

## INDEX

## Introductory Note

References such as '178–79' indicate (not necessarily continuous) discussion of a topic across a range of pages. Wherever possible in the case of topics with many references, these have either been divided into subtopics or only the most significant discussions of the topic are listed. Because the entire work is about the 'judiciary', the use of this (and certain other terms which occur constantly throughout the book) as an entry point has been minimised. Information will be found under the corresponding detailed topics.

ability, 28-30, 32, 36-38, 44, 193, 196, 277, 287, 291 Aboriginal peoples, 90, 93, 95-98, 101, 174, 269-70 ABS 92 see Australian Bureau of Statistics abuse, 242, 244, 249 sexual, 244 accountability, 7, 11, 56, 59, 61-65, 69, 71–72, 118–19, 126–30, 139–40 Chief Justices, 61–65 individual, 230 value of, 62, 64-65 activism, 8, 16-17, 163, 165-86, 252 appellation, 172-73, 180-81 characterisations of, 167-69, 171 conservative, 181 debate, 163, 167, 180, 182 informed public criticism of courts without activism terminology, language of, 166, 175, 178, 180-81, 183, 186 meanings, 166-72 perceived, 172, 177 in political discourse, 172–77

reasons for enduring appeal of term in popular discourse, 172-80 repercussions for courts, 180-82 terminology, 166, 172, 176, 182, 185 use of activist language in legal community, 178-79 activist critiques, 176-77, 186 activist judges, 13, 168-69, 303 hard-left, 58, 163 activist language, 183 use in legal community, 178-79 adjournments, 154-55, 157, 159, 162, administrative decisions, 119, 142 administrative powers, 47, 62 affection, 3, 89, 160 affective work, 143-46 age, 96, 100-1, 107, 136, 281 agency, 16, 146, 156 algorithmic risk assessments, 117, 139 algorithms, 125, 128, 130 opaque machine-learning, 16 allegiances, 271, 291 Allsop, Chief Justice, 121, 276–77 ambiguities, 47, 180, 305 ambivalence, 297, 302-3



308 INDEX

American Realism, 8, 173, 228, 290-94, 296, 299, 301, 305-6 American television, 294-96, 303, 305 analysis bifurcated, 169, 179 content, 18, 236, 238-39, 255 critical, 25, 32 quantitative, 71, 245 statistical, 15, 123, 135, 276 value, 245, 247, 251, 254-56 analytics, 137, 139 predictive, 134, 138 ancestry, 93, 95, 100, 105, 110 anger, 144, 149-58, 160 antagonism, 150, 153, 157 appellate courts, 5, 17, 190-91, 196, 202, 208 final, 205, 212 intermediate, 213, 221, 223, 228 appointments, judicial 65 see judicial appointments apprehended bias, 134-35, 270 appropriateness, 3, 8, 164 arbitrariness, 34, 40 artificial intelligence, 20, 122-23 applications, 16, 117 assault, 297-98 sexual, 242-43, 246-47, 303 assessment, 34, 53-55, 73, 90, 159-60, 168, 180, 270 objective, 149, 152 risk, 124, 129, 138 attributes, 51, 86, 90-91, 98, 110, 112-14, 143, 199 attrition, 85, 111-13 audiences, 209-11, 220-21, 223-24, 226-27, 230, 286, 289-90, 297-98, 300 judicial, 213, 277 Australia 54 see Introductory Note Australian Bureau of Statistics (ABS), 92, 94–97, 100–6, 108–10 Australian Constitution, 22, 170, 173, 177, 234 authorial control, 223, 226 authoritative tone, 227–28 authority, 33-34, 37-38, 64, 273-74, 284, 289-90, 297

judicial, 154, 156, 161, 274 automated systems, 16, 119, 126, 128-30, 132-34, 136, 138-40 automation, 117-19, 122-23, 129, 138-41 of decision-making, 122-25 tools, 118, 124, 129, 132, 141 awareness, 154, 158, 160, 298 public, 131, 182 backgrounds academic, 212 professional, 93-94, 136, 192 social, 83, 98-99 bail conditions, 292, 302 balance, 18, 43, 55, 111, 239, 249-51 fair, 201 work-life, 112, 296 bamboo ceiling, 84 Bandes, Susan, 285 barristers, 84, 99, 111, 189, 272, 288 Beazley, Justice, 221, 228, 231 behaviour, 36-39, 41, 113, 150, 154, 162, 172, 286, 290 judicial, 116, 172, 180-81, 186, 198, 207 beliefs, personal, 300, 303 Bell, Justice, 15, 242, 246, 249-54 bias, 16, 87, 89, 134-35, 139-40, 150, 153, 295-96, 303 absence of, 126, 133 actual, 134-35 apprehended, 134-35, 270 institutional, 57, 131 unconscious, 89 birth, country of, 93, 100, 106, 136 black armband historians, 174-75 boundaries, 16, 33, 156, 159, 259 Boyd-White, James, 227 branches executive, 58-59, 65, 200 judicial, 6, 51-52, 56, 62, 241 political, 6, 60, 75, 223 Brennan, Chief Justice, 60, 74–76, 127,

Campbell, Enid, 99, 265–66 Canada, 88, 90, 113, 122, 184, 194, 205, 264

131, 184, 235



INDEX

capacity, 4, 6, 126, 132, 140, 146, 153, 209, 213, 216 Cardozo, Justice Benjamin, 44, 219-20, 222, 225, 227 careers, 83, 85, 88, 91, 99, 111, 115 caricatures, 226, 283-84, 288, 290 caseloads, 198, 204, 252 caution, 10, 263, 280 censuses, 15, 85, 92-94, 97, 100-1, 104-10, 115 questions, 92-93, 100, 105, 107 challenges, 4, 8, 13, 15, 56, 59, 68, 128-29, 140 chambers, 60, 155, 192, 209, 289-90, 293-95, 297-98 Chief Justices, 13–14, 50–77, 193, 196, 199-200, 213-30, 268, 276-77 see also individual names accountability, 61-65 and delivery of judgments, 69-72 and efficiency, 68-72 independence, 57–61 and judicial appointments, 73-76 and judicial discipline, 62-65 judicial leadership and reflections on office, 4, 52-55 legitimacy values and relational pressures, 55-76 and representativeness, 72-76 retired, 54-55 role, 5, 52, 55, 76 and technology, 66-68 and transparency, 65-68 children, 120, 150, 179, 243-44 feuding, 31 chilling effect, 113 civil disobedience, 300-1 civility, 161, 189, 204 clarity, 17, 25, 33-34, 45, 197, 203, 212, 219, 229 pursuit of, 14, 46, 201, 214 clerks, 123, 205, 214-15, 293, 298, 302 clients, 290, 297-98 coalitions, 112, 164, 175-77, 255 codes, 130, 262, 289 ethical, 281 judicial, 261, 267 coherence, 22, 40, 45, 219

309 collective institutions, 5, 11 collective practices, 8, 218 collegial courts, 17, 193, 205-6 collegiality, 7, 13-17, 23, 48, 67, 189-207, 238, 246 institutional perspectives, 197-202 meaning, 191-97 rise of judicial value, 202-7 commentators, 139, 165-68, 171-72, 175-77, 180-86, 271 common law tradition, 13, 208-9 communication, interpersonal, 149, 152 community, 10, 15, 28, 34, 88-90, 224, 227, 297-98, 300-2, 304 legal, 172, 178-79, 182-83, 186, 194 COMPAS system, 124-25, 129-30, 132 compassion, 148, 150, 155 competing values, 18, 235, 241-42 complaints, 5, 7, 10, 61-64, 69-70, 254, 264, 269 complexity, 56, 58, 63, 72-73, 110-12, 139, 145, 226-27, 229, 236 compliance, 37, 140, 162 composition ethnic, 95 ideal, 91, 95 of judiciary/courts, 83-84, 89, 95-98, 113, 115, 202, 207, 212, 214–15, 248 conceptual framework, 32, 47 concurrences, 212, 223, 230-32 conduct, judicial, 3, 62, 154, 160, 162, 261, 288 confidence, public, 60, 63, 68, 73, 88-89, 127, 181-82, 259, 265, 278 conflicts, 19, 38-40, 57, 60, 122, 193, 199, 202, 246 underlying, 32, 34 conformity, 152, 239, 241, 243-47, 252, 254, 256 confusion, 41, 182-83, 267, 281 conscience, 6, 294, 296 consensus, 34, 166, 180, 213-15, 225, 232, 246, 284 consent, 31, 273 conservation, 44, 241, 254 conservatives, social, 173-74



310 INDEX

consistency, 124, 133, 208, 217, 236, 242, 246-47, 251-52, 255, 234 constituencies, 181, 235 Constitution, Australian, 22, 170, 173, 177, 234 constitutional cases, 236-38, 252, 254 - 55constitutional context, 23-26 constitutional functions, 5, 221 constitutional limits, 22-23, 26, 253 constraints, 24, 26, 87, 139-41, 159-60, 210, 212, 233, 255 institutional, 159 constructivism, strict, 169 consultations, 191, 206 public, 92 contempt, 13, 58, 164 content analysis, 18, 236, 238-39, 255 control, 32-33, 128, 146, 149, 151, 154-56, 161, 199, 240, 249 authorial, 223, 226 social, 37-38, 286 convention, 18, 60, 241, 261-62, 265 corruption, 132, 140, 275, 300, 303-5 judicial, 131, 304-6 counsel, 70, 129, 149, 151, 154, 161 country of birth, 93, 100, 105-6, 136 court administrations, 183-85 courtroom, 67-68, 120, 127, 150, 154–59, 161, 288–90, 292–99 participants, 154, 156, 159 courts 5 see also Introductory Note collegial, 17, 193, 205-6 criminal, 121, 127 final, 18, 205, 210, 212, 223, 230, 233, 255 hierarchy, 101, 209 highest, 63, 115, 233 intermediate, 149, 213, 221, 223, 228 leadership, 5, 197, 202 lower, 47, 100, 148, 191, 276, 281 multi-member, 7, 11-13, 17, 193, 200, 207, 229, 233–37, 255–56 role, 5, 22, 26, 119 Crennan J, 240, 243, 246-54 crime, 124, 151, 156-58, 243, 283, 289, 300

criminal courts, 121, 127 criminal sentencing, 119, 123-24, 139-41 criticism, public, 59, 61, 127, 135, 178, 182, 261, 265 criticisms, personal, 259, 268-69 cross-examination, 144, 297 cross-institutional dynamics, 65 culture, 4, 17, 136, 193, 200, 204, 286, 295, 301 popular, 19-20, 283-87, 289-90, 294, 296, 298-99, 302-3, 305-6 wars, 173-74, 186 custodial sentences, 301-2 decision-makers, 141, 237, 241-42, 246, 251, 254 quasi-judicial, 116, 142 decision-making, 119, 122, 125-26, 132-37, 139, 237, 246-47, 256 automation, 122-25 processes, 116, 118-19, 122, 128, 132-34, 206, 236, 247, 251 decision-support, 122, 125 systems, 123-24, 133 defendants, 124, 146, 159, 161, 269-70, 304 delay, 69-70, 138, 154, 173, 275 delegation, 132, 154, 159, 215 deliberations/deliberative processes, 13, 17, 144, 190, 195, 197, 202-3, 207 secret, 209 delivery of judgments, 8, 275-76, 302 and Chief Justices, 69-72 democracy, 19, 92, 176, 235 democratic legitimacy, 235, 255 descriptors, 166-67, 172, 176, 179-80 Devlin, Richard, 7, 14, 16, 51–52, 56-57, 61, 65, 126, 131 differential pattern of value expression, 244, 247–49, 255 differential treatment, 113, 134 digitisation, 118-22, 128, 131-32, 140 processes, 120-21 dignity, 66, 76, 154, 192 dilemmas, 64, 305-6 ethical, 4, 62 disability, 72, 93, 98, 100, 107, 110, 136

mental, 107



INDEX 311

disadvantaged groups, 85, 94	gender, 87, 109-10, 112-13, 115
disagreement, 20, 23, 25, 52, 195-96,	justifying, 85–90, 92, 94, 114
198, 233, 235, 255–56	languages spoken, 107
discipline, 4, 62, 86, 145, 201	marital status, 102-3
judicial, 62–65	national census and diversity
discovery, 15, 66, 116, 124, 139-40, 217,	characteristics, 92-95
296	new national census dataset, 100-11
discretion, 3, 16, 34, 47, 76, 84, 90, 118,	of perspectives, 227, 256
129, 138	religion, 104–5
executive, 84, 115	and technology, 136-37
discrimination, 16, 86, 118, 140	value, 13, 18, 236, 255–56
systemic, 76	variables, 101, 115
disenfranchisement, 242, 254	Dixon, Chief Justice, 170-71, 173, 213,
disorder, 161	225
social, 45	Dodek, Adam, 7, 14, 16, 51-52, 56-57,
dispassion, judicial, 16, 144, 158, 162	61, 65, 68, 131
display rules, 151, 159-61	dominant cultural script of judicial
dispute resolution, 14, 27, 29-33, 39,	dispassion, 162
222, 305–6	dominant values, 243-46, 249, 254
inter-party, 29, 31	duties, 65, 69-70, 76, 89, 200, 236, 241,
judicial form, 27–35, 37–40, 42–43,	260
46–48, 306	dynamics
mechanisms, 28, 35-36, 40, 118	cross-institutional, 65
methods, 28-30, 37	institutional, 17, 23
by reference to chance, 29, 32	relational, 4, 8
by reference to merit, 29–30	, -, -
by reference to might, 28-29, 37	echo chamber, 135, 179-80
systems, 35–37	education, 5, 86, 93, 100, 108, 110, 136
taxonomy of methods, 28–33	judicial, 4-5, 61, 66, 85, 111, 114
third-party, 29, 31, 38	legal, 34, 183
merit-based, 31, 33, 45, 48	effectiveness, 38, 52, 156
dissenting judgments/opinions, 18, 194,	efficacy, 24, 34, 37, 39-40, 42, 44, 137,
196, 223, 229, 235, 255–56	179
diversity, 15, 72, 84-98, 110-15, 126,	efficiency, 16-17, 48, 56, 69-72,
136, 139–41, 206–7, 294	121–22, 125–26, 137–40, 203,
age, 101–2	276–77
ancestry, 105, 110	and Chief Justices, 68–72
characteristics, 15, 85, 90–94, 101,	and technology, 137-39
112, 115	e-filing, 15, 120–21
composition of Australian judiciary,	elections, 175, 252, 254, 285
98–100	elites, 168, 173, 176
composition of Australian	emotion management, 145, 151,
population, 95–97	154–56, 158, 162
country of birth, 106	strategies, 154–58, 161–62
deficit, 15, 83–115, 137	emotion work, 16, 143–62
measuring, 94–111	and emotion, 143–47
redressing, 111–14	interview segments, 148–51
disability, 107	limits, 151, 158–59
educational status, 93, 100, 108	research design and method, 147



312 INDEX

emotions, 16, 20, 149, 151-60, 162 expertise, 140, 183, 192, 268, 293, background, 146, 151, 157-58, 162 298 and emotion work, 143-47 exploratory tone, 210, 227-28 expression of, 156, 160 extra-curial activities, 4, 76 judicial, 10, 162 in judicial work, 151-61 Facebook, 127, 133, 280-81 empathy, 148, 150-51, 153, 155-60 fair balance, 201 fairness, 31, 34, 227, 240, 243, 249, 276, enforcement, 27, 37, 162 296, 298 mechanisms, 45 engagement, judicial, 5, 13, 18, 47, procedural, 138 family members, 150, 159, 244 204 English judges, 208, 212-13, 220, 260, federal level, 6, 8 263 feeling rules, 155, 159-62 and display rules, 159-61 environment, 24-25, 114-15, 203-4, 264, 270 implicit, 160, 162 judicial, 85, 113 feelings, 151-62 normative, 154, 160 personal, 143, 293 female judges/judicial officers, 98, equality, 73, 85-86, 91, 113, 115, 136, 240 102-4, 109, 148, 294-95 and technology, 133-36 feminist scholars, 74-76 error, 97, 101, 203 final courts, 18, 205, 210, 212, 223, 230, ethical dilemmas, 4, 62 233, 255 ethical goals, 162 final outcomes, 235-36, 246, 251, ethics, 87 255-56 judicial, 62, 160, 274 fiscal independence, 57, 131 ethnicity, 83, 136 force, 28, 37, 160, 176, 200, 244 everyday work, 139, 148, 151, 154, 162 armed, 271 evidence, 135, 138, 140, 203, 206, persuasive, 210, 219, 228 238-40, 242-44, 246-48, formal rules, 160, 291, 298 255-56, 297-98 formalism, legal, 218, 226 documentary, 121, 149 formalists, 291, 301 expert, 132, 140 forms, judicial, 27-28, 33, 42 relationship, 243, 246 frameworks, 4, 51, 53-77, 121, 145, 162, rules of, 34, 297 217 executive branch, 58-59, 65, 200 conceptual, 32, 47 executive discretion, 84, 115 normative, 6-7, 14, 47, 52, 76, 166 exercise of power, 6, 38, 47, 141, 259, value, 18, 51–53, 55–56, 235–36 265 Frank, Jerome, 296–97 expectations, 3-4, 14, 65, 68, 72, 90, fraud, 288, 300, 302 152, 161, 197, 201 freedom, 86, 125, 174, 265-66, 278 institutional, 200, 202 French, Chief Justice, 50, 60, 178, 240, public, 19, 70, 288 246, 248-49, 252-54 experience, 15-16, 86-87, 90, 156-57, Friedman, Lawrence, 284 190-94, 203, 205-7, 290-91, 294 functions, 22, 26, 45-48, 76, 89, 196, judicial, 99, 191, 207, 281 202, 259, 263-64 expert evidence, 132, 140 constitutional, 5, 221 judicial, 14, 22, 26-28, 35, 38, 42, expert knowledge, 31, 298 expert systems, 123, 128–29 45–46, 48, 210, 216



INDEX 313

gender, 72, 74, 83, 85, 87-88, 90, 101-2, 105-9, 136-37, 148 217, 226 diversity, 87, 112-13, 115 genre, literary, 214, 217, 226 hubris Gibbs, Sir Harry, 218-20 Gibson, Laura (TV character), 288, 290, political, 180 292-93, 295, 298, 300-4 Gleeson, Chief Justice, 6, 63, 70, 74, 178, 243 goals, 48, 114-15, 125, 138, 151, 159, 229, 236, 275 political, 264 ethical, 162 motivational, 239-40 good humoured tone, 151, 159 mental, 114 governance, 27, 35-36, 38-39, 42, 45 conclusions, 43-45 good, 35, 38, 44 normative, 38, 41, 48 160 - 62social, 12-14, 22, 28, 35-36, 41, 45, 126 through power, 36-38 through rules, 38–43 177 government, 10-11, 35-37, 45, 60, 65, 77-79, 115, 259, 264-65 green lawfare, 271 Greene, Cleaver (TV character), 288-89, 293, 295-97, 299-301 fiscal, 57, 131 guidance, 70, 91, 261-62, 267, 281 Gummow, Justice, 235, 242-44, 246, 252 - 54Hale, Lady, 266, 272 hard cases, identification, 237-38 Hayne, Justice, 241-43, 246-52 15, 254 head of jurisdiction, 4, 8, 51, 62, 72-73 hearings, 15, 127, 267-68 online, 122 public, 193 Heerey, Justice, 116, 135, 142 Heydon, Justice, 11–13, 47–48, 178–79, 201, 212, 216, 241, 243, 245-47, 274 - 78hierarchy, 56, 146, 154-55, 161, 301, 303 304 court, 101, 209 High Court, 11–13, 47–49, 173–75, 195-200, 221-22, 229-31, 233-56, 274-77 high profile cases, 265, 267 historians, black armband, 174-75

history, 9, 50, 58, 74, 83, 89, 93, 209, English legal, 260 judicial, 168, 171, 175, 181 human nature, 116, 142, 150, 153 human rights, 86, 168, 176, 264, 271 ideals, 127, 227, 241 identities, judicial, 158, 169, 182 illness, 71 see also disability imagination, 300, 304 impartiality, 6-7, 32, 34, 56-58, 62, 88-89, 125-27, 131-37, 139-41, and technology, 133-36 implied rights jurisprudence, 163, 175, inclusive judiciary, 15, 83-115 independence, 11, 52, 56, 58-59, 61-62, 70-73, 130-32, 140, 200-2, 263 Chief Justices, 57-61 institutional, 57, 131-32 and technology, 130-32 threats to, 11, 48, 75 value of, 56-58, 61, 127 Indigeneity, 87, 114 individual responsibilities, 3-4, 6, 12, individualism, 214, 229 individuality, 13, 19, 201 historical, 213 judicial, 208, 229 inevitability, 28, 42, 114, 226-27 rhetoric of, 226-27 information, 92-93, 130-31, 135, 147-48, 152, 267, 269, 297-98, injustice, 44, 46, 88, 153, 249, 277 innovation, 22, 222, 256 technological, 10, 66 institutional context, 7, 145, 221, 232 institutional dynamics, 17, 23 institutional expectations, 200, 202



314 INDEX

institutional independence, 57, 131-32 journalists 181, 184, 260, 265, 269, 273 institutional norms, 208-32 see also media institutional practices, 13, 197, 210, judges 293 see also individual judges 231, 267 and Introductory Note institutional requirements, 6, 9, 162 celebration of, 299, 303 institutional responsibilities, 4, 201, 214 female, 148, 294-95 institutional role, 3, 14 individual, 3-12, 14-19, 71, 130-31, institutional values, 4-5, 7, 11, 14-16, 137-38, 203-4, 229-30, 246-47 52, 56, 59, 62, 72-77 male, 87, 294-95 portrayal of, 19, 283-84, 287, 303 institutions, 6, 8, 14-15, 36-37, 55, 57, 62-63, 200-2, 207 retired, 216, 273-74, 278 collective, 5, 11 secondary role, 284, 299, 305-6 curial, 19, 190 unelected, 42, 168, 174 and individual style, 229-32 women, 5, 75-76, 113, 148 judgments 69 see also Introductory Note judicial, 6, 13-15, 45, 51, 56, 63, delivery 8 see delivery of judgments 71 - 72public, 93, 173, 181 joint, 69, 190, 198, 201, 212-14, instructions, 220, 269, 299 229-32, 240, 242 intentions, 166, 219, 231, 249, 254, 264, length, 253 majority, 222-23, 229-31, 242, 244 272 inter-curial dynamics, 12 minority, 243-45, 247, 254 interests, 31, 33-37, 76, 89-90, 93, 127, written, 169, 211 131, 171, 173-74 judicial activism 8 see activism judicial appointments, 64, 84, 86, 99, of justice, 44 potential, 90, 93 177, 198, 263, 265–66 public, 43, 127, 264, 270 and Chief Justices, 73-76 social, 31, 243 judicial authority, 154, 156, 161, 274 interlocutors, 171, 180 judicial behaviour, 116, 172, 180-81, intermediate courts, 149, 213, 221, 223, 186, 198, 207 228 judicial branch, 6, 51-52, 56, 62, 241 inter-party resolution, 29, 31 judicial codes, 261, 267 chance-based, 29, 32 judicial collective, 4-5 merit-based, 29-30 judicial collegiality 7 see collegiality might-based, 29-30 judicial conduct, 3, 62, 154, 160, 162, interpersonal communication, 149, 152 261, 288 intersections, 10, 72, 76, 284-86 Judicial Conference of Australia, 5, 58, intervention, 31, 59, 77, 292, 297 183, 267 interview methodology, 147 judicial corruption, 131, 304-6 interviews, 4, 16, 67-68, 145, 147-50, judicial decision-making method, 26, 156, 162, 273, 278 34, 43 intra-curial dynamics, 48 judicial discipline, 62-65 isolation, 5, 44, 112, 205 judicial dispassion, 16, 144, 158, 162 judicial diversity 13 see diversity Janet King - JK (TV series), 287–90, judicial education, 4-5, 61, 66, 85, 111, 292-97, 299, 303-4 114 joint judgments/opinions, 69, 190, judicial engagement, 5, 13, 18, 47, 204

judicial ethics, 62, 160, 274

judicial experiences, 99, 191, 207, 281

240, 242

198, 201, 212–14, 229–32,



INDEX 315

judicial form of dispute resolution, judicial scholarship, 8-10, 195 27-35, 37-40, 42-43, 46-48, judicial selection, 88, 111-12 judicial style 13 see style judicial form of social governance, 35-45 judicial systems, 5, 15, 34, 42, 86, 115 judicial function(s), 14, 22, 26-28, 35, judicial transparency, 126, 129, 139 37, 42, 45-46, 48, 210, 216 judicial values, 7-8, 55, 57, 61, 117, 119, in Australia, 22-48 125-26, 136-37, 139-42, 202-7 revisited, 45-48 judicial wellbeing, 7, 56, 61, 70, 205 judicial hubris, 168, 171, 175, 181 judiciary 205 see also Introductory Note; judicial identities, 158, 169, 182 judges; judicial officers; judicial independence 7 see magistrates independence Australian, 20, 26, 83, 89, 98-100, judicial individuality, 208, 229 107-9, 114-15, 136-37, 165, judicial institution, 6-8, 13-15, 45, 51, 56, 63, 71-72 diverse, 84, 90, 111, 136 judicial leadership, 4, 50, 52-55, 207 inclusive, 15, 83-115 judicial legitimacy, 52, 55-56, 156 juries, 121, 150, 153, 244, 294, 299-300 judicial methodology, 166, 180, 182 judicial misconduct, 10, 62 Kiefel, Chief Justice, 13, 18, 193, 198, judicial officers, 5, 16-17, 84-86, 89, 98, 201, 222, 230-32 100-11, 114-15, 144, 147-48, Kilmuir rules, 260-62, 265-66 154-57, 160-62 see also judges; Kirby, Justice, 63, 86, 196, 199, 212-25, 234-35, 243-45 magistrates female, 98, 102, 109 knowledge, 86, 130, 132, 164, 182, 230, male, 101, 109 277, 300, 305 population of, 113, 147 Kourakis, Chief Justice, 65, 131 judicial opinions, 211, 214, 217, 220, 224-26, 236-37, 245, 255 labels, 8, 13, 176, 178, 183, 294 judicial performance, 17, 53, 90, 152, language, 30, 32, 83, 86, 93-98, 100, 154, 162 107, 130, 163, 173 judicial personality, 198, 215, 219, of activism, 166, 175, 178, 180-81, 225 - 26183, 186 judicial power, 8, 22-26, 46, 73, 265, law clerks 123 see clerks 285 law officers, 18 exercise of, 6, 141, 259, 265 first, 262-63, 266 nature and limits of, 22, 24 law-making, 41-42, 45 judicial practices, 47, 161, 167, 169, 172, leadership, 11, 20, 50, 53-56, 59, 75, 176 112, 200, 202 judicial process, 6, 66, 68, 128, 132, 195, court, 5, 197, 202 207 judicial, 4, 50, 52-55, 207 judicial reasoning, 130, 170, 215, 248 roles, 8, 61 judicial relationships, 4, 193, 199 legal community, 172, 178-79, 182-83, judicial resolution, 33-35, 38, 42-43, 186, 194 48, 306 legal education, 34, 183 judicial role, 7-12, 15-18, 20, 22, legal educationalists, 179, 183 43-44, 117-19, 132-33, 158-59, legal formalism, 218, 226 299 legal profession, 66, 75, 83, 111, 115, and technology, 142 223, 293



316 INDEX

legal realism, 8, 173, 228 coverage, 68, 128, 259, 261, 267-68, legal system, 46, 90, 118, 120, 266, 271, 272, 278, 282 277, 283, 285, 304-6 decline of first law officers as judicial legal uncertainty, 237, 242 defenders, 262-63 legalism, 8, 170-71, 173, 178-79, 183 examples of judges in the media, legislation, 170, 234, 252, 254, 263, 271 269 - 73overturning, 172 and judges, 259-82 tax, 141 judges criticising courts/other judges legislature, 6, 51, 224, 254 in the media, 273-78 legitimacy, 34, 36, 41, 47, 56, 85, 88, Kilmuir rules, 260-62, 265-66 91-92, 173, 176 new forms of, 77, 281 democratic, 235, 255 outlets, 184-85, 271 judicial, 52, 55-56, 156 possible judicial responses, 265-68 reportage, 165, 168, 173, 180, liberty, 24, 223 individual, 7, 141 183 - 84social, 4, 66-67, 133, 183, 185, literary genre, 214, 217, 226 literature, 74, 87, 89, 93, 113, 148, 208, 279-81 211, 223, 225 traditional, 279-81 academic, 165, 284 merit, 29-34, 45, 73-76, 88, 300 chilly climate, 113 criteria, 33 Llewellyn, Karl, 298 resolution by reference to, 29-30 logic, 91, 130, 141, 170, 291, 294, 305 third-party, 33, 45 methodology, 20, 98-100, 140, 166-67, machine learning, 16, 117, 124 171 Macmillan, Lord, 216, 219 interview, 147 magistrates, 15, 85-86, 98-102, 107-8, judicial, 166, 180, 182 115, 191-92, 269-70, 273, 293, metrics, 71-72, 141, 276 300-2 see also judicial officers might, resolution by reference to, new, 290, 292 28-29, 37majorities, 13, 221-23, 230-31, 234-35, ministers, 13, 58-59, 164, 171, 179, 184, 238, 243-44, 246-52, 254, 256 263, 270 large, 105, 178 federal, 165, 179 majority judgments/opinions, 222-23, minorities, 75-76, 167, 223, 238, 244, 229-31, 242, 244 246-52, 254, 266 male judicial officers, 101, 109 minority judgments/positions, 243-45, marital status, 93, 100, 102-3 247, 254 Mason, Sir Anthony, 20, 178, 195, 200, misconduct, 7 229 judicial, 10, 62 meanings, 16-17, 42, 44, 50, 133, sexual, 242-43 165–68, 171–72, 182, 217, 220 misinformation, 67, 183 mechanisms, 28, 31-32, 39, 41, 45, 116, morality, 34, 264, 291 140, 143 motivational goals, 239-40 media, 13-14, 18-20, 51, 67-69, 128, motivations, 195, 203, 215, 238-39, 252 165, 180, 224 overarching, 235, 239 political, 9 attention, 64, 266, 270, 274-75, 277 changing perceptions of judges and value, 239, 245, 247, 250-51, 253 changing cases before courts, multi-member courts, 7, 11–13, 17, 193, 200, 207, 229, 233–37, 255–56 263 - 65



national census

Cambridge University Press 978-1-108-49461-8 — The Judge, the Judiciary and the Court Edited by Gabrielle Appleby , Andrew Lynch Index More Information

INDEX 317

and diversity characteristics, 92-95 new dataset, 100-11 native title, 163, 173-75, 177 neutrality, 3, 143, 259, 280 New South Wales, 5, 20, 70-71, 221, 238, 247, 267, 270, 274 newspapers, 164, 269, 272, 275, 279 non-legal factors, 33, 291 normative development, 43, 46 normative framework, 6-7, 14, 47, 52, 76, 166 norms, 7, 34, 36, 38, 154, 159-62, 277 institutional, 208-32 social, 33, 36, 145-46 oath, 3-4, 6, 89, 160 obedience, 131, 298, 302 obfuscation, 17, 180, 183 objective assessment, 149, 152 obligations, 11, 17, 27, 30, 61, 75-76, 89, 137, 157, 254 moral, 236 online hearings, 122 open justice, 126-30 opinions, judicial 211 see judicial opinions orations, 178, 182, 216 outcomes, 5, 30, 32-33, 217-19, 235-37, 240, 249-51, 256, 298 final, 235-36, 246, 251, 255-56 supporting opposing, 237, 255 outsiders, 120, 190 Parliament, 60, 71, 117, 248, 253-54, 264, 301, 303 parliamentary sovereignty, 253-54 patience, 148, 154, 156 patterns, 41, 107, 128, 134-35, 137, 140 differential, 244 of value expression, 255–56 peak bodies, 183-85 perceptions, 4, 18, 67, 74, 148, 153, 158, 235 changing, 263–64

performance, 7-8, 15, 50-51, 53, 74, 114, 146, 159, 190 judicial, 17, 53, 90, 152, 154, 162 permissiveness, 173, 177 personal beliefs, 300, 303 personal criticisms, 259, 268-69 personal feelings, 143, 293 personal relationships, 50, 201 personal voice, 227-28 personalities, 50, 197-99, 219, 225, 296 persuasion, 47, 219, 228 persuasive force, 210, 219, 228 pipelines, career, 85, 111, 115 police, 272, 283, 288-89, 292-93, 297-98, 304 political branch, 6, 60, 75, 223 political debate, 77, 180 political interventions/pressures, 56, 292, 303 political strategy, 176-77 politicians, 18, 165, 172, 176, 181-82, 184, 186, 261, 265, 271 politics, 115, 173-74, 186, 291-92, 305 Popkin, William D, 210, 220, 226-28 popular culture, 19-20, 283-87, 289-91, 294, 296, 298-99, 302-3, 305-6 importance of who the judge is, 290-303 judge as caricature, 288-90 judge as villain, 303-5 judges and civil disobedience, 299-303 studies, 284-86 positivist approach, 170, 291, 302 Posner, Richard, 217-20, 222, 224, 226, 228, 299 power, 6, 9, 23-24, 36-37, 239-40, 245, 249-51, 253, 298, 300-1 exercise of, 6, 38, 47, 141, 259, 265 governance through, 36-38 judicial, 8, 22–26, 46, 73, 265, 285 limited, 63, 65 separation of powers, 23-24, 51, 59, 131, 252 precedent, 41, 170-71, 226, 234, 237, 242, 248, 270, 298, 304 predictability, 11, 14, 34, 39, 43-46

public, 19, 136, 165, 182, 184, 280,



318 INDEX

predictions, 39, 124, 276, 298 predictive analytics, 134, 138 prejudices, 133, 150, 153, 248, 291, 298 pressures, 10, 19, 51-52, 57, 71, 84, 201, 212, 217, 221 political, 56, 292 relational, 51, 55, 63, 76 Preston, Chief Justice, 270-73 principles, 23, 40, 43, 59, 72, 86, 91, 126-28, 131, 171 fundamental, 118, 249 general, 41, 248 priorities, value, 236, 242-47, 251, 254-56 prioritisation, 4, 8, 18, 56, 138, 209, 236, 241, 254–56 of universalism, 240, 244, 251-52 of values, 74, 242, 254 prison, 295, 301-2, 304 productivity, 70, 113, 196, 276 professional background, 93-94, 136, 192 propositional style, 48, 221 prosecutors, 146, 159, 293-94, 303 protection, 6, 14, 22, 24, 53, 168, 239, 243, 249, 253-54 psychology, 18, 53, 235 public awareness, 131, 182 public confidence, 60, 63, 68, 73, 88-89, 127, 181–82, 259, 265, 278 public criticism, 59, 61, 127, 135, 178, 182, 261, 265 public discourse/discussion, 59, 90, 164, 166, 178, 182, 186, 266, 274, 277 public expectations, 19, 70, 288 public institutions, 93, 173, 181 public interest, 43, 127, 264, 270 public law, 20-21, 170 public perceptions, 19, 136, 165, 182, 184, 280, 284 public roles, 43, 118, 183 public scrutiny, 4, 165 public statements, 65, 277 public trust, 91, 132, 280 publicity, 259, 271, 275, 295 qualifications, 84, 108-9, 140, 180

quasi-judicial decision-makers, 116, 142 Queensland, 55, 60, 67, 121, 168, 177 questions, census, 92-93, 100, 105, 107 race, 72, 85-90, 93, 136-37, 295 Rake, 287-90, 292-97, 299, 301, 303 rational legal power, 290, 306 rationality, 31, 153, 219, 296 readiness to change, 44, 241 real time transcripts, 120, 138 realism, 8, 173, 228, 290-94, 296, 299, 301, 305-6 reality court shows, 283, 287, 290, 295 reasoning, 89-91, 140, 144, 170-71, 211, 213, 219, 224, 226, 228 judicial, 130, 170, 215, 248 recusal, 270, 278, 281 referees, 30, 299-300 reflexivity, 148, 151-54, 157, 162 reform, 26, 41, 47, 65, 68-69, 84-85, 112, 263, 301, 303 relational pressures, 51, 55-76 relationship evidence, 243, 246 relationships, 14, 33, 40-41, 51, 76-77, 198-200, 246-47, 259, 293, 295-96 judicial, 4, 193, 199 personal, 50, 201 religion, 83, 86, 93-95, 100, 104-5, 111 Renmark, Judge (TV character), 290, 293-94, 303-4 reportage, 19, 176, 184 representativeness, 7, 17, 52, 56-57, 101, 136, 203 and Chief Justices, 72-76 value, 74-76 reputation, 35-36, 59, 63, 77, 172, 204, 209, 231, 260 resolution 12 see dispute resolution resources, 38, 147, 156, 158, 162, 240 positive, 16, 151, 162 responses, 12–13, 19, 52, 57–59, 61–62, 67-71, 152-53, 267-68, 272-73, 303 - 4public, 59, 61

quantitative analysis, 71, 245

226

quality, 85–86, 88, 97, 133, 136–37,

203-4, 207, 211-12, 219-20,



responsibilities, 20, 38, 44, 51, 63-65,

68, 70-72, 74, 92

INDEX 319

individual, 3-4, 6, 12, 15, 254 institutional, 4, 201, 214 results-oriented decisions, 167-68, 173, 180 - 81retired Chief Justices, 54-55 retirement, 3, 11, 48, 75, 113, 184, 212, 235, 278 rhetoric, 219, 269, 271, 303 of inevitability, 226-27 rights, 22, 24, 30, 36, 58, 86, 125, 131, 171, 177 human, 86, 168, 176, 264, 271 individual, 119, 142 risks, 20, 28, 67, 77, 113, 124-25, 136, 195, 201 assessments, 124, 129, 138 algorithmic, 117, 139 roles, 4-7, 14, 23-25, 41-42, 48-49, 53-58, 117, 150-51, 262-64, 268 of chief justice, 52, 55, 76 of courts, 5, 22, 26, 119 institutional, 3, 14 judicial, 7-12, 15-18, 20, 22, 43-44, 117-19, 132-33, 158-59, 299 public, 43, 118, 183 secondary, 19, 290, 299 social, 27, 44 rule of law, 74, 181, 203, 263, 282 rules of evidence, 34, 297 formal, 160, 291, 298 governance through, 38–43 Sachs, Justice, 17, 193, 282 Sales, Lord, 264, 272-73 sanctions, 19, 47, 300 scholars, 17, 52, 118, 124, 167, 183, 284 - 86scholarship, 8-9, 16, 53, 110, 191, 194 scrutiny, public, 4, 165 SeaChange, 287-90, 292-93, 295, 298, 303 - 4secondary role, 19, 290, 299 security, 161, 239, 241 assessment, 272 national, 116

selection, 88, 112, 267, 284 judicial, 88, 111-12 processes, 85, 112 self-direction, 239, 241, 243-44, 252 self-restraint, 166, 169-70, 252 sentences, 124, 132-33, 175, 217, 269, 300 - 1custodial, 301-2 sentencing, 58, 68, 127, 129, 139, 159, 164, 270 criminal, 119, 123-24, 139-41 separation of powers, 6, 12-13, 24, 46, 51, 59, 130, 252 sex, 86, 89, 93, 100-3 see also gender ratios, 109-10, 113 sexual assault/misconduct, 242-43, 246-47, 303 sexuality, 114, 136 silence, 74, 177, 181, 249, 267, 269, 273 site of truth, 297, 299 skills, 29-30, 153, 194 social backgrounds, 83, 98-99 social conservatives, 173-74 social control, 37-38, 286 social disorder, 45 social governance, 12-14, 22, 28, 126 judicial form, 35-45 social media, 4, 66-67, 133, 183, 185, 279 - 81social norms, 33, 36, 145-46 social order, 37-38, 46 social roles, 27, 44 social values, 41-42, 45, 235 solicitors, 99, 111-12, 297, 304 sources, 6, 58, 74, 77, 97, 109, 199, 205, 209, 227 South Africa, 17, 106, 193, 282 South Australia, 54-55, 64, 131, 243 sovereignty, parliamentary, 253-54 speeches, 4, 11, 48, 55, 65, 70-71, 121, 264, 266, 274–78 stability, 26, 35, 43-44, 60, 177, 181 standards, 4, 62, 155, 213, 219 statements, public, 65, 277 statistical analyses, 15, 123, 135, 276 statistics, 69, 74, 92, 98, 135 step-by-step programming, 123 stereotypes, 19, 87, 89, 226, 306



320 INDEX

strategies, 15-16, 60, 111-14, 145, 147, 150-51, 155-59, 161-62 style, 13, 17-18, 197, 200, 208-32 context and audience, 221-24 individual, 214, 222-23 institution and individual style, 229 - 32186, 271 judges as writers, 210-17 personal, 226, 229 propositional, 48, 221 substance form and style, 217-24 taxonomies, 225-29 292 substantive criteria, 28 Sunstein, CR, 256 support, 4-5, 61-62, 65, 70-71, 126, 132-33, 175, 222-23 Supreme Courts, 31, 64, 67–68, 127–28, 172-73, 176, 248-49, 270, 272, 280 UK, 222, 237, 239, 255 United States, 199, 205-6, 213-15, 222, 225 Victoria, 13, 16, 58, 184 sympathy, 150-51, 153, 156-59, 293, 303 taxonomies, 165, 208 dispute resolution methods, 28-33 judicial style, 225-29 teamwork, 192, 207 techniques, 117, 123-24, 298 technology, 10, 15, 61, 92 and Chief Justices, 66-68 and diversity/representation, 136-37 and efficiency, 137-39 and foundational judicial values, 125 - 39impact, 15, 133 and impartiality/equality before the law, 133-36 and independence, 130-32 and judicial role, 142 and open justice, 126-30 spectrum of technologies used by courts, 119-25

television, 260, 283-306 American, 294-96, 303, 305 shows, 287-88 temptations, 223, 267, 275 tenure, 54, 56, 61, 73-74, 113 terminology, 165, 171-73, 178, 182-84, activism, 166, 172, 176, 182, 185 terrorism offences, 58, 164, 177 third-party resolution, 29, 31, 38 merit-based, 31, 33, 45, 48 by reference to chance, 29, 32 threats, 11, 48-49, 52, 66, 75, 176, 272, timeliness, 137, 201, 214, 229 title, native, 163, 173-75, 177 tone, 151, 161, 210, 220-31, 272 authoritative, 227-28 good humoured, 151, 159 tools, 14, 17, 23, 85, 117-18, 124-25, 128-29, 132, 139-41 automated, 132, 138 automation, 118, 124, 129, 132, 141 Torres Strait Islanders, 90, 93-98, 101 touchstones, 47, 76, 91, 94, 220 trade secrets, 118, 129, 140 traditional media, 279-81 traditions, 59, 208, 213, 218, 229, 239-44, 249, 252-54 transcripts, 149, 152 real time, 120, 138 transparency, 17, 52, 56-57, 59, 62, 65-66, 68, 126-30, 139, 141 and Chief Justices, 65-68 lack of, 129, 139-40 trivialisation, 66-67 trust, 88, 115, 127, 163, 204, 244, 304-5 public, 91, 132, 281 truth, 273, 284, 296-99 site of, 297, 299 turnover, 113, 268 Twitter, 67, 127-28, 185, 280

uncertainty, 42, 46–48, 91, 237, 242, 244, 267, 303 under-represented groups, 75, 85 unelected judges, 42, 168, 174 unfairness, 240, 243, 276

tools, 117–18, 139, 141

use, 15, 66, 116, 118



INDEX 321

United Kingdom, 18, 112, 117, 185, 210, 230-32, 263-64, 272, 287 Supreme Court, 222, 237, 239, 255 United States, 53, 67, 90, 117, 169, 172, 181, 210-32 Court of Appeal, 196, 207, 218 Supreme Court, 199, 205-6, 213-15, 222, 225 universalism, 239-40, 242-47, 249-54 prioritisation, 240, 244, 251-52 use of technology, 15, 66, 116, 119 utility, 71, 77, 85, 88, 91, 136, 166, 197, 203 value analysis, 245, 247, 251, 254-56 value diversity, 13, 18, 236, 255-56 value expression, 18, 236, 242, 244-46, 252 - 55differential pattern of, 247-49, 255 patterns, 255-56 value framework, 18, 51-53, 55-56, 235 - 36value motivations, 239, 245, 247, 250-51, 253 value priorities, 236, 242-47, 251, 254-56 values, 7, 17-18, 52, 55-58, 65-70, 72-74, 235-46, 249-56 of accountability, 62, 64-65 competing, 18, 235, 241-42 consistent value priorities and division

in related cases, 242-47

dominant, 243-46, 249, 254

identification in High Court

judgments, 236–42

dissent and individual, 255-56

diversity

and influence of individual judges, 247 - 52institutional, 4-5, 7, 11, 14-16, 52, 56, 59, 62, 72-77 judicial, 7-8, 55, 57, 61, 117, 119, 125-26, 136-37, 139-42, 202-7 and judicial difference, 233-56 opposing, 241, 256 prioritisation of, 74, 242, 254 social, 41-42, 45, 235 value expression in Rowe v Electoral Commissioner, 252-55 victims, 144, 149-51, 155-59, 269 Victoria, 5, 59, 61, 68, 127–28, 164, 166, 171, 177, 179 Supreme Court, 13, 16, 58, 184 video-links, 120-22, 138, 140 violence, 37, 124, 301 domestic, 269-70 vitality, 17, 39, 41, 45, 193 vulnerable witnesses, 120, 138 Warren, Chief Justice, 13, 58-59, 61, 67, 75, 128 wellbeing, 10, 137 judicial, 7, 56, 61, 70, 205 Williams, Daryl, 255, 262 witness box, 149, 151, 158 witnesses, 138, 149, 151, 155, 158, 161, 243, 296-97 vulnerable, 120, 138 women, 75, 87-91, 109, 111, 113, 115, 148, 266, 294–95, 300 judges, 5, 75-76, 113, 148 workloads, 66, 71, 112, 213-14, 238, 275, 296

workplaces, 70, 111-12, 148, 196, 205