Index

AAA Investments (Pty) Ltd v. Micro Finance Regulatory Council, 189
Abdul Aziz Mohammad JCA, 243–246
Aboriginal rights, in Canadian administrative law, 125
Act of 1756 (Scotland), 84–85
adjectival law, English judicial review and, 35
adjudication
Administrative Procedure Act 1946 and, 154–156
US bureaucracy and role of, 150–153
Administration of Islamic Family Law (Malaysia), 239–240
Administration of Justice (Miscellaneous Provisions) Act of 1958 (UK), 206
Administrative Appeals Tribunal (AAT) (Australia), 312–313, 315–316
Administrative Justice and the Supremacy of Law in the United States (Pound), 123–125
administrative law. See also judicial review; specific countries administrative law, e.g., Canadian administrative law
common law systems, comparative analysis, 4–5, 550–558, 570–573
cost-benefit constitutional entrenchment and, 14–16
cost-benefit constitutional foundations of, 13–14, 362–363
defined, 117–118
dualism in, 69–71, 350–353
English vs. US jurisprudence, 117–117
future research issues, 175
international law and, 66–67, 75–76
multiple legal orders and, 19–20
post-colonial evolution of, 360, 367–371
substance-based judicial review and, 46–59, 350–353
temporal aspects of, 361
trans-Atlantic scholarship concerning, 128–133
transitional development and, 361–367
typology of systems, 21–23, 358–367
administrative law judges (ALJs) (US), 126–127
Administrative Procedure Act 1946 (US), 22, 125, 130–131, 154–156, 352–355
Administrative Review Council (Australia), 319–320
Administrator, Transvaal v. Traub, 188–189
Advocate-General (South Africa), 175–176
Affirmation of Faith (Kalimlah Shahadah), 246–248
Africa, South African administrative law influence in, 179–181, 354
Ahmad, Kassim, 249–250
Ahmed, Farrah, 275–288, 376
Ahmed, Shababuddin (Justice), 303
Ahmed and Others v. HM Treasury, 334
Ahrons, Constance, 372
Arendale N.H.S. Trust v. Bland, 262–263
Ajay Hasina v. Khalid Mujib Sehravardi, 275–276, 284–286
Akechi, Migi, 190–201, 374
Alex Makhia Wasubwa & 7 others v. Elias Namibkha
Wamita & 4 others, 206–207
Ali, Inman (Justice), 304
ambiguity principle
duality in judicial review and, 65, 68
international human rights law and, 75–76
New Zealand administrative law abandonment of, 332–333
Anglo-Boer War of 1899–1902, 173
Anglo-Irish Treaty 1921, 99–100
Anisminic Ltd v. Foreign Compensation Commission. See also Wednesbury principle
Australian jurisdictional error and, 316
Bangladesh judicial review and, 297–298, 305–306
Canadian divergence from, 141–142
contested legacy of, 144–145
English law and legacy of, 145
Hong Kong judicial review and, 264–266
Israeli administrative law and, 164–165
judicial error and, 53–56, 58–59, 111–112
judicial review and, 46–48
jurisdictional issues and, 174
Malaysian religious conversion cases and, 245
New Zealand administrative law and, 343–344
Singapore ouster clause enforceability and, 223–228
South African administrative law and, 188–189
ultra vires doctrine and, 49
Anwar Hossain Khan & Speaker Jatika Sangsad (Parliament Boycott), 301–306
anxious scrutiny review, 64–65, 70–71
Canadian administrative law and, 154
Hong Kong judicial review and, 265–266
Index

375

apartheid
South African judicial review and, 175–176, 354
South African legal system and, 171–172, 174–177
Union of South Africa formation and, 173–174
arbitrariness doctrine, Indian administrative law and,
Asnabi J, 250
Associated Provincial Picture Houses v. Wednesbury
  Corporation, 141–142, 244–246. See also Wednesbury
  principle
A. Taib v. Minister for Local Government, 202
Attorney-General v. Ng Yuen Shin, 256–258
Attorney-General (NSW) v. Quin, 310, 335–338
audi alteram partem, 103–104
Australia
  common law in, 10–11
  international-domestic law dualism in, 69–71
  jurisdiction in law of, 114
  ratification theory in legitimate expectations doc-
  trine, 63
  UK public law influence in, 310–311
  Australian administrative law
    constitutional entrenchment and, 13–16, 124, 309–326,
      364–365
    natural justice and legitimate expectation and,
      321–325
    overview of, 13–14, 357
    public law and, 310–311, 312–313, 357
    rise of constitutional review and, 315–318
    statutory reform of, 344–345
  Awami League (AL) (Bangladesh), 298–300
  AXA General Insurance v. Lord Advocate, 89–90
Baker v. Canada, 66–67, 75–76
Baker v. Carr, 166–167
BALCO Employees Union v. Union of India, 287
Bangalore Principles, 63, 68
Bangladesh
  judicial review in, 17, 295–308
  transitional development in, 365–367
  Bangladesh administrative law, 289–306
  colonization and, 289–291
  decolonization and, 300–306
  jurisdictional reach and, 301–302
  Bangladesh National Party, 298–300
  Bangladesh v. Advocate Asaduzzaman Siddiqui, 299, 304
  bankruptcy legislation, English law and, 41–42
  Bankruptcy Act of 1860 (UK), 41–42
  Barak, Aharon (Justice), 167–168
  Barisan Nasional coalition (Malaysia), 258–260
  Barrington J, 112–113
  Barton-Prescott v. Director-General of Social Welfare, 332
  Basic Law (Hong Kong)
    Article 39, 258–261
  Chinese power over, 258–261
  continuity of, 255–261, 355–356
  divergence from English law in, 266–271
  international instruments and, 267–268, 269–270
  basic structure doctrine
    Bangladesh administrative law and, 304
    Singapore statutory interpretation and, 229–230
    Bastarache J, 142–144
    Bato Star Fishing (Pty) Ltd v. Minister of Environmental
      Affairs, 184–185
    Baxi, Upena, 374–375, 286–287
    Bazet, L. G., 149–149, 175–176, 188–189
    Beitz, Jean, 142
    Beg (Justice), 278
    Beinart, B., 174–177, 180–181
    Bejerano v. Minister of Police, 163
    Ben Gurion, David, 163
    Berman v. Minister of Interior, 165
    Bhagwati (Justice), 284–285
    Bharat Bank Ltd Delhi v. The Employees of the Bharat
      Bank Ltd Delhi, 244–246
    Bhuwania, Anuj, 281–282
    Bill of Rights Ordinance (BORO) (Hong Kong),
      258–261, 267–268, 270–271
    Birmingham (Lord), 18–19, 62, 64–65, 75
    Births and Deaths Registration Act (BDRA) (Malaysia),
      251–253
    Blackstone, William, 121–122, 128–131
    Board of Education v. Rice, 188–189
    Boddington v. British Transport Police, 189
    Boer republics, 173
    Bokhary (Justice), 315–318, 344
    Brennan J, 258, 314
    Bridge (Lord), 63
    British Mandate in Palestine, English law influence
during, 159–161
    Brodie (Lord), 93–94
    Browne-Wilkinson (Lord), 61
    Bryce, James, 128–131
    Bugden v. Secretary of State for the Home
      Department, 63, 358–359
    Bulk Gas Users Group v. Attorney-General, 343–344
    bureaucracy
      in colonial Kenya, 194–195
      politicisation in US of, 127–128
      US administrative control of, 126–127, 135–136
    US scholarship concerning, 131–133
    Byrne v. Ireland, 104–105
    Calvin v. Carr, 345
    Canada
      convergence of English and domestic law in, 147–155
      divergence from English law in, 156–156
      international human rights law and domestic law in,
        66–67
      judicial reasoning in, 21
      legal change in, 367
    Canadian administrative law
      Bangladesh and influence of, 304
      convergence with English law in, 150–157, 333
      divergence from English law in, 149–142, 353
      evolution of, 158–159, 353

© in this web service Cambridge University Press
www.cambridge.org
Criminal Justice and Courts Act (New Zealand), 340–342
Criminal Law (Temporary Provision) Act (CLTPA) (Singapore), 249–222, 228–231
Crow Redress Act 1877, 328–329
Cuna Regis (Ireland), 102
custody cases, Malaysian religious conversion laws and, 240–248
custody law of African indigenous peoples, 173
democracy
Bangladesh judicial review and, 298–300
Canadian administrative law and, 153–155
in colonial US, 122–123
US administrative law and, 127–128
Democratic Alliance v. President of the Republic of South Africa, 185–187
Denning MR (Lord), 144–145, 192
Department of Islamic Development (Jabatan Kemanan Islam Malaysia (JAKIM)), 249–250
Derryanaflan Horde, 105
detention orders, Singapore judicial review of, 219–222
development, administrative law and culture of, 365–367
on parliamentary sovereignty, 50–53
dickinson, John, 171–173
dickson, Brian (Justice), 142–144, 145
diplock (Lord), 46–48, 111–112, 145, 218, 261–263, 316
Director General of National Registration (Malaysia), 250–253
disciplinary power, rule of law and, 46–48
D & J Nicoll v. Dundee Harbour Trustees, 88–92
domestic law, dualism with international law, 60–61
Donoughmore Report. See Report of the Committee on Ministers’ Powers (Donoughmore Report)
droit administratif, French principle of, 28–30, 128–131, 350–351
dualism in Australian administrative law, 69–71
British origins of, 60–61
comparative approaches to, 71–77, 350–351
constitutional law and, 66–67, 69–71, 73
English administrative law and, 60–61, 64–65, 71–77
exportability of, 65–71
Hong Kong administrative law, 67
Hong Kong judicial review and, 265–266
human rights law and, 64–65, 719–762
Indian administrative law, 66–67, 69–71
international law and, 60–61
in Israeli administrative law, 168
judicial review and, 60–61, 65–71
in New Zealand administrative law, 68
parliamentary sovereignty and, 75–76
in Scottish administrative law, 69–71
in Singapore administrative law, 67
in South African administrative law, 66–67
sovereignist foundations and, 75–76
in Sri Lankan administrative law, 67
UK-European legal debate over, 72–77
Westminster model and, 358–359
in Zimbabwe administrative law, 69–71
due process, in Fifth Amendment (US Constitution), 170–171
Dugard, J., 67
Dumani v. Nair, 84–85
Dunedin (Lord), 50–50
Dunsmuir v. New Brunswick, 21, 150–152
Dutch East India Company, 172
duty to act fairly, South African administrative law and, 188–189
Dykes, Philip QC, 265–266
East African Order in Council (1902), 197–198
East Donegal Co-operative Livestock Mart Ltd v. Attorney General, 168
efficacy, of English judicial review, 36–37, 64–65
Elias CJ, 334
Elliott, Mark, 153–154
English Administration of Justice (Miscellaneous Provisions) Act 1938, 928
English administrative law during British Mandate in Palestine, 159–161
Canadian law convergence with, 147–155
Canadian Law divergence from, 138–156
classical administrative law, 46–49
common law framework and, 4–5
complexity of, 152–153
constitutional entrenchment and, 14–16
constitutional principles and, 13–14
control regimes in, 9–11
distrupt of, 90–91
major features in, 46–48
ECHR and, 64–65
evolution of, 4–5, 13–14, 25–25
expanding systems of, 4
government systems and, 9–11
history of, 25–45, 108–120
350–351
human rights and, 14
Irish law and, 99–100
Israeli administrative law and, 159–170
judicial decision-making in, 14–142
judicial review doctrine in, 28–31, 32–39
legacy of Anisminic case in, 144–145
misperceptions about, 44–45
multiple legal orders, 19–20

© in this web service Cambridge University Press
www.cambridge.org
post-independence Israel and legacy of, 162–163
regulation and, 31–32
Scottish judicial review and, 83–87, 88–92
South African judicial review and, 184–185, 187–189
substantive review in, 140–141
threats to, 50–57, 58
ultra vires doctrine and, 48–49
US law compared with, 117–147
English law. See also United Kingdom
Australian Constitution and, 311–313
Australian judicial review and, 309–310, 314–315, 316
Australian public law and, 310–311, 357
Bangladesh administrative law and, 292, 304, 306, 356–357
British colonial law in US, 118–120
case law volume in, 33–34
continued relevance in Hong Kong of, 264–266
dualism in, 60–61, 65–77
ECHR and, 61–65
exportability of, 60–77
history of, 25–45, 350–351
Hong Kong administrative law and, 264–265, 355–356
Hong Kong colonial law and, 255–261
international law and, 311
judicial reasoning in, 20–24
Kenya colonial law and, 191–198
Kenyan democracy movement and influence of, 202
legal doctrine in, 34–39
legislation and, 31–32, 39–41
Malaysian Syariah law and, 237–238
misperceptions about, 44–45
New Zealand administrative law and, 327–329, 357–358
Scottish administrative law and, 81–83
Singapore administrative law and, 215–216, 233
in South Africa, 172–173
Syariah law and, 234–235
Westminster model and, 359–362
Entick v. Carrington, 162–163
E P Royappa v. State of Tamil Nadu, 273–274
error of fact
Irish supervisory jurisdiction concerning, 101–103
New Zealand administrative law, 358–359
South African administrative law and, 189
South African judicial review and, 185–188
error of law. See also jurisdictional error
Annamice case and, 144–145
Australian constitutional review and, 315–318
Australian judicial review and, 314–315, 358–359
Bangladesh administrative law and, 292
Irish Constitution and, 111–112
Irish supervisory jurisdiction concerning, 101–103
judicial discretion concerning, 53–56, 58–59
scholarship on, 44
South African administrative law and, 188–189
Ershad, Hussen Mohammed, 208–209
European Communities Act 1972, 147–150
European Convention on Human Rights (ECHR)
administrative law and, 56–57, 61
Hong Kong judicial review and, 264–266
Human Rights Act 1998 (UK) and, 147–150
Irish law and, 108–109
judicial effect in, 60–65
New Zealand administrative law and, 353–355
UK withdrawal from, 72–77
Westminster model and, 360
European Court of Human Rights, 64–65, 267–268,
333–335
European Union law, 108–109, 147–150, 351–352,
362, 364
Evans v. Attorney-General, 51–52, 58
Evidence: Act 1950 (Malaysia), 239–240
evolutionist legal scholarship, 369–371
E v. Secretary of State for the Home Department, 282–283, 358–359
Eschequer Court Act 1856 (Scotland), 84–85
excise collection, English regulatory policy and, 40–42
exclusivity principle, Hong Kong judicial review and,
262–263
executive power
Bangladesh administrative law and, 292
Bangladesh judicial review and, 295–298
in colonial US, 211–212
common law suspicion of, 16–17
courts and, 16–17
Hong Kong colonial law and, 255–256
Hong Kong under PRC and, 256–258
Kenyan constitutional law and, 210–211
Kenyan judicial review and, 200–201
non-justiciability and, 222–223
Parliamentary supremacy and, 41–53
scope of substantive review by courts of, 18–19
Singapore judicial-executive separation and judicial
c-o-equality and, 219–222
Singapore judicial review and, 216–218
Singapore statutory interpretation of, 228–231
in South Africa, 175–176, 182–183
suspicion of, 16–17
US administrative law scholarship on, 131–133
US suspicion of, 122–124
extraterritorial asylum screening, EU-UK dualism
concerning, 75
Fair Administrative Act 2015 (FAAA) (Kenya), 180–181,
207–211, 254
fairness doctrine, substantive review and, 18–19
Fairuz, Ahmad CJ, 355, 362
Faiza Tamby Chik J, 355
Farikullah, Hanipah J, 355
fatwa, 355
federalist governmental system, US adoption of,
248
federal common law (US), English law and,
248
fairness doctrine, substantive review and,
40–42
European Union law, 108–109, 147–150, 351–352,
362, 364
Evans v. Attorney-General, 51–52, 58
Evidence: Act 1950 (Malaysia), 239–240
evolutionist legal scholarship, 369–371
E v. Secretary of State for the Home Department, 282–283, 358–359
Eschequer Court Act 1856 (Scotland), 84–85
excise collection, English regulatory policy and, 40–42
exclusivity principle, Hong Kong judicial review and,
262–263
executive power
Bangladesh administrative law and, 292
Bangladesh judicial review and, 295–298
in colonial US, 211–212
common law suspicion of, 16–17
courts and, 16–17
Hong Kong colonial law and, 255–256
Hong Kong under PRC and, 256–258
Kenyan constitutional law and, 210–211
Kenyan judicial review and, 200–201
non-justiciability and, 222–223
Parliamentary supremacy and, 41–53
scope of substantive review by courts of, 18–19
Singapore judicial-executive separation and judicial
c-o-equality and, 219–222
Singapore judicial review and, 216–218
Singapore statutory interpretation of, 228–231
in South Africa, 175–176, 182–183
suspicion of, 16–17
US administrative law scholarship on, 131–133
US suspicion of, 122–124
extraterritorial asylum screening, EU-UK dualism
concerning, 75
Fair Administrative Act 2015 (FAAA) (Kenya), 180–181,
207–211, 254
fairness doctrine, substantive review and, 18–19
Fairuz, Ahmad CJ, 355, 362
Faiza Tamby Chik J, 355
Farikullah, Hanipah J, 355
fatwa, 355
federalist governmental system, US adoption of,
248
federal common law (US), English law and,
248

Indian administrative law, 273–288
access to justice and, 280–281
arbitrariness doctrine and, 273–274, 275–281, 283–286, 316
common law and, 274–275
doctrinal uncertainty concerning, 279–280
designation and, 281–287
lack of guidance for, 279
legal norms and, 278–279
public awareness of, 281–282
strengthening of, 286–287
Indian Express Newspapers (Bombay) v. Union of India, 286–287
indignation
common law and, 19–20, 74
Hong Kong judicial review and, 266–271
Indian administrative law and, 281–287
 Malaysian judicial review culture and, 240–253, 355
multi-layered legal systems and, 363–365
 South African administrative law and, 181–187
indigenous peoples, customary law of, 173, 364
Indira Gandhi a/p Muthu v. Pengarah Jabatan Agama Islam Perak, 246–248, 250, 253
injunction, writ of, Australian judicial review and, 314–315
Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd, 262–263
Innes CJ, 173
In re Racal Communications Ltd, 188–189, 316
institutional competence, Canadian administrative law and, 173–174
instrumentality of state, Bangladesh administrative law and, 301–302
Interim Constitution (South Africa), 15–16
Internal Security Act (Singapore), 219–222
International Covenant on Civil and Political Rights (ICCPR)
Art. 25, 64–65
extraterritorial asylum screening, 75
Hong Kong Bill of Rights Ordinance and, 258–261
Hong Kong judicial review and, 267–268, 269–271
immigration policy and, 68
New Zealand administrative law and, 333–335
Optional Protocol of, 67, 68
International Criminal Court (ICC), South African
defiance of, 182–183
international human rights law, dualism with common law, 66–67
international law
dualism with domestic law, 60–61
English law and, 60–77, 351
Israeli administrative law and, 168
New Zealand administrative law intervention and, 332–333
Interstate Commerce Commission (ICC) (US), 115–117
invalidity, theory of, New Zealand administrative law and, 343–344
Ireland, Republic of
constitutional continuity and change in, 100–110
constitutional justice, 103–104
error of law and constitution of, 111–112
fundamental rights protections in, 105–109
history of law and justice in, 99–100
law-making power in, 109–110
supervisory jurisdiction in, 101–103
Irish administrative law, 98–99, 352
fundamental rights protection in, 105–109
history of, 99–100
judicial error and, 111–112
judicial review in, 98–114
Irish Constitution, 98–99, 110–113
Irish Permanent Building Society v. Caldwell, 112–113
Irvine (Lord), 62
Is Administrative Law Unlawful? (Hamburger), 132–133
Islamic Law
Malay administrative law and, 256–257, 253
Malaysian fatwa administrative fiat and, 256–257, 248–250
Malaysian reforms, 257–240
Malaysian Syariah law and, 235–238
religion conversion in Malaysia and, 242–248
Syariah courts resurgence and, 238–239
Israel
human rights and constitutional law in, 14
private and public law in, 162–165, 363–365
Israeli administrative law, 159–170
constitutionalization of, 169
departure from English law, 165–168, 353–354
future trends in, 169–170
international law and, 168
judicial review and, 166–167, 353–354
post-independence evolution of, 162–165, 364
privatization of, 169
substantive review and, 167–168
US influence in, 164–165
Jabotinski v. Weitzman, 189
Jackson, Vicki, 66–67
Jalan, Pratik, 276–277
Jhaveri, Swati,
Indigence
common law and, 19–20, 74
Hong Kong judicial review and, 266–271
Indian administrative law and, 281–287
 Malaysian judicial review culture and, 240–253, 355
multi-layered legal systems and, 363–365
 South African administrative law and, 181–187
indigenous peoples, customary law of, 173, 364
Indira Gandhi a/p Muthu v. Pengarah Jabatan Agama Islam Perak, 246–248, 250, 253
injunction, writ of, Australian judicial review and, 314–315
Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd, 262–263
Innes CJ, 173
In re Racal Communications Ltd, 188–189, 316
institutional competence, Canadian administrative law and, 173–174
instrumentality of state, Bangladesh administrative law and, 301–302
Interim Constitution (South Africa), 15–16
Internal Security Act (Singapore), 219–222
International Covenant on Civil and Political Rights (ICCPR)
Art. 25, 64–65
extraterritorial asylum screening, 75
Hong Kong Bill of Rights Ordinance and, 258–261
Hong Kong judicial review and, 267–268, 269–271
immigation policy and, 68
New Zealand administrative law and, 333–335
Optional Protocol of, 67, 68
International Criminal Court (ICC), South African
defiance of, 182–183
international human rights law, dualism with common law, 66–67
international law
dualism with domestic law, 60–61
English law and, 60–77, 351
Israeli administrative law and, 168
New Zealand administrative law intervention and, 332–333
Interstate Commerce Commission (ICC) (US), 115–117
invalidity, theory of, New Zealand administrative law and, 343–344
Ireland, Republic of
constitutional continuity and change in, 100–110
constitutional justice, 103–104
error of law and constitution of, 111–112
fundamental rights protections in, 105–109
history of law and justice in, 99–100
law-making power in, 109–110
supervisory jurisdiction in, 101–103
Irish administrative law, 98–99, 352
fundamental rights protection in, 105–109
history of, 99–100
judicial error and, 111–112
judicial review in, 98–114
Irish Constitution, 98–99, 110–113
Irish Permanent Building Society v. Caldwell, 112–113
Irvine (Lord), 62
Is Administrative Law Unlawful? (Hamburger), 132–133
Islamic Law
Malay administrative law and, 256–257, 253
Malaysian fatwa administrative fiat and, 256–257, 248–250
Malaysian reforms, 257–240
Malaysian Syariah law and, 235–238
religion conversion in Malaysia and, 242–248
Syariah courts resurgence and, 238–239
Israel
human rights and constitutional law in, 14
private and public law in, 162–165, 363–365
Israeli administrative law, 159–170
constitutionalization of, 169
departure from English law, 165–168, 353–354
future trends in, 169–170
international law and, 168
judicial review and, 166–167, 353–354
post-independence evolution of, 162–165, 364
privatization of, 169
substantive review and, 167–168
US influence in, 164–165
Jabotinski v. Weitzman, 189
Jackson, Vicki, 66–67
Jalan, Pratik, 276–277
Jhaveri, Swati,
judicial independence, Bangladesh administrative law and, 301–302
judicial reasoning, cross-national comparisons of, 20–21
judicial removal, in Bangladesh jurisprudence, 304
judicial review. See also administrative law
common law approaches to, 3–23
constitutional entrenchment of, 12–16
dualism and, 60–61, 65–71
English law and origins of, 11–12, 28–39, 32–39, 350–351
of executive power, 16–17
future research issues, 373
international human rights law and, 60–77
normative dimension in English law of, 58–59
regulation and, 39–41
rule of law and, 58–59
tribunals and, 53–56
Wednesbury principle and, 46–48
judicial review (Australia) administrative law and, 13–14, 357
common law and, 10–11
constitutional entrenchment and, 14–16
dualism in, 69–71
English law influence in, 309–310
jurisdictional error and, 318–321
legitimate expectations doctrine and, 63
limits of, 312
natural justice and legitimate expectation and, 321–325
rise of constitutional review and, 315–318
statutory reforms of, 314–315
judicial review (Bangladesh), 289–306
foreign influences in, 305–306
historical jurisprudence and influence of outside jurisdictions, 302–306
judicial autonomy and, 298–300
post-independence evolution of, 295–298
Supreme Court and, 289–306
judicial review (Canada)
convergence with English law in, 190–192
divergence from English law in, 141–144
English law influence on, 139–140, 144–145
renovation of, 132–153
substantive review divergence from English law in, 149–147
judicial review (Hong Kong)
in colonial era, 255–266
comparative influences on, 261–265
divergence from English law in, 266–271
English law relevance in, 264–266
judicial review (India)
arbitrariness doctrine and, 275–278
unreasonableness doctrine and, 277–278, 356
judicial review (Ireland), 68–114
judicial review (Israel), evolution of, 166–167
judicial review (Kenya), 191–211
in colonial era, 193
constitutional petition jurisdiction and, 203–204
Constitution of Kenya 2010 and, 203–211
democracy movement and, 201–203
Fair Administrative Action Act 2016 in, 207–209
independence and changes to, 198–203
irrelevance in colony of, 194–198
parallel constitutions and applications jurisdictions and, 204–207
post-Constitutional growth of, 209–211
in post-independence period, 199–201
judicial review (Malaysia)
constitutional amendments to, 240–253
fatwa flat and, 236–237, 248–250, 335
indigenising culture and, 240–253
Indira Gandhi case and, 246–248
Syariah law and, 234
judicial review (New Zealand)
human rights and, 333–335
liberal access to courts and, 340–342
sociopolitical factors in, 334–335
judicial review (Scotland), 86–97
judicial review (Singapore)
autochthonous administrative law adaptations and, 218–219
green-light approach to, 216–218
judicial-executive separation and judicial co-equality and, 219–222
non-judicial review and, 222–223
ouster clause enforceability and, 223–228
statutory interpretation in, 228–231
judicial review (South Africa)
apartheid-era evolution of, 174–177
constitutionalisation and codification of, 177–179, 362–365
courts’ approach to, 176–177
dominance in post-apartheid era of, 175–176, 182–183
expansion of, 183–185
legitimacy principle and, 185–187
judicial review (United Kingdom), 11–12, 28–31, 32–39
administrative decision-making vs., 143–144
Asymmetric case and, 144–145
supremacy of Parliament and threat of, 50–53
judicial review (United States)
Administrative Procedure Act 1946 and, 134–136
ascendency of, 133–134
origins of, 122–124
Judicial Review Procedure Act 2016 (NZ), 340–342
Judicial Service Commission (JSC) (Kenya), 199–201, 210–211
jurisdiction. See also supervisory jurisdiction
Australian judicial review and, 344–345
Bangladesh administrative law and, 301–302
Bangladesh historical jurisprudence and influence of outside jurisdictions, 302–306
Canadian administrative law and, 142–144
English common law limits on, 134
judicial discretionary power and, 46–48, 53–56, 59
judicial review (Malaysia) and, 240–253
Kenyan constitutional petition jurisdiction, 203–204
Malaysian Constitutional article 121(A) and, 250–253
Malaysian religious conversion jurisprudence and, 242–248
Index

Index

Lett & Co v. Wexford Borough Council, 31
Letters Patent 1843 (Hong Kong), 255–261
L'Heureux-Dube, Claire (Justice), 66–67, 142, 145
Li (Chief Justice), 70–71
Lina Joy v. The Federal Territory Islamic Council & Ors, 19–20
Lindseth, Peter, 6–7
Lloyd Jones (Lord), 59
Loughlin, M., 30–31

MacCormick v. Lord Advocate, 81–82
Maharashtra Ekta Hawkers Union, 278–279
mala fide
Bangladesh judicial review and, 505–506
South African judicial review and, 176–177, 183–185
Malanjam, Richard CJ, 19–20, 245
Malawi, administrative law in, 180–181
Malaysia
common law and Islamic law reforms in, 239–240, 354
constitutional amendment of 1988 in, 236–237
history of Syariah law in, 234–236
Islam and Syariah law in, 237–238
Singapore administrative law and, 233
Syariah law and judicial review in, 234
Westminster model in, 358–359
Malaysian administrative law, 19–20
constitutional amendment of 1988 and, 236–237
faith flat and, 236–237, 248–250, 355
history of Syariah law and, 234–235, 355
implementation of Constitutional article 121(1A) and, 250–255
indigenising judicial review culture and, 240–253
Indira Gandhi case and, 246–248
religious conversion and, 242–246
Mamdani, Mahmood, 195–197
Mance (Lord), 64–65, 147–150
Manchester City Council v. Pinnock, 270–271
mandamus, writ of
Australian judicial review and, 314–315
Australian jurisdictional error and, 318–321
Bangladesh administrative law and, 293–295
Canadian administrative law and, 193
case law volume, 317–318
in English law, 33–34, 35, 119–120
in Scottish law, 87–88
in US law, 122–124, 126–127
Manek Gandhi v. Union of India, 278
Manji, Inyad, 251–253
Māori rights, New Zealand administrative law and, 328–330
Marbury v. Madison, 122–124, 126–127
Marsh v. Alabama, 302
Mashaw, Jerry, 126–127
Mason, Anthony (Sir), 268–271
Mason J, 321–322
Matrimonial Causes Act 1973 (UK), 239–240
McDonald v. Board of Can, 103–104
McHarg, Alan, 95–96
McHugh (Justice), 69–71, 325
mercantilism, English legislative policy and, 41–42
Merrill, T.W., 335–336
Meshech Ageng'o Omondi v. Eldoret Municipal Council and another, 266–267
Metropolitan Life Insurance Co v. International Union of Operating Engineers, 142, 145
Michael Munagi v. Attorney General, 204
migration law, Australian judicial review and, 314–315
military intervention, Bangladesh administrative law and, 293–295
Minister for Immigration and Ethnic Affairs v. Teh, 63, 69–71, 72, 75–76, 287–288, 324
Ministry of Transport v. Nour; Police v. Curran, 333–335
Missuse of Drugs Act (Singapore), 220–222, 224–225, 230–231
Mitchell, J. D. B., 29, 87–88
Mohammad Fazil bin Sabtu v. PP, 224
Mohan J, 254–256
Mohl Fazil Musa v. Minister of Home Affairs, 249–250
Mohun Jain v. State of Karnataka, 279–280
monarchy, English law under, 119–120
Montesquieu, 121
multi-party consensus, common law and, 302
multi-layered legal systems
common law and, 21–23
multi-party consensus, common law and, 10–11
multiple legal orders, administrative law, 19–20

Nagaenthran a/l K Dharmalingam v. Foundation Suing through Geoffrey Maganya, 1988
natural justice
Australian judicial review and, 310, 321–325, 357
Bangladesh judicial review and, 297–298
Indian judicial review and, 277–278
Irish constitutional law and, 103–104
nemo iudex in sua causa, 103–104
Neuberger (Lord), 52
Newbold, Charles (Sir), 200–201
New Deal government, administrative law scholarship concerning, 151–153
New Horizons Ltd v. Union of India, 284–286
new institutionalism, legal change theory and, 368–369

www.cambridge.org © in this web service Cambridge University Press
New Zealand common law vs. indigenous legal systems in, 19–20
dualism in law of, 68
legal change in, 367
Ombudsman office in, 313
Parliamentary sovereignty in, 75–76
substantive review in, 18–19
New Zealand administrative law, 327–345
conservation and substantive review in, 339–340
doctrinal relaxation in, 342–344
error of fact and, 338–339
heightened scrutiny in, 336
historical background and constitutional structure, 327–329, 357–358
human rights legislation and, 333–335
international law and interventionist approaches in, 332–333
substantive legitimate expectations and, 337–338
substantive review and, 335–340
Treaty of Waitangi and, 329–332
New Zealand Association for Migration and Investments Inc v. Attorney-General, 337–338
New Zealand Bill of Rights 1992, 18–19, 333–335
New Zealand Maori Council v. Attorney-General (Land), 330
Ngā Taui ki Tāmaki v. Minister of Conservation, 330
Nicholls v. Registrar of the Court of Appeal, 343
Nicholson v. Haldimand-Norfolk Regional Police Commissioners, 142
non-delegation doctrine, Irish law-making power and, 109–110
non-jurisdictional error, vs. jurisdictional error, 20–21, 140–141, 144–145
non-justiciability, Singapore judicial review and, 222–223
non-refundence principle, 70–71, 262–263, 265–266
Novak, William, 136–137
Nyali Ltd v. Attorney-General, 192
O’Donnell J, 113
O’Donnell v. Corporation of Du’n Laoghaire, 112–113
Oireachtas (Irish Parliament), 100–110
Irish courts and, 101–103
law-making power of, 109–110
Około-Ogendo, H. W. O., 193
Ombudsman (Australia), 313
Om Kamor v. Union of India in Delhi Development Authority, 284–286
Orange River Colony, 173
Order 55 of the Civil Procedure Rules (Kenya), 203–211, 354
constitutional petition jurisdiction and, 203–204
parallel constitutions and applications jurisdictions under, 204–207
O’Regan J, 184–185
O’Reilly v. Mackman, 112–113, 262–263
Osborne v. Worksafe New Zealand, 343
Ottoman Empire, law during, 160–161, 282–285
Oudekraal Estates (Pty) Ltd v. City of Cape Town, 189
ouster clauses, Singapore judicial review and enforceability of, 223–228

Padfield v. Minister of Agriculture, Fisheries and Food, 46–48, 141–142, 262–265
Palestine, British Mandate in, 159–161
Palestine Order in Council 1922, 159–161
Parliament (UK)
regulation by, 39–41
threats to supremacy of, 50–51, 58–59
parliamentary sovereignty
Australian judicial review and, 311–313, 323–325
British scholarship concerning, 129–131
in Canada, 139
in colonial Kenya, 194–198
British scholarship concerning, 129–131
in Hong Kong, 256
in Kenya, 258–261
Hong Kong administrative law and, 258–261
Kenyan administrative law and, 191–194, 199–201
Index
Index

Pound, Roscoe, 117–118, 131–133
Practice and Procedure Rules, Kenyan constitutional petition jurisdiction and, 203–204
Practice Direction to CPR Part 54 (New Zealand), 333–335
ultra vires doctrine
in Australian constitutional law, 13–14, 315–318
Australian judicial review and, 314–315
Australian jurisdictional error and, 318–321
Bangladesh administrative law and, 292
Bangladeshi judicial review and, 297–298
classical administrative law and, 48–49
Irish human rights protections and, 108–109
in Israeli administrative law, 162–163
jurisdictional error and, 319–320
Kenyan judicial review and, 193
natural justice and, 323–325
Scottish judicial review and, 86, 89–90
South African judicial review, 175–176
uncertainty, proportionality and human rights and, 56–57
Unfederated Malayan States, 235–236
Union of South Africa, 173–174
United Kingdom. See also English law
administrative law and regulation in, 31–32
British colonial rule in South Africa, 171–173
classical administrative law in, 40–49
common law in, 10–11
comparison of US administrative law with, 177–179
constitutional foundation of judicial review in, 15–16
dualism in law of, 351–352
Handover of Hong Kong to China by, 255
Hong Kong post Handover law and, 258–261
judicial review influence in Scotland from, 81–97
misperceptions of administrative law in, 44–45
politicisation of bureaucracy in, 127–128
public law of, influence in Australia, 310–311
trans-Atlantic administrative law scholarship and, 128–131
ultra vires in, 323–325
United States
administrative power in nineteenth century in, 126–127
ascendancy of judicial review in, 133–134
Australian Constitution and law of, 311–313
colonial-era legal system in, 120–122
common law in, 10–11, 22
comparison of UK administrative law with, 117–119
constitutional influence on, 105, 352–353
distribution of power in, 122–124
English colonial law in, 118–120
federal system in, 122–125
Indian judicial review and, 277–278, 356
Kenyan judicial review and, 208–209
South African administrative law and, 188–189
South African judicial review and, 176–177, 183–185
utilitarian legal scholarship, 359–371
Vakil, Raeesa, 279–280
Varnhัส, Jason, 29
Veilalam do Manu Mathu v. AG, 230–231
Vetting of Judges and Magistrates Act of 2011 (Kenya), 230–231
Viraгор Nayagan v. Deepa Subramaniam and Other
Appeals, 246–248
Wade, William, 30–31, 156
Waitangi Tribunal, 259–261
War of Independence (Ireland), 99–100
Warren, Earl (Chief Justice), 105
Waters, M., 66–67
Wauig (Justice), 267–268
Webb, Beatrice, 41–42
Webb, Sidney, 41–42
Wednesday principle, 46–48
See also Associated Provincial Picture Houses v. Wednesbury
Corporation
Bangladesh judicial review and, 297–298
Canadian divergence from, 145–147
Canadian vs. English law and, 141–142, 145, 147–155
ECHR and, 62
Hong Kong judicial review and, 264–266
Indian administrative law and, 285–286
Indian judicial review and, 277–278
Irish human rights protections and, 108–109
Israeli substantive review and, 167–168
Malaysian religious conversion law and, 142–145
proportionality and human rights and, 136–137
reasonableness principle and, 155
South African judicial review and, 184–185
Weeks, Greg, 13–14, 309–326, 357
Westminster model
Bangladesh administrative law and, 289–291
modification of common law and, 21–23, 339–362
Singapore statutory interpretation and, 230–231
Union of South Africa formation and, 173–174
West v. Secretary of State for Scotland, 85–87, 89–90
white supremacy, in colonial Kenya, 195–197
Wilberforce (Lord), 94–95, 144–145
Wilberforce, John, 320–321
Wilberg, Hanna, 327–345, 357–358
Wilson (Lord), 52, 159
Wilson, Bertha (Justice), 142
Wolf v. Minister of Immigration, 336
Woolf (Lord), 62, 262–263, 267–268
World Bank, 365–367
Wyman, Bruce, 117–118
Yehoshua v. Appeals Tribunal Under the Invalids
(Pensions and Rehabilitations) Law, 165
Yes Minister, 127–128

Index

Yew, Lee Kuan, 215–216
Yong Vui Kong v. Attorney-General, 222–223
Yong Vui Kong v. Public Prosecutor, 230–233
Zainun Ali FJ, 247
Zaoui v. Attorney General, 68
Zaoui v. Attorney-General (No 2), 332–333

Zenit Mataplas, 285–286
Zernhavel v. Appeals Tribunal under the Families of Fallen Soldiers Law, 265
Zestra Asia Ltd v. Commissioner for Transport, 265–266
Zimbabwe
  administrative law in, 180–181
  dualism in law of, 69–71
Zuma, Jacob, 182–183

© in this web service Cambridge University Press
www.cambridge.org