act 2008 (New Zealand), 123-8, 158 EACD and, 124-6 reclassification of BZP under, 124-6 reclassification of TFMPP under, 124 - 5Misuse of Drugs Amendment Act (no

Misuse of Drugs (classification of BZP) Amendment Bill 2007 (New Zealand), 128-30 ACT New Zealand and, 134 Attorney General reports on, 129-30 criminalization of BZP, 134 Green party and, 132, 135 Law Commission review of, 133 Maori party and, 134 R. v. Hansen and, 128-9 select committees and, 130-9 vote count for, by party, 135 Misuse of Drugs Amendment Bill 2010 (New Zealand), 141-5 ACT New Zealand opposition to, 143 - 4Finlayson on, 141 Green party opposition to, 143 Labour party support for, 143-4 Maori party support for, 143-4 New Zealand National party support for, 143-4 NZBORA and, 143 United Future New Zealand support for, 143-4 Victorian Charter of Human Rights and Responsibilities Act and, 144 mixed member proportional (MMP) representation. See also New Zealand National Party adversarialism as result of, 117 cabinet-centred government, 174 CIR with, 186 coalition governments with, 13 confidence and supply agreements and, 100-9, 157 democratic legitimacy of legislation with, 87-8 Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010 and, 115-16 executive-legislature relationship and, 87 FPP transition to, 86 House of Representatives with, size variability of, 84 legislative control under, 175-6 minority governments under, 13

158, 171

2) 2011 (New Zealand), 139-46,



INDEX 475

Misuse of Drugs Act 1975 and, 146 in New Zealand, 10, 12-14, 76, 84-93, 402 number of bills passed with, 180 NZBORA influenced by, 13-14, 59, 82 - 4, 174penal populism with, 94 political party dominance with, 175 political stability/instability under, 88-9, 96-7, 405 Royal Commission on the Electoral System and, 116 select committees and, 119-22, 174 - 5Sentencing and Parole Reform Bill 2009 influenced by, 92-3, 97-8 SMP system compared to, 12-13, 113 SOs and, 118-19, 123 Moore, Mike, 48 Muldoon, Robert, 33, 36, 78 Murray, Colin, 377 National Council for Christian

(NCCL), 254

National Identity Registry, in UK, 371–2, 376

NCCL. See National Council for Civil Liberties

New Zealand. See also specific acts; specific amendments; specific bills; specific political parties

aversive constitutionalism in, 34–5

Children, Young Persons and their Families Amendment Act in, 75, 99

Citizen Initiated Referendum in, 24

Standards in Society, 355

National Council for Civil Liberties

Civil Union Act in, 79–80
Civil Union Amendment Act 2007
in, 178
coalition governments in, 13, 402–3
Commonwealth model for bill of
rights in, 77–9
compatibility issues in, for
legislation, 404–5

constitutional reform movement in, Criminal Investigations (Bodily Samples) Act 1995 in, 210, 213 Criminal Investigations (Bodily Samples) Amendment Bill in, 158, 177, 185, 202, 208 Criminal Justice Amendment Act in, 79 - 80criminal policy in, as parliamentary outlier, 186-7 Eden Park Trust Amendment Bill in, Electoral Act 1956 in, 160-1 Electoral Act 1993 in, 160, 163 Electoral Amendment Act in, 75, 99 Electoral Finance Bill 2007 in, 177-8 Foreshore and Seabed Act in, 90-1 Foreshore and Seabed Bill 2004 in, House of Representatives in, 175 Income Tax Bill 2002 in, 191 Interpretations Act in, 68 judicial review in, 403-4 Justice and Electoral Committee in, 197-8, 213 Labour party in, 34 LAC in, 117-18 legislative sovereignty in, 78 Marriage Act in, 79-80 Marriage (Definition of Marriage) Amendment Act 2013 in, 178 Ministry of Justice and Crown Law Office in, 179-81 minority governments in, 13, 123 Misuse of Drugs Amendment Act 2005 in, 125, 127 Misuse of Drugs Amendment Act (no 2) 2011 in, 139-46, 158, 171 MMP system in, 10, 12–14, 76, 84-93, 113, 402 MP voting behavior in, 12 New Zealand Public Health and Disability Amendment Bill (No 2) in, 120

parliamentary democracy in, 401,

Parole Act in, 95, 193

410



476 INDEX

New Zealand. (cont.) Parole Amendment Act 2007 in, Parole (Extended Supervision Order) Amendment Bill in, 73, 120, 122 Parole and Reform Act 2010 in, 230-1 Parole (Extended Supervision) and Sentencing Amendment Bill 2003 in, 190-4 penal populism in, 138 Prisoners' and Victims Claim Act in, Privacy Act 1993 in, 221 Psychoactive Substances Act in, 158 - 9Public Health and Disability Amendment Bill in, 122 Public Health and Disability Amendment Bill (No 2) in, 120 Rogernomics in, 44 Royal Commission on the Electoral System in, 116 SCNZ in, 63 Sentencing Act in, 79-80, 95, 217 Sentencing and Parole Reform Bill 2001 in, 95 Sentencing and Parole Reform Bill 2009 in, 91-2 Sentencing and Parole Reform Bill 2010 in, 96 SST group in, 187, 199, 212 'three-strikes' policy in, 24-5 transition from SMP system, 13, 78, 82-4, 113unicameral parliament system in, Victims' Rights Act in, 95, 217 Victorian Charter of Human Rights and Responsibilities Act in, 144 Wanganui District Council (Prohibition of Gang Insignia) Act 2009 in, 100-9 New Zealand Bill of Rights Act (NZBORA), 1, 41, 45-50. See also Misuse of Drugs Act 1975 amendments to, 39, 47 Attorney General responsibilities under, 51-2, 72-3, 97-110

Belcher v. Chief Executive of the Department of Corrections and, 66 Bill of Rights Bill and, 52-3 A Bill of Rights for New Zealand - A White Paper, 37-41 bill proposals and, consistency with, 54 - 5under Bolger government, 50-61, 93 Boscawen v. Attorney General and, 63-4,66-7bureaucratic response to, 36 'CabGuide' for, 55 Canadian Bill of Rights compared to, 44, 253-4 Canadian Charter of Rights and Freedoms compared to, 39, 48-50, 62 - 3checks and balances within, 39 - 40CIR Act and, 24, 93-4 citizen-initiated referenda under, compatibility requirements for, 411 conceptualization of, 78-9, 110-11 confidence and supply agreements under, 100-9 constitutional engineering under, 75 as constitutional reform, 37-8 under constitutional theory, 60 criminal policy under, 138-9 criticisms of, 48 crown law office and, 54-61 development history for, 33-5 disclosure under, 74 Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 as breach of, 166 electoral reform and, 82-93 ESOs and, inconsistencies with, 191 - 4final passage of, 48 Fourth Labour Government and, 37-50, 113 functions of, 401-2 Gardbaum's defense of, 80-1 Geddis' criticism of, 51 Guidelines on the New Zealand Bill of Rights Act 1990, 56-61



INDEX 477

HRA and, 64, 77 implementation of, 48-50 institutional resistance to, 49-50 Interpretations Act and, 68 as interpretive bill of rights, 63, 69 introduction of, 45-6 judicial declaration of inconsistency in, 64-6, 69 judicial enforcement of, 61-9 iudicial review of, 3, 40 Justice and Law Reform Select Committee reports, 41-4 Labour party and, 34 LAC and, 117-18 under Lange, 36, 50 legal advice in, 54 legislative design influenced by, 176 legislative limitations of, 50–1 legislative review of, 5, 20 legislative rights review of, 252 limitation clauses in, 35, 62-3 limitations to, 47 ministerial reports for, 9-10 ministry of justice under, 54-61 Misuse of Drugs Act 1975 and, 114, 146, 171 Misuse of Drugs Amendment Bill 2010 and, 143 MMP representation as influence on, 13-14, 59, 82-4, 174 under Muldoon, 36 New Zealand Law Society opposition to, 50 New Zealand National Party opposition to, 46-7, 50-4 1990 draft of, 133 NZBORA and, 52-3 under Palmer, 36, 50 as parliamentary bill of rights, 65, 69-70, 110 as parliamentary elements in, 45-6 parliamentary limitations under, 40–1 Parole (Extended Supervision) Amendment Act 2004 and, inconsistencies with, 194, 200-1 Parole (Extended Supervision Orders) Amendment Act 2009 and, 204

penal populism and, 93-7, 185-9 policy advice in, 54 political origins of, 35-6, 69 political prioritization of, 70 as politically-enforced document, Prisoners' and Victims Claim Act and, inconsistency with, 65-6 purpose of, 177 repeal of, 39 reporting duties section of, 53-4 rights-based engagement of, 138 - 9rights-compliance under, 408-9 section 7 reports for, 72-7, 97-110 select committees under, 41-4, 119-22, 177-85 Sentencing and Parole Reform Act 2010 and, 219-24 during Shipley government, 50-61 SOs under, 118-19 Taunoa v. Attorney General and, 65-6 transition from SMP system as influence on, 78, 82-4 Treaty of Waitangi and, 39, 44 vetting process for, 36, 54, 57, 59 New Zealand First, 84-6, 88, 187 election manifestos for, 187-8 ESO regimes and, 194-6, 199 New Zealand Human Rights Commission, 114, 167-8 Criminal Investigations (Bodily Samples) Amendment Act 2009 and, 212-13 Parole (Extended Supervision Orders) Amendment Bill 2014 and, 207 Sentencing and Parole Reform Act 2010 and, 216, 229 New Zealand Law Society, 34, 50, 114, 167 - 8Criminal Investigations (Bodily Samples) Amendment Act 2009 and, 212–13 ESO regimes and, 197 opposition to Parole (Extended Supervision) Amendment Act 2004, 197



> 478 INDEX

New Zealand Law Society (cont.) ascension to Prime Minister, 44 Parole (Extended Supervision A Bill of Rights for New Zealand-A Orders) Amendment Bill 2014 White Paper, 37-41 on conceptualization of NZBORA, Sentencing and Parole Reform Act 78-9, 110-11 2010 and, 216, 229 Justice and Law Reform Select New Zealand National Party, 33 Committee reports, 41-4 CIR and, 94-6 LAC and, 117-18 Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 and, 164-6 resignation of, 48, 70 Electoral (Disqualification of Unbridled Power, 33-4 Convicted Prisoners) Amendment on unicameralism, 116 Palmer, Matthew, 67 Bill 2010 and, 114 ESO regime support by, 194-6 parliamentary bills of rights. in Justice and Electoral Committee, See also Human Rights Act; Human Rights Act 1998; New 213 law and order agenda of, 95-6 Zealand Bill of Rights Act opposition to Bill of Rights Bill, 46-7 Commonwealth model and, 77-82 opposition to NZBORA, 50-4 defined, 7-8 Parole (Extended Supervision Westminster-based, 10-11 Orders) Amendment Act 2009 parliamentary democracy. and, 201-3 See also Commonwealth model, penal populism and, 188, 199 for bill of rights; Westminster-Sentencing and Parole Reform Act based parliamentary systems cohesive party behaviour with, 402 2010 and, 216-17, 225, 227 Sentencing and Parole Reform Bill in New Zealand, 401, 410 2009 and, 92 structural variables of, 77 Sentencing and Parole Reform Bill in UK, 401, 410 2010 and, 96 parliamentary review support of Misuse of Drugs of Anti-Terrorism, Crime and Amendment Bill 2010, 143-4 Security Bill, 308-11 New Zealand Police Association, 212 of Civil Partnership Act, 369-70 New Zealand Public Health and of Criminal Investigations (Bodily Disability Amendment Bill (No 2), 210 - 12Ngatia Apa v. Attorney General, 91, 178 of Electoral (Disqualification of Nicol, Danny, 17, 255, 267, 390 Norrie, Ken, 362 Bill 2010, 115-16 NZBORA. See New Zealand Bill of Rights Act 255 - 7of legislative bills, ECHR OutRage! group, 355-6 compatibility with, 346–7

Palmer, Geoffrey, 5, 23, 33, 36, 50, 61, 69-70, 231. See also Bill of Rights Bill; Fourth Labour Government; New Zealand Bill of Rights Act

New Zealand Bill of Rights Bill and, Samples) Amendment Act 2009, Convicted Prisoners) Amendment of Human Rights Act 1998, 237, 250, of Misuse of Drugs Act 1975, 115–16 of Parole (Extended Supervision) Amendment Act 2004, 198-200

of Sentencing and Parole Reform Act

2010, 220-4



INDEX 479

of Terrorism Bill 2005-2006, 320-2 parliamentary rights model, 6 Parole Act (New Zealand), 95, 193 Parole (Extended Supervision) Amendment Act 2004 (New Zealand), 177, 189-201 Belcher v. Chief Executive of the Department of Corrections and, 200 - 1CIR and, 198 ESOs under, 190 inconsistency with NZBORA, 194, 200 - 1justice and electoral committee and, 197 - 8as management system for high-risk offenders, 189-90 New Zealand Law Society opposition to, 197 parliamentary debate over, 198-200 passage of, by party vote, 199-200 penal populism and, 189-90 Parole Amendment Act 2007 (New Zealand), 203 Parole (Extended Supervision Orders) Amendment Act 2009 (New Zealand), 177, 185, 201-6 ACT New Zealand and, 201-2, 205 Attorney General reports on, 203-4 Green party support for, 205 introduction by minority government, 206 New Zealand National Party and, parliamentary passage of, 205-6 section 7 reports on, 205-6 Sentencing and Parole Reform Bill 2009 and, 202 United Future New Zealand and, 201 - 2as violation of NZBORA, 204 Parole (Extended Supervision Orders) Amendment Bill (New Zealand), 73, 120, 122 Parole (Extended Supervision Orders) Amendment Bill 2014 (New Zealand), 206-7

New Zealand Human Rights Commission and, 207 New Zealand Law Society and, 207 section 7 report on, 207 Parole and Reform Act 2010 (New Zealand), 230-1 Parole (Extended Supervision) and Sentencing Amendment Bill 2003 (New Zealand), 190-4 Attorney General report on, 190-4 penal populism ACT New Zealand and, 195 CIR and, 94, 186 Criminal Investigations (Bodily Samples) Amendment Act 2009 and, 210-11 Labour party and, 188 legal rights protections in conflict with, 185–6 Misuse of Drugs Act 1975 and, 172 - 3MMP as welcome environment for, 94 in New Zealand, 138 New Zealand National Party and, 188, 199 NZBORA and, 93-7, 185-9 parliamentary response to, 194-6 Parole (Extended Supervision) Amendment Act 2004 and, 189 - 90policy competition between parties from, 94 political costs of, 188 rights of accused and, 186 rights of victims and, 186 Phillipson, Gavin, 307 PII. See public interest immunity political rights review, 3–4 Human Rights Act 1998 and, 237 politics of panic, 304 populist constitutional law, in US, 9 Power, Simon, 92, 218 Pratt, John, 94 Prevention of Terrorism Bill (UK), 268, indefinite detention issues in, 311,

313

ESO regimes and, 207



INDEX

480 Prevention of Terrorism Bill (UK) JCHR review of, 314-15 Law Lords review of, 326 Prisoners' and Victims Claim Act (New Zealand), 65-6 prisoner's rights, 347. See also disenfranchisement, of prisoners; Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010; Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010; voting rights, for prisoners Conservative Party on, 347 under ECHR, 346 under Prisoners' and Victims Claim Act, 65-6 Privacy Act 1993 (New Zealand), 221 Protection of Freedoms Act 2012 (UK), Psychoactive Substances Act (New Zealand), 158-9 Public Health and Disability Amendment Bill (New Zealand),

public interest immunity (PII), 339

Quinn, Paul, 76, 161-2, 164, 167, 172, 213

R. v. A., 268 R. v. Hansen, 126-8, 168 Attorney General response to, 129 - 30Misuse of Drugs Amendment Act 2005 and, 127 Misuse of Drugs Amendment Bill 2007 and, 128-9 Raab, Dominic, 388 Re Bennett, 162-3, 166 referenda, citizen-initiated CIR, 24, 93-4 under NZBORA, 93-7 Reform Bill 2012-2013 (UK), 278, 382 regulatory impact statement (RIS), 222 - 3

Relationships (Civil Registration) Bill (UK), 356 Representation of the People Act (UK), 377, 379-80 A Review of the Misuse of Drugs Act 1975 (New Zealand Law Commission), 145 'right of rights,' 240 rights. See specific rights rights of accused criminals, penal populism and, 186 RIS. See regulatory impact statement Rishworth, Paul, 41 risk aversion, for legislative bills, 287, risk taking, under Human Rights Act 1998, 301-2 risk-based assessments, of legislative bills for Communications Act 2002, 353 in decision-making, 302 for Human Rights Act 1998, 302 by JCHR, 302 Rogernomics, in New Zealand, 44 Rose, Dinah, 344 Royal Commission on the Electoral System, in New Zealand, 116

same-sex marriage legislation, in UK, 347-8. See also Marriage (Same Sex Couples) Bill Cameron's support for, 347-8, 363, lesbian involvement in, 362 Sauvé v. Canada, 163 SCNZ. See Supreme Court of New Zealand Scoppola v. Italy, 385 Cameron's response to, 387 Scotland, disenfranchisement of prisoners in, 378 Secretary of State for the Home Department v. AF (No. 3), 328 section 7 reports bills passed with, 73, 99, 120, 181 Boscawen v. Attorney General, 178

Ryall, Tony, 194-5



INDEX 481

Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 and, 165-7 under Finlayson, 109-10, 191 for NZBORA, 72-7, 97-110 on Parole (Extended Supervision Orders) Amendment Act 2009, on Parole (Extended Supervision Orders) Amendment Bill 2014, 207 purpose of, 190-1 select committees and, 179 SOs in, 118-19, 123 under Wilson, 191 section 19(1)(b) reports, 278-9, 287-9, 292 for Communications Act 2002, 350-1, 353 compatibility claims for, 279 security bias, 304 security bills, parliamentary review of. See also specific security bills government incentives for, 304 JCHR compatibility assessments for, 305 - 6security bias, 304 select committees. See also Justice and Electoral Committee for Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, 164 Justice and Law Reform reports, 41 - 4Ministry of Justice and Crown Law Office and, 179-81 Misuse of Drugs Act 1975 and, 130 - 9MMP representation and, 119–22, 174 - 5for NZBORA, 41-4, 119-22, 177 - 85section 7 reports and, 179 SOPs and, 174 SOs and, 178-9 Sensible Sentencing Trust (SST), 187, 199, 212 ACT New Zealand and, 218

Sentencing and Parole Reform Act 2010 and, 216-18, 225 Sentencing Act (New Zealand), 79-80, 95, 217 Sentencing and Parole Reform Act 2010 (New Zealand), 93, 169, 177, 216-29, 231 ACT New Zealand and, 216-17, 225, 227 Finlayson on, 224 inconsistency with NZBORA, 219-24 Labour Party and, 224-5 New Zealand Human Rights Commission and, 216, 229 New Zealand Law Society and, 216, 229 New Zealand National Party and, 216-17, 225, 227 parliamentary cabinet review of, 220 - 4Privacy Act 1993 and, 221 RIS for, 222-3 rules under, 224-9 SST and, 216-18, 225 'three-strikes' policy as influence on, 217-18, 222 Treaty of Waitangi and, 221 Sentencing and Parole Reform Bill 2001 (New Zealand), 95 Sentencing and Parole Reform Bill 2009 (New Zealand), 92. See also 'threestrikes' policy, in New Zealand development of, 218-19 MMP as influence on, 92-3, 97-8 Parole (Extended Supervision Orders) Amendment Act 2009 and, 202 passage of, 229 SOs and, 185 Sentencing and Parole Reform Bill 2010 (New Zealand), 96 Shaw, Jo, 344 Shipley, Jenny, 50-61 Short, Clare, 322 single member plurality (SMP) system MMP compared to, 12-13, 113 New Zealand's transition from, 13, 78, 82-4, 113



> 482 INDEX

single member plurality (SMP) system NZBORA influenced by, 82-4 Smith, Jacqui, 323 Smith, John, 245 SMP. See single member plurality Solicitors Family Law Association, 357 SOPs. See Supplementary Order Papers SOs. See Standing Orders SST. See Sensible Sentencing Trust Standing Orders (SOs) Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 and, 164 Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010 and, 185 by minority governments, 123 under NZBORA, 118-19 select committees and, 178-9 Sentencing and Parole Reform Bill 2009 and, 185 Stone Sweet, Alec, 17, 266 Stonewall, 355-6 Straw, Jack, 245, 258, 293-4, 383 Stychin, Carl, 361-2 Supplementary Order Papers (SOPs), Supreme Court of Canada, 60, 62 invalidation of parliamentary statutes, 73 Sauvé v. Canada, 163

R. v. Hansen, 126-8 Re Bennett, 162-3, 166

Misuse of Drugs Act 1975 and,

Supreme Court of New Zealand

Belcher v. Chief Executive of the

Department of Corrections, 66,

Boscawen v. Attorney General, 63-4,

(SCNZ), 63

200-1, 204

66 - 7

126 - 8

Taunoa v. Attorney General, 65-6

Tanczos, Nandor, 132, 195-6. See also Green party

Taunoa v. Attorney General, 65-6 Television Act (UK), 348 Terrorism Act 2000 (UK), 321 Terrorism Act 2006 (UK), 322 Terrorism Bill 2005-2006 (UK), 305, A v. Secretary of State for the Home Department, 318 Blair and, 318-19 indefinite detention issues in, 320-2 judicial review of, 319-20 London bombing as impetus for, 317 - 19parliamentary review of, 320-2 passage of, 320-2 Terrorism Prevention and Investigation Measures (TPIMs) Bill (UK), 305 civil liberties arguments against, 325 coalition government response to, 330 - 1compatibility with Human Rights Act 1998, 326-7 control orders compared to, 325-36 critical review of, 332-3 Draft Enhanced version of, 332-3, House of Commons review of, 335-6 JCHR criticism of, 325, 327, 333-5 Law Lords review of, 326-7 Liberal Democratic Party response to, 330, 335 Secretary of State for the Home Department v. AF (No. 3) and, 328 suggested amendments to, 333-4 TFMPP. See trifluoromethyl phenylpiperazine 'three-strikes' policy, in New Zealand, 24-5, 91-2. See also Sentencing and Parole Reform Act 2010 Sentencing and Parole Reform Act

2010 and, 217-18, 222

White Paper and, 44

TPIMs Bill. See Terrorism Prevention

and Investigation Measures Bill

A Bill of Rights for New Zealand-A

Tolley, Anne, 206 Tomkins, Adam, 292, 325

Treaty of Waitangi



INDEX 483

bill proposals and, consistency with, 55
NZBORA and, 39, 44
Sentencing and Parole Reform Act 2010 and, 221
trifluoromethylphenylpiperazine (TFMPP), reclassification of, 124–5
Trudeau, Pierre, 42, 45, 49, 70
Tushnet, Mark, 1, 6, 73–4, 256, 409

UK. See United Kingdom Unbridled Power (Palmer, G.), 33–4

unicameralism, executive dominance and, 116–18. See also single member plurality system United Future New Zealand Party, 84–6, 88, 187

ESO regime debate, 194–6 Parole (Extended Supervision Orders) Amendment Act 2009 and, 201–2

support of Misuse of Drugs Amendment Bill 2010, 143–4 United Kingdom (UK).

See also disenfranchisement, of prisoners; Human Rights Act 1998; same-sex marriage legislation, in UK; voting rights, for prisoners; specific acts; specific bills

Adoption and Children Act in, 367 bicameral structure of government in, 14, 403

Civil Contingencies Bill in, 294 common law system in, 324 Commonwealth Immigrants Act in, 242

compatibility issues in, for legislation, 404–5

Counter-Terrorism Act in, 305, 322–5

Criminal Injuries Compensation Scheme in, 367

Criminal Justice Act 2003 in, 321 discriminatory legislation against homosexuality in, 354–6

Draft Enhanced Terrorism
Prevention and Investigation
Measures Bill in, 332–3, 336
Electoral Commission in, 351–2
Gender Recognition Act in, 366–7
House of Commons in, legislative
review by, 335–6, 397–8
House of Lords in, 14, 278, 309–10
House of Lords Reform Bill
2012–2013 in, 278
identity cards legislation in, 371–7
Identity Document Act in, 376
Immigration Appeals Commission

Immigration Appeals Commission Act of 1997 in, 337–8 Independent Television Authority in,

judicial review in, 403–5 Law Lords in, 326–7, 352 Liberal Democratic Party in, 321–2,

330, 335, 342, 344 Liberal Party in, 242 Local Government Act in, 279,

355-7 MP voting behaviors in, 11-12 National Identity Registry in, 371-2,

parliamentary democracy in, 401,

perceived threats to legislative agendas in, 405–7

Prevention of Terrorism Bill in, 268, 305, 311, 313–15, 326

Protection of Freedoms Act 2012 in, 325

Reform Bill 2012–2013 in, 278, 382 Relationships (Civil Registration) Bill in, 356

Representation of the People Act in, 377, 379–80

same-sex marriage legislation in, 347–8, 362–3, 368 SMP system in, 12–13 Television Act in, 348

Terrorism Act 2000 in, 321 Terrorism Act 2006 in, 322

Voting Eligibility (Prisoners) Draft Bill in, 386

voting rights for prisoners in, 377



484 INDEX

United States (US), populist constitutional law in, 9 Upton, Simon, 46 US. See United States

victims' rights, penal populism and, 186 Victims' Rights Act (New Zealand), 95, 217

Victorian Charter of Human Rights and Responsibilities Act (Victoria, Australia), 144

Voting Eligibility (Prisoners) Draft Bill (UK), 386

voting rights, for prisoners, 347 Cameron on, 385–6, 388 compensation rewards and, 384–5 Conservative Party response to, 347, 378–9, 381–9

constitutional arguments for, 383–4 Council of Europe response to,

378–81 disenfranchisement of prisoners and, 377–9

ECHR response to, 347, 377–8,

388-9 Greens and M.T. v. the United

Kingdom and, 382 Hirst and, 377–8

Hirst v. the United Kingdom and, 163, 383

Human Rights Act 1998 as influence on, 390–3

JCHR response to, 379–81, 391 Labour Party (UK) response to, 347, 378–9 to, 382 under Reform Bill 2012–2013, 278, 382 under Representation of the People Act, 377

Liberal Democratic Party response

Scoppola v. Italy and, 385 in UK, 377

under Voting Eligibility (Prisoners) Draft Bill, 386

Wadham, John, 247 Waldron, Jeremy, 16, 206, 240, 391

Walker, Clive, 325 Wanganui District Council

(Prohibition of Gang Insignia) Act 2009 (New Zealand), 100–9

weak-form model, for bill of rights, 6 Westminster-based parliamentary systems, 10–11, 410–11.

See also New Zealand; United Kingdom

instability of, 256

legislative bills in, 263

MPs in, 11–12

New Zealand parliamentary system compared to, 76–7

Williams, Shirley, 242

Wilson, Margaret, 23, 52–3, 58, 199,

section 7 reports under, 191, 207

Young, Alison, 257