INDEX

aboriginal land title extinguishments, see native land title extinguishments
academic writing
  on fiduciary relationships, 225–6
  on judicial dissent, 190–2, 267, 268
  references by judges to, 202–3
accountability, judicial, 149
activism, judicial, 342
administrative detention, 316
administrative law, 208
Administrative Review Council, 198
advertising, political, 286
Aickin, Keith (Justice), 199
Al-Kateb, Ahmed Ali, 314–15, 318, 322
Al Khafaji, Abbas Mohammad Hassan, 315
Al Masri, Mohammed, 311
Alder, John, 335
Allan, James, 344–5
anti-discrimination legislation, 158
anti-terrorism legislation, 113–15
appeals
  at Privy Council, Australia’s abolishment of 158, 179
  see also criminal appeals
arbitrary detention, see asylum-seekers, indefinite detention of
Aronson, Mark, 205–6
Arthurs, Harry, 208
asylum-seekers, indefinite detention of
Federal Court on, 311
Gleeson’s dissent on, 313, 314, 328–33
Gummow’s dissent, 313, 316, 323, 328, 329
High Court on, 311–12, 315–19, 331–2, 333–4
human rights criticism on, 312–13, 315–16, 317
Kirby’s dissent on, 313, 314, 320–4, 326–7, 329, 333
McHugh on, 314, 324–8, 333
Australian Assistance Plan (AAP), 16, 170–2
Victoria State validity challenge to,
  169, 172–3
Mason’s dissent, 169–70, 173–6, 180–3, 185–8
Australian Conservation Foundation (ACF)
  Barwick as President of, 202
  standing rights sought by
    High Court on, 198–201
    Murphy’s dissent on, 189–90, 201, 202–8
Australian Labor Party, 74, 287
Ayers, Philip, 152–3
Bader Ginsburg, Ruth (Justice), 4
Baker, John, 2–3
Barnett, Katy, 5
Barrett (Justice), 223
Barton, Edmund (Justice), 50–1, 156
dissenting opinions of, 15, 20–1, 24–6, 34
  on constitutional interpretation,
    35, 37–8
Barwick, Garfield (Chief Justice), 3, 41–2, 44, 105, 160–1, 163
career/reputation of, 124, 126–7, 201–2
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
</table>
| Barwick, Garfield (Chief Justice) (cont.)
  dissenting opinions of
  at Privy Council, 128–9, 130
  on Commonwealth executive power, 173
  on Privy Council prohibition on
  public dissenting opinions, 118, 124–6
  Basten, John, 204
  Behrooz, Mahran, 315
  Bell, Virginia (Justice), 39, 95, 182, 186–7
  Benda, Julien, 349
  Bennett, David, 166
  Bergman, Matthew P., 146
  Bhagwati, P. N., 315–16
  Blackstone, William, 137–8
  Blake, William, 65
  Booker, Kevin, 83
  Bray, John Jefferson (Chief Justice)
  dissent on duress defence in murder charge, 131, 134, 137–40
  impact of, 131–2, 140–4, 147–8
  Brennan, Gerard (Justice), 95, 203–4
  on Commonwealth executive powers, 181, 183–4, 185
  dissent on murder charges against Chamberlains, 231, 236–41, 249
  on electoral system/freedom of political communication, 277–9
  on equal treatment, 161–2
  on independence/sovereignty of Australia, 179
  Brennan, Sean, 16
  Bridge, Nigel (Law Lord), 77
  Bright (Justice), 134, 136–7, 148–9
  Brown, A. J., 8–9
  Buckley (Justice), 195
  Burnside, Julian, 317
  Cairns, Hugh (Lord Chancellor), 119–20
  Callinan, Ian (Justice)
  on anti-terrorism control order regime, 114, 115
  dissenting opinions of, 18, 51–2, 220
  on indefinite detention of asylum-seekers, 316–17
  Cameron, Clyde, 118, 129
  Canada
  jurisprudence on weighing of evidence, 244
  opposition to publication
  prohibition of dissenting opinions of Privy Council, 122–3
  Carter, Anne, 46
  Cassese, Antonio, 154–5
  Chamberlain, Lindy and Michael, 16
  murder charges against, 230–1, 248–9
  Brennan’s dissent, 231, 236–41, 249
  Deane’s dissent, 241–6, 249–50
  High Court on, 232, 245
  Murphy’s dissent, 231–6
  Chester, Mrs, 16, 58
  Evatt on suffering of, 66, 67, 70
  nervous shock suffered by, 63–4
  Chief Justices, 112
  dissent by, 105
  publication of dissenting opinions of Privy Council recommended by, 120
  Chifley, Ben, 100–1
  *Cigamatic* doctrine, 86–7
  continued acceptance of, 90–2, 93–4
  Dixon’s influence on, 87–90
  rejection of, 95
  Collins, Tom, 65
  common law
  equality as core value of, 256–8, 262–4
  judicial dissent in, 190–2
  legality principle in, 329–30
  on liability for negligence, 76–8
  Commonwealth
  dispute-resolution bodies, 28
  executive powers of, 16
  High Court on, 169, 172–3, 177–8, 180–3, 185–8
  Mason’s dissent on, 169, 173–85
  impact of, 169–70, 174–6, 180–3, 185–8
immunity of 
and Cigamatic doctrine, 86–90
Dixon on, 80–2, 85, 86–7, 94–6 legislative powers of, 83, 84, 93
see also Constitution; Parliament
Communist Party Dissolution Act, 99–102
High Court rejection of, 97, 102–3, 111–13
Latham’s dissent, 98–9, 103–10, 113–15
Constitution
on Commonwealth executive powers, 175
on electoral systems, 277–8
equality principle in, 15–16, 253–4, 257–9, 264
in United States, 265–6
federalism in, 81, 83–4
individual rights protection in, 259–60
on judicial powers, 15, 31–2, 35–6, 42
on national unity, 161–2
and Parliament, 98, 102–3
on residence based discrimination, 155
separation of powers in, 20–1, 32–3
and Inter-State Commission, 23–4, 33, 34
trial by jury guarantee in, 39–41, 42–4
High Court on, 39–41, 42–57
contractual relationships, co-existence with fiduciary relationships, 216, 221–5
Convention Debates
on equality principle, 257–8, 262
on trial by jury guarantee, 50–1, 55–6
Coper, Michael, 33–4, 45, 46, 55
counter-hero judges, 348–53, 354
Country Party, 100
Cowen, Zelman, 98, 108
Crennan, Susan (Justice), 95, 182, 187, 328, 351
criminal appeals
at High Court, 132–4, 247–9
against jury verdicts, possibility of, 233–4, 239–41, 242–3
Crook, Stephen, 200–1
Darley, Frederick, 120
Davies (Justice), 201
Dawson, Daryl (Justice), 12, 52, 95, 162
dissenting opinions of, 272
on freedom of political communication, 272–3, 280–4, 289
on fiduciary relationships, 214, 220
Deane, William (Justice)
career/reputation of, 271
dissenting opinions of, 15–16
on legal equality doctrine, 253–71
on murder charges against Chamberlains, 231, 241–6, 249–50
on trial by jury guarantee, 47–9, 56
on fiduciary relationships, 215, 221
on liability for negligence and nervous shock, 76–7
on national unity, 162
‘Death of the Rule of Law’ (speech, Heydon), 342–3, 349, 350
Denning, Alfred (Law Lord), 194
detention of asylum-seekers
Federal Court on, 311
Gleeson’s dissent on, 313, 314, 328–33
Gummow’s dissent, 313, 316, 323, 328, 329
High Court on, 311–12, 315–19, 331–2, 333–4
human rights criticism on, 312–13, 315–16, 317
Kirby’s dissent on, 313, 314, 320–4, 326–7, 329, 333
McHugh on, 314, 324–8, 333
Dicey, A. V., 263
discrimination
High Court on, 155–7, 160–2
legislation against, 158
Stephen’s dissent on, 150–1, 157–8, 163–7, 168
discrimination (cont.)
US Supreme Court on, 166
see also equality
dispossessions, of indigenous peoples
see native land title extinguishments
dispute-resolution bodies, of Commonwealth, 28
Dixon, Owen (Chief Justice)
career/reputation of, 6, 46–7, 80, 87–90, 91, 103–4, 226
on Commonwealth executive powers, 177–8
on Communist Party Dissolution Act, 97–8, 114
dissenting opinions of, 15, 19
on immunity of the Commonwealth, 80–2, 85:
impact of, 86–92, 94–6
on trial by jury guarantee, 39–40, 42–4, 55–7
on federalism, 82–7, 96
on precedent, importance of, 91
Dixon, Rosalind, 342–3
donations, political, 287–8
Douglas, Roger, 193, 203
Douglas, William O. (Justice), 9–10
Doyle, John, 86
duress defences in murder charges,
131–2, 135–7, 140–1
Bray’s dissent on, 131, 134, 137–40
High Court on, 136–7
House of Lords on, 141–3
Privy Council on, 136–7, 139, 143
duties
of care, 60–2
and liability for negligence, 63–4, 69–74
fiduciary, breaches of, 210, 221
of natural justice, 203–4
public, performance of, and standing, 195–6
East, Edward Hyde, 137–8
Edelman (Justice), 212–13
Edmund-Davies, Herbert (Law Lord), 142
electoral legislation, 275–6, 285–6
adverse effects of, 286, 287–8
High Court on, 276–80, 286–8
‘The Enemy Within’ (speech, Heydon), 351–2
England, see United Kingdom
environmental groups, see public interest groups, standing of equality
as common law core value, 256–8, 262–4
constitutional principle of, 15–16, 253–4, 257–9, 264
in United States, 265–6
High Court on, 251–2, 269, 270, 302–3
legal equality doctrine, 253–5
criticism of, 255–67
impact of, 267–71
see also discrimination
Evatt, Herbert Vere
career/reputation of, 46–7, 59–60
dissenting opinions of, 12, 15, 16, 39–40, 42–4
on constitutional trial by jury guarantee, 39–40, 42–4, 55–7
on liability for negligence, 59, 61–2, 64–73: impact of, 74–9
evidence
unsafe/unreliable, and jury directions, 235–6, 237, 240
weighing of, 244
executive powers of Commonwealth, 16
High Court on, 169, 172–3, 177–8, 180–3, 185–8
Mason’s dissent on, 169, 173–85
impact of, 169–70, 174–6, 180–3, 185–8
see also legislative powers
exercise of rights, 303, 308
Federal Court of Australia
creation of, 159
on indefinite detention of asylum-seekers, 311
on native land title extinguishment, 291–2, 293–9, 309, 310
North’s dissent, 14–15, 291–2, 297, 300–8, 309
on standing, 193
federalism, 36, 81, 83–4, 93–4
Dixon on, 82–7, 96
High Court on, 185–8, 260–1
Mason on, 183–5, 187–8
Whitlam government, 170–1
fiduciary relationships, 209–13
High Court on, 213–16, 218–21, 222
Mason’s dissent on, 209, 214, 215–23
impact of, 217–21, 222, 224–8
Finn, Paul, 213, 223, 225
Finnis, John, 34, 36
freedom of political communication
Dawson’s dissent on, 272–3, 280–4, 289
Heydon’s dissent on, 337–42, 353–4
High Court on, 278–80, 283–4, 286–8, 336–7
French, Robert (Chief Justice), 181–2, 186, 220, 331
Fricke, Graham, 40–1, 47
Fullagar, Wilfred (Justice), 87, 89–90, 98
Gageler, Stephen (Justice), 193, 308
Gans, Jeremy, 14
Gardiner, Gerald (Lord Chancellor), 126
Gaudron, Mary (Justice), 95, 162
dissenting opinions of, 252–3
on electoral system, 279
Getzler, Joshua, 222
Gibbs, Harry (Chief Justice), 76, 199
dissenting opinions of, 105, 173
on fiduciary relationships, 214–15, 219–20
on murder charges against
Chamberlains, 230–1, 232, 234
on standing of public interest
groups, 199–200
‘Gibbs Oration’ (speech, Heydon), 350
Glass, Arthur, 83
Gleeson, Murray (Chief Justice), 76, 122
on courage of dissenters, 268–9
dissenting opinion on detention of
asylum-seekers, 313, 314, 328–33
Goldsworthy, Jeffrey, 257
Governor-General, powers of, 103, 175
‘Great Dissenters’, 6–10, 18–19, 47, 272, 321, 349
‘Great Dissents’, 10–12, 13, 145–6,
216–17
Australian, 16–18, 20–1, 39–40,
59–60, 96, 131, 146–9, 188, 227,
229, 282, 304, 314, 334, 354
language used in, 64–8
stereotypes of, 12
see also impact of dissenting
opinions; judicial dissent
greatness, of judges, 10–13
Griffith, Gavan, 312–13, 317
Griffith, Hugh (Law Lord), 144
Griffith, Samuel (Chief Justice), 50,
226, 247
Groves, Matthew, 90, 205–6
Guest, Christopher (Law Lord), 128–9,
130
Gummow, William (Justice), 71, 75–6,
77, 78, 86, 95
on Commonwealth executive
powers, 182, 186–7
dissenting opinion on detention of
asylum-seekers, 313, 316, 323, 328, 329
on electoral system, 279–80
Hale, Matthew, 137–8
Harlan, John Marshall (Justice), 6–7,
146
Harlow, Carol, 206
Hayne, Kenneth (Justice), 73
on indefinite detention of
asylum-seekers, 316
on native land titles, 307–8
Henry, Edward, 150–1, 155–7
hero judges, 342
Heydon, Dyson (Justice)
career/reputation of, 7–9, 335,
342–5, 348–53
dissenting opinions of, 282, 335,
336, 345–52
Heydon, Dyson (Justice) (cont.)
on freedom of political communication, 337–42, 353–4
on indefinite detention of asylum-seekers, 319
Higgins, Henry (Justice), 40, 42 dissenting opinions of, 18
High Court of Australia, 17, 91, 108–9, 159 consensus norm, 192–3
on Communist Party Dissolution Act, 113–15
on discrimination, 163–7
on duress defences in murder charges, 131–2, 140–4, 147–8
on fiduciary relationships, 217–21, 222, 224–8
on immunity of Commonwealth, 86–92, 94–6
on legal equality doctrine, 267–71
on liability for negligence, 74–9
on standing of public interest groups, 204–6
on trial by jury guarantee, 45–52, 56–7
Imperial Appeal: The Debate on the Appeal to the Privy Council 1833–1986 (Swinfen), 123
implied freedom, 272–3, 353–4
see also freedom of political communication
inconsistency, impact on title extinguishment, 300–1, 303, 307
individual rights
constitutional protection of, 259–60
High Court on, 155–6, 160, 163, 270
interference with, and performance of public duties, 195–6
to liberty, violated by detention of asylum-seekers, 312–13, 315–16, 317
see also human rights
Inglis Clark, Andrew, 50
Inter-State Commission, 20–2
Barton on, 25–6, 27
judicial powers of, 22, 25, 26 and constitutional separation of powers, 23–4, 33, 34 and Parliament, 22–3, 26–7
Isaacs, Isaac (Justice)
dissenting opinions of, 18, 20 on murder charges, 229, 230, 246 on separation of powers doctrine, 23–4, 34
on trial by jury guarantee, 40, 50–1
Jacobs, Kenneth (Justice), 174
Jacobson, Arthur, 4
Jacobson (Justice), on fiduciary relationships, 223
Jefferson, Thomas, 3–4
Jenkinson (Justice), 232
Jordan (Chief Justice), 61, 70, 72
judges
academic sources used by, 202–3
great, 10–13
hero/counter-hero, 342, 348–53, 354
of High Court, 164, 342–3
'Great Dissenters', 6, 7–9, 18–19, 47, 321, 349
humanity of, 68
impartiality/independence of, 153–4, 351–2
jury directions by, 135–6, 139–40, 235–6, 237, 240
literary quotations used by, 65–7, 339–40
standing of, 226–7
judicial dissent
consensus norm at High Court, 192–3
cost-benefit analyses, of, 1
courage, of dissenters, 268–9
origins, of, 2–3
partial dissents, 5–6
research, on, 1
selection, of dissenting opinions, 1–2, 18–19
Supreme Court (US), dissenting opinions at, 3–4, 6–7, 9–10
unanimity, pressures for, 3
United States, in, 1, 17
judicial powers
and administrative powers, 28–30
Constitution on, 15, 31–2, 35, 42
of Inter-State Commission, 22, 25, 26 and constitutional separation of powers, 23–4, 33, 34 and parliamentary legislative powers, 22–3, 26–7
of Privy Council, 117–18
of tribunals, 31–2, 34, 35
judicial process, High Court on, 346–7
juries

constitutional guarantee of trial by, 39–41, 42–4
Dixon’s and Evatt’s dissent on, 39–40, 42–4, 55–7
High Court on, 39–41, 42–57
and parliamentary powers, 40, 42, 45
instructions/directions, 135–6
for duress defences, 139–40
on unsafe/unreliable evidence, 235–6, 237, 240
verdicts by, 238–9
possibility of appeals against, 233–4, 239–41, 242–3
jurisdiction
of Federal Court, 159
of High Court, 30–1, 158, 179
of Privy Council, 30, 119
of supreme/supreme courts, 260–1
of tribunals, 31–2, 36–7, 38
justice
miscarriages of, 230, 244, 246
natural, 203–4

Keane, Patrick (Justice), 220
Kelly, Fitzroy, 119–20
Kennett, Geoffrey, 259
Kiefel, Susan (Justice), 187, 353
Kilbrandon, Charles (Law Lord), 142
Kipling, Rudyard, 339
Kirby, Michael (Justice), 226
on dissenting opinions, 145
dissenting opinions of, 49–50, 55, 56, 114
on detention of asylum-seekers, 313, 314, 320–4, 326–7, 329, 333
‘Great Dissenter’ label of, 6, 7–9, 321
on liability for negligence and nervous shock/duty of care, 71, 75–6, 77, 78
on use of literature, 66–7
on wrongful convictions, 229
Kirk, Jeremy, 257, 259, 261–2, 270
Knox, Adrian (Chief Justice), 40–1
Kuhl, Joy, 235–6

Landa, Abram, 74, 75
Langer, Albert, 273–5, 276–7, 284–5
language use, in dissenting opinions, 64–8

Latham, John (Chief Justice), 13, 42, 60, 63, 90
career/reputation of, 104, 111–13
dissenting opinion on Communist Party Dissolution Act, 98–9, 103–10, 115
impact of, 113–15
Lau, Sean, 342–3
Laurie, Edward, 106
dissenting opinion on Communist Party Dissolution Act, 98–9, 103–10, 115

Kipa, Patrick (Justice), 220
Kelly, Fitzroy, 119–20
Kennett, Geoffrey, 259
Kiefel, Susan (Justice), 187, 353
Kilbrandon, Charles (Law Lord), 142
Kipling, Rudyard, 339
Kirby, Michael (Justice), 226
on dissenting opinions, 145
dissenting opinions of, 49–50, 55, 56, 114
on detention of asylum-seekers, 313, 314, 320–4, 326–7, 329, 333
‘Great Dissenter’ label of, 6, 7–9, 321
on liability for negligence and nervous shock/duty of care, 71, 75–6, 77, 78
on use of literature, 66–7
on wrongful convictions, 229
Kirk, Jeremy, 257, 259, 261–2, 270
Knox, Adrian (Chief Justice), 40–1
Kuhl, Joy, 235–6

Landa, Abram, 74, 75
Langer, Albert, 273–5, 276–7, 284–5
language use, in dissenting opinions, 64–8

Latham, John (Chief Justice), 13, 42, 60, 63, 90
career/reputation of, 104, 111–13
dissenting opinion on Communist Party Dissolution Act, 98–9, 103–10, 115
impact of, 113–15
Lau, Sean, 342–3
Laurie, Edward, 106
law-making, judicial, 147–8
by High Court, 159
lawyers, education of, 268
Lee (Justice), on native land title extinguishment, 293–4, 295–6
Leeth, Richard, 251–2
dissenting opinion on Communist Party Dissolution Act, 98–9, 103–10, 115
impact of, 267–71
legal pluralism, new, 28–30, 37, 208
legality principle, 297, 329–30
and human rights protection, 332–3
legislation
anti-discrimination, 158
anti-terrorism, 113–15
criminal law reforms, 144
electoral, 275–6, 285–6
adverse effects of, 286, 287–8
High Court on, 276–80, 286–8
on human rights protection, 318–19, 324–5, 330–1
on liability for negligence, 74–6, 78–9
on migration, 317, 318
of New South Wales, applicability to Commonwealth, 80–1
on standing, 196–8, 199
see also Communist Party Dissolution Act

executive powers of Commonwealth

INDEX

 liberty rights, violated by detention of asylum-seekers, 312–13, 315–16, 317
 Lindell, Geoffrey, 257–8
 literature, judges using quotations from, 65–7, 339–40
 Lloyd, Clem, 111–12
 Loreburn, Robert (Lord Chancellor), 121–2
 Lynch, Andrew, 190, 344, 348
 McDonald, Stephen, 46
 McHugh, Michael (Justice)
 on Commonwealth executive powers, 180
 on detention of asylum-seekers, 314, 324–8, 333
 dissenting opinions of, 18
 on electoral system, 278, 280
 on fiduciary relationships, 219–20
 on trial by jury guarantees, 52–3, 54, 56
 McKell, William, 75
 McTiernan, Edward (Justice), 47, 102–3
 Maher, Laurence, 46
 Marr, David, 313
 Marr, Laurence, 108, 126–7
 Marshall, John (Chief Justice), 3–4, 226
 Mason, Anthony (Chief Justice), 45, 160–1, 163, 166
 career/reputation of, 226–7, 342
 dissenting opinions of, 5, 14, 16, 19, 55, 227
 on Justice Stephen, 152, 153–4, 155
 on murder charges against Chamberlains, 230–1, 232, 234
 Meagher, Dan, 53, 329–30
 Meagher, R. P., 86, 351
 Menzies, Douglas (Justice), 89
 Menzies, Robert, 100, 110–11
 Merkel, Ronald (Justice), 311
 migration legislation, 317, 318
 Miller, T, 112
 miscarriages of justice, 230, 244, 246
 Mitchell (Justice), 134, 136–7, 148–9
 Monis, Man Haron, 335, 336–7
 Morin, Guy Paul, conviction of, 244
 Morison, Professor, 76
 Morris, John (Law Lord), 141
 Muirhead (Justice), 235–6
 murder charges, 132
 against Chamberlains, 230–1, 248–9
 Brennan's dissent, 231, 236–41, 249
 Deane's dissent, 241–6, 249–50
 High Court on, 232, 245
 Murphy's dissent, 231–6
 duress defences in, 131–2, 135–7, 140–1
 Bray's dissent on, 131, 134, 137–40
 High Court of Australia on, 136–7
 House of Lords on, 141–3
 Privy Council on, 136–7, 139, 143
 wrongful convictions, 229–31, 246
 Isaacs' dissent on, 229, 230, 246
 Murphy, Lionel (Justice), 45, 159
 career/reputation of, 201–2
 'Great Dissenter' label, 6, 10
 dissenting opinions of, 19
 on murder charges against Chamberlains, 231–6
 on standing rights for public interest groups, 189–90, 201, 202–8: impact of, 204–6
 Mylne, Nina, 152–3
 national government/national unity, 161–2, 176–83, 185
 national security, and parliamentary powers, 106–10
 native land title extinguishments, 16, 290, 292–3, 308–9
 duration, impact on extinguishment, 298–9, 302, 307–8
 Federal Court on, 291–2, 293–9, 309, 310
 High Court on, 290–2, 299–300, 304, 305, 307–8, 309–10

© in this web service Cambridge University Press
www.cambridge.org
native land title
extinguishments (cont.)
North’s dissent on, 14–15, 291–2, 297, 300–8, 309
partial extinguishment, 298–9, 303
pastoral leases and, 294–5, 303
natural justice, duties to observe/provide, 203–4
negligence, liability for, 59
common law on, 76–8
and duty of care, 60–2, 63–4, 69–74
Evatt’s dissent on, 59, 61–2, 64–73
foreseeability of injury/harm, 71, 76–8 reasonable, 69
High Court on, 60–2, 78
legislation on, 74–6, 78–9
nervous shock liability for illness/injury caused by, 61–2, 74–5, 76–8
of parents, 72–3
timing of, 69–71
Neuberger, David Edmund (Law Lord), 148
New South Wales legislation applicability to Commonwealth, 80–1
on liability for negligence in, 74–6, 78–9
North, Anthony (Justice), 14–15 dissent on native land title extinguishment, 291–2, 297, 300–8, 309
offences, indictable, trial by jury guarantees for, 40–1, 45, 48–9, 52
Orr, Graeme, 346 ‘Outstanding Australian Judges’ (speech, Heydon), 349–50
Page, Earle, 111–12
Pakulski, Jan, 200–1
Pal, Radhabinod (Justice), 350–1
Pannam, Clifford, 51
Parliament abrogation/curtailment of rights by, 328
and Constitution, 98, 102–3 deference to, 269, 270–1
powers of to create courts/tribunals, 28–31
to defend national security, 106–10
to determine trial by jury, 40, 42, 45
to establish an electoral system, 277–8, 284, 286
and Inter-State Commission judicial powers, 22–3, 26–7
tribunals created by, 28–31
parole provisions, equality in, 251–2, 255, 269
Paterson, Alan, 118
Paton, George, 153
Pelly, Michael, 76 pluralism, new legal, 28–30, 37, 208 political advertising, 286 political communication, freedom of Dawson’s dissent on, 272–3, 280–4, 289
Heydon’s dissent on, 337–42, 353–4
High Court on, 278–80, 283–4, 286–8, 336–7
political donations, 287–8
precedent, doctrine of, 91 preferential voting scheme, 275–80
Primus, Richard, 46
Privy Council, 116, 117–18 Australia’s abolishment of appeals to, 158, 179
Board Members, 124 dissenting opinions, 128–9, 130 publication prohibition of, 116–17, 118–26, 129–30
on duress defences in murder charges, 136–7, 139, 143 jurisdiction of, 30, 119 on negligence claims for nervous shock, 61
unanimity requirement of, 3 proof, see evidence proportionality and freedom of political communication, 341
impact on extinguishment, 301–2, 306
public duties, standing of individuals on performance of, 195–6
public interest groups, standing of, 208
High Court on, 198–201
legislation on, 197–8, 199
Murphy’s dissent on, 189–90, 201, 202–6, 208
UK Supreme Court on, 208
publication prohibition of dissenting opinions of Privy Council, 116–17, 118–19
lifting of, 119–26, 129–30
publicity, stay of trial because of, 240–1
punitive purposes of detention, 316
Punjabi, Ruchir, 322
Reed, Robert (Lord), 206–7
remedies, for breaches of fiduciary duties, 210, 221
residence
discrimination based on Constitution on, 155
High Court on, 161
Stephen’s dissenting opinion on, 150–1, 157–8, 163–7, 168
High Court on, 156–7
Rich, George (Justice), 23–4, 60–1, 63–4
rights
abrogation/curtailment of, 328
Bill/Charter of, 318–19, 320–1, 324–5, 330–1
exercise of, 303, 308
see also human rights; individual rights
Ritter, David, 80
Robertson, Geoffrey, 59, 68
Robertson, Tim, 161
Robson, Ross, 153
Rodger, Alan (Law Lord), 190
Rose, Dennis, 260
Ross, Colin, 229–30
rule of law, 193–4, 263
Sackville (Justice), 204–6
Said, Edward, 349
Saunders, Cheryl, 261
Sawer, Geoffrey, 54–5, 89–90
Scalia, Antonin (Justice), 9, 312, 348–9
Scarman, Leslie (Law Lord), 77–8
Selway, Bradley, 95
separation of powers, constitutional, 20–1, 32–3
and Inter-State Commission, 23–4, 33, 34
seriatim/separate opinions, 3–6, 160, 192–3
Simon, Jack (Law Lord), 142
Simpson, Amelia, 15–16, 161
Smith, Lionel, 212
Smyth, Russell, 47, 90, 190–2, 193
special interests test to establish standing, 199–200
standing, 193–5
busybodies, fears of, 194, 203
determination of, 204–6, 207
development of/legislation on, 195–8, 199
of public interest groups, 208
High Court on, 198–201
Murphy’s dissent on, 189–90, 201, 202–6, 208
UK Supreme Court on, 206–7
self-interest, and standing, 194–5
Starke, Hayden (Justice), 64, 68, 90
states
immunity of, 253
legislative powers of, 85–6
Stephen, James Fitzjames, 137–8
Stephen, Ninian (Justice), 12, 121
career/reputation of, 152–5
dissenting opinions of, 164
on residence-based discrimination, 150–1, 157–8, 163–7, 168
Stephenson, Peta, 16
Stebbings, Chantal, 28, 29
Street, Sandy, 161
Sunstein, Cass, 268
Supreme Court (UK), on standing of public interest groups, 206–7
Supreme Court (US), dissenting opinions at, 3–4, 6–7, 9–10
Swinfen, David, 123
Thwaites, Rayner, 313
Tokyo War Tribunals, 350–1
Toohey, John (Justice), 95

career/reputation of, 271
dissenting opinions of, 15–16
on legal equality doctrine, 253–5:
criticism on, 255–67; impact of,
267–71
on electoral system, 279
on fiduciary relationships, 218, 220
on individual rights protection,
259–60
on national unity, 162
tort law, 60–1, 78–9

trial by jury
constitutional guarantee of, 39–41,
42–4
Dixon’s and Evatt’s dissent on,
39–40, 42–4, 55–7
High Court on, 39–41, 42–57
parliamentary determination of, 40,
42, 45

see also juries

tribunals, 28
judicial powers of, 31–2, 34, 35
jurisdiction of, 31–2, 36–7, 38
parliamentary creation of, 28–31

Tushnet, Mark, 9–10

Twomey, Anne, 84

unanimity
pressures for, 3
Privy Council requirement of, 3

United Kingdom
constitutional change in, 116
criminal law reforms, 144
jurisprudence
on duress defences in murder
charges, 141–3, 144
on liability for negligence, 62
on standing of public interest
groups, 206–7

see also House of Lords; Privy
Council

United States
judicial dissent in, 1, 17
at Supreme Court, 3–4, 6–7, 9–10

jurisprudence
on discrimination, 166
on Equal Protection Clause, 265–6
on liability for negligence, 67–8
and standing of public interest
groups, 203

United States Surgical Corporation
(USSC), 213–14, 221

verdicts by juries, 238–9
possibility of appeals against, 233–4,
239–41, 242–3

Victoria
validity challenge against AAP, 169,
172–3
Mason’s dissent, 169–70, 173–83

voting
preferential scheme of, 275–80
rights to, 287

Walker, Robert, 190

Walsh, Cyril (Justice), 160–1

Weinrib, Ernest, 225

Westen, Peter, 263

Wheeler, Fiona, 112

Whitlam, Gough, 170–2, 178–9

Wilberforce, Richard (Law Lord),
141–2, 225

Wilcox (Justice), 194–5

Williams, George, 10, 325–6, 344,
348

women, unequal treatment of, 262–3

Woods, Robert, 270

World War I, 66

World War II, and High Court
judgments on national security,
109–10

wrongful convictions for murder,
229–31, 246

Isaacs’ dissent on, 229, 230, 246

Young, John, 163–4

Young, Norman, 238

Zines, Leslie, 46–7, 82–3, 258, 259