

INDEX

- Aboriginal title. *See* Radical versus aboriginal title
- Académie des Inscriptions et des Belles Lettres, 244
- Accursius (Italian jurist), 28, 30–31
- Acher, Jean, 40
- Acta Eruditorum* (journal), 165
- Akademie der Wissenschaften zu Göttingen, 166, 172–173
- Albert, Pere. *See* Pere Albert
- Albert (Prince Consort of England), 246
- Alexander II (Scotland), 51, 58, 83
- Alexander III (Scotland), 37, 75–78, 81–82
- Analysis of the Laws of England* (Blackstone), 20, 172
- Anderson, Edmund, 133–134
- d’Andrea, Giovanni. *See* Giovanni d’Andrea
- Annalen der Britischen Geschichte* (journal), 181
- Annales of Literature* (journal), 137–138
- Anselm of Canterbury (Archbishop), 149
- Anti-Corn Law League, 237
- Antiquities of Rome* (Kennett), 134
- Anti-Slavery and Aborigines’ Protection Society, 282–283
- Arcadia* (Sidney), 101
- Archaeologia Graeca or the Antiquities of Greece* (Potter), 134
- de Ardizzone, Iacobus. *See* Iacobus de Ardizzone
- Ashley, Francis, 114
- Assizes of David I, 79
- Attwood, Bain, 274
- Augustus (Rome), 128
- Aulus Gellius (Roman author), 130–131
- de Aurelianus, Iacobus. *See* Iacobus de Aurelianus
- d’Aurillac, Pierre Jame. *See* Pierre Jame d’Aurillac
- Austin, John, 5
- Australia, radical versus aboriginal title
in. *See also* Radical versus aboriginal title
aboriginal title, 279–280
Batman’s Treaty (1835), 274
case law, 264–265, 272–273
Gove Peninsula and, 274
historical evolution, 272–274
Privy Council and, 272–273
treaties, effect of, 274
uninhabited, land deemed prior to colonisation, 272–274
Yolngu people and, 274
- Australian High Court, English law in comparative legal history and, 18–19
contributory negligence and, 292
Court of Appeal precedent, 291–293
evolution of relationship with English law, 286–289
House of Lords precedent, 292
insanity defense and, 294–295
Judicial Committee of the Privy Council and, 298
matrimonial law and, 291–293
M’Naghten rule and, 294–295
§92 cases, 296–297
overview, 18–19, 286–289, 303–304
Parker v. The Queen (1963), 286–289, 295–300

- Australian High Court, English law in (cont.)
Piro v. Foster (1943), 292
 Privy Council and, 18–19, 287–289, 294–304
 promissory estoppel and, 293–294
 unified common law, importance of maintaining, 290–295
 unsuccessful attempts to break with English law, 300–303
Waghorn v. Waghorn (1942), 291–292
Wright v. Wright (1948), 292–293
Authenticum (a text of Justinian's *Novels*), 28–29
- Bacon, Francis, 116, 118
 Bacon, Matthew, 132
 Bail, 72
 Balliol, Edward (Scotland), 54, 80
 Balliol, John (Scotland), 53–54, 80
 Bancroft, Richard (Archbishop), 100
 Barbados
 martial law in, 320–321
 Militia Act, 308
 Servant Act, 308
 Slave Code 1661, 306–310, 318–321
 slave rebellions in, 321
 statistics of slavery in, 305
- Barbour, John, 83–84
 Barrow, Geoffrey, 53–54
 Bartolus (Italian jurist), 131–132
Basilicon Doron (James I/James VI), 97–98, 108–109, 114, 117
 Bassianus, Iohannes. *See* Iohannes Bassianus
- C. Bathurst and E. Withers (printers), 124
 Batman's Treaty (1835), 274
 Bavaria, obligation to state reasons for court decisions in, 207–208
 Benevenantus, Roffredus. *See* Roffredus Benevenantus (Roffredo da Benevento)
- Bernardus Parmensis (Bernard of Parma) (Italian jurist), 64–65
 Bethell, Richard (Lord Westbury), 194–195, 197
 Bible Society, 238
- Biener, Friedrich August, 161–162
 Black, David, 88, 92, 105, 117
 Blackburn, Colin (Lord), 189–190, 192, 274
 Blackstone, William
 generally, 16, 21–22
Analysis of the Laws of England, 20
Commentaries (*See Commentaries* (Blackstone))
 in *Göttingische gelehrte Anzeigen*, 20, 167–170, 172–177, 180–181
 radical title and, 266–268
 research of, 22
 on villeinage, 313
- Blanc, Jean. *See* Jean Blanc
 de Blanot, Jean. *See* Jean de Blanot
 Blount, Thomas, 132
 Bodin, Jean, 99, 104–105, 148–149, 157
 Boniface VIII (Pope), 64–66
 Bothwell, Earl of, 105–106, 117
 Bower, Walter, 80
 Bowles, Michael, 200
Bracton (English legal treatise), 69, 132, 169–170
 Bramwell, George (Baron), 199
 Brandis, Hermann Friedrich, 216–222
 Brennan J, Gerard, 264–266
 Brinckmann, Karl Heinrich Ludwig, 245
Britisches Museum für die Deutschen (journal), 181
 British Association for the Promotion of Social Sciences, 254
 British Museum Library, 242
 British South Africa Company, 282–283
Brittische Bibliothek (journal), 181
Britton (English legal treatise), 132
 Brooks, Christopher W., 87
 Brougham, Henry, 203, 240–241, 246–247
 Bruce, Edward (Scotland), 54, 79–80
 Bruce, Niall, 80
 Bruce, Robert (minister), 99–100
 Bruce, Robert (Scotland). *See* Robert I (Robert the Bruce) (Scotland)
 Brudenell, Robert, 101–102

- Brunner, Heinrich, 161–162
The Brus (Barbour), 83–84
 Bugnyon, Philibert, 131–132
 Busby, James, 278
- Cade, Elizabeth, 316
 Calasso, Francesco, 73, 147
 Calderwood, David, 92
 Campbell, John (Lord), 197
 Canada, radical versus aboriginal title
 in. *See also* Radical versus
 aboriginal title
 aboriginal title, 279–280
 British North America Act 1867, 274
 case law, 262–263, 271
 historical evolution of, 269–272
 possessory interests, aboriginal rights
 limited to, 270–272
 Privy Council and, 269–271
 Royal Proclamation 1763 and,
 269–272
 treaties, effect of, 274
 Tsilqot'in Nation and, 262–263
 usufructuary interests, aboriginal
 rights limited to, 270–272
 will of sovereign, aboriginal rights
 subject to, 270–272
 Capograssi, Giuseppe, 141–142
 Capua, James Vincent, 319
 de Caramanico, Marinus. *See* Marinus
 de Caramanico
- Case law
 Australia, radical versus aboriginal
 title in, 264–265, 272–273
 Canada, radical versus aboriginal
 title in, 262–263, 271
 feudal law, 35–38
 in Germany, 18, 206–207 (*See also*
 Seuffert's *Archiv*)
 New Zealand, radical versus
 aboriginal title in, 261–262
 radical versus aboriginal title,
 279–280, 285
 Cavanagh, Edward, 280
 Cecchinato, Andrew J., 16, 20–22
 Chamberlain, John, 96
 Chancery, 94
Chancery Cases, 133–134
Chancery Reports, 133–134
 Channell, Arthur (Baron), 191
 Chapman, Henry, 276–277
 Charles I (England), 86, 107, 119
 Charles II (England), 320
 Chattels, slaves as, 309–310
 Chitty, Edward, 244
 Chitty, Joseph, 191, 196
 Cicero, 130–131, 155–156
 Cistercians, 37–38
 Civilians (scholars of Roman law), 30,
 33
 Civil law
 common law versus, 17–18, 206, 223
 in Germany, 206
 Claproth, Justus, 20, 169, 172–176, 178,
 180
 Clement III (Pope), 77
 Clement V (Pope), 54
 Cobden, Richard, 237
 Cobden-Chevalier Treaty (1860), 251
Code (Justinian), 129–130, 153
 Coke, Edward
 on custom, 142
 in *Göttingische gelehrte Anzeigen*,
 169–170
 Harris translation of *Institutes*
 (Justinian) and, 132–135
 on interpretation, 155
 James I (England)/James VI
 (Scotland) and, 88, 94, 101,
 103–104, 115–116, 118
 on judges, 156–157
 legal fiction and, 266
 on villeinage, 312
Collection des lois civiles et criminelles
des États modernes (Foucher),
 244
 Collins, Justine, 15
 Collinson, Patrick, 99
 Coluim, William, 55
Commentaries (Blackstone)
 common law, custom and, 144–145
 comparative legal history and,
 20–21
 court decisions, custom and,
 152–154
 custom and, 142–143, 160

- Commentaries* (Blackstone) (cont.)
Göttingische gelehrte Anzeigen and,
 167–168, 180–181
 integration of law and,
 143–144
 interpretation and, 154–157
ius commune and, 144–148, 150–151
 judges and, 155–157
 jurisdiction and, 154–155
 justificatory purpose of, 21–22
 ordering of law in, 140–142
 overview, 20–21
 Parliamentary sovereignty and,
 157–160
 precedent and, 152–154
 radical title and, 266–268
rex in regno suo and, 145–152
 royal prerogative and, 145–152
 text and authority, relationship
 between, 143, 146
- Commentaries* (Kent), 276
- Commercial law. *See* Comparative
 commercial law
- Commercial Law of the World* (Levi),
 21, 243, 246–247, 249–250, 252
- Common law
 Australian High Court, importance
 of maintaining unified common
 law, 290–295
 civil law versus, 17–18, 206, 223
 custom and, 144–145
Göttingische gelehrte Anzeigen,
 English common law in, 169–172,
 180–181
- Communitas regni*, 81–82
- Comparative commercial law
 alignment of commercial law,
 promotion of, 250–254
 arbitration and, 240
 changes in commercial law, impact
 of, 248–249
 codification efforts, 250–251
 comparative legal history and, 21
 importance of comparative approach
 to, 236
 international commercial code,
 proposal of, 251–254
 international conference of, 255–256
 joint stock companies and, 250–251
 lessons of comparative legal history
 and, 23
 Levi and, 21–22, 240–259
 liberalism and, 253–254
 overview, 21
 Saint-Joseph and, 241–247, 251
 similarities between laws of different
 countries, 241–243
 statistics and, 247–248, 252
 translation and, 243–244
 uniform laws and, 245
- Comparative legal history
 Australian High Court, English law
 in, 18–19 (*See also* Australian
 High Court, English law in)
 challenges of, 22–23
Commentaries (Blackstone) and,
 20–21 (*See also Commentaries*
 (Blackstone))
 commercial law and, 21 (*See also*
 Comparative commercial law)
 continuous easements and, 14–15
 (*See also* Continuous easements)
 difficulties in comparison, 8
 educative purpose of, 22
 feudal law and, 16–17 (*See also*
 Feudal law)
 generalisation and, 9–11
Göttingische gelehrte Anzeigen,
 19–20 (*See also Göttingische*
gelehrte Anzeigen (German legal
 journal))
 Harris translation of *Institutes*
 (Justinian), 21 (*See also* Harris
 translation of *Institutes*
 (Justinian))
 internal versus external legal history,
 6–8
 James I (England)/James VI
 (Scotland) and, 15–16, 116–117
 (*See also* James I (England)/James
 VI (Scotland) as judge)
 justificatory purpose, 21–22
 lessons of, 23–24
 level of comparison, 9–11
 metaphor and, 184
 overview, 1–4

- radical versus aboriginal title and, 17
(See also Radical versus aboriginal title)
- Regiam maiestatem* and, 13–14 (See also *Regiam maiestatem* (Scottish law book))
- research of, 11–13
- Seuffert's *Archiv* and, 18 (See also Seuffert's *Archiv*)
- slave laws in West Indies and, 15 (See also Slave laws)
- social legal history, 6–8
- subject matter of, 4–6
- units of comparison, 9
- writing of, 11–13
- Compilatio tertia* (canon law collection), 31
- Comyn, John, 54
- Concordances entre les codes de commerce étrangers et le code de commerce français* (Saint-Joseph), 242, 245
- Congress of Berlin (1878), 257–258
- Congress of European Statisticians, 239
- Constantine (Rome), 128
- Conte, Emanuele, 38–39
- Continuous easements
- comparative legal history and, 14–15
- conflicting French decisions on, 193–194
- 'continuous' element, focus on, 186–187, 198–201
- contradictions in French Civil Code provisions, 185–186, 193, 195
- differences between French and English rules, 188–189
- discontinuous easements versus, 190–192, 199
- Gale, incorporation of French rule by, 187–190
- influence of French Civil Code on English rule, 14–15, 184, 188–190, 192, 203
- legal transplants and, 184–185, 201–203
- misinterpretation of French rule by English jurists, 190–192, 198–201
- overlooking of French debate by English jurists, 194–197
- overview, 14–15, 183, 204–205
- recent origins of French rule, 189, 192–193
- role of English treatises, 204
- Cooper, Anthony Ashley (Lord), 48–49, 53, 57, 65
- Cooper, Thomas, 125–126
- Copeland, Rita, 68–69
- Corpus iuris canonici*, 120
- Corpus iuris civilis*, 30–32, 120
- Cortese, Ennio, 153–154
- Cotter, William R., 316
- Cours de droit commercial* (Pardessus), 244
- de Covarrubias y Leyva, Diego, 131–132
- Cowell, John, 132
- The Critical Review* (journal), 137–138
- Croke, George, 133–134
- Cujas, Jacques (Jacobus Cujacius) (French jurist), 131–132
- Custom
- Coke on, 142
- Commentaries* (Blackstone) and, 142–143, 160
- common law and, 144–145
- court decisions and, 152–154
- in *Glanvill*, 82
- in *Libri feudorum*, 33–35, 38–42, 45
- Roman law versus, 25–27
- Customs of Catalonia between Lords and Vassals* (Pere Albert), 39
- Dagleish, Nicholas, 88
- Davey, Horace (Lord), 281
- David I (Scotland), 52, 54–55, 58, 63–67, 70–71, 79–80
- David II (Scotland), 83
- David (Biblical King), 97, 108
- Davies, John Reuben, 60, 64
- Davy, William, 316
- Dawson, John, 206–207, 223
- De actionibus* (Jean de Blanot), 38, 40–41
- Decretum* (Gratian), 31, 159

- De feudis* (title of section of canon law), 31
- De iure communi Angliae* (Gatzert), 20, 169–173, 175–178
- De l'esprit des lois* (Montesquieu), 134
- de Denarii, Odofredus. *See* Odofredus de Denarii
- Denning, Alfred Thompson ‘Tom’ (Lord), 18–19, 290, 293–294, 299, 303
- De usu et autoritate Iuris civilis Romanorum in dominiis principum Christianorum* (Duck), 138
- Dacey, Albert, 319
- Dickins, Francis, 130
- Digest* (Justinian), 64–65, 72, 129–130, 155–156, 222
- Dionysius of Halicarnassus, 130–131
- Disraeli, Benjamin, 240
- Dixon CJ, Owen, 287–304. *See also* Australian High Court
- Domat, Jean, 131–132, 135
- Donne, John, 100
- Doujat, Jean, 131–132
- The Dual Mandate in British Tropical Africa* (Lugard), 284
- Duck, Arthur, 138
- Dullius Gambarini (Italian jurist), 31
- Dumoulin, Charles, 32–33
- Duncan, Archibald Alexander McBeth, 53, 59–61
- Durand, Guillaume. *See* Guillaume Durand
- Durant, Alexandre, 193, 195–197
- Dyer, James, 133–134
- Dyzenhaus, David, 319–320
- Easements. *See* Continuous easements
- Eden, Robert, 131–132
- Edgeworth, Brendan, 265–266
- Edward I (England), 51, 53–55, 64, 75–77, 266
- Egerton, Thomas (Lord Chancellor Ellesmere), 100
- Ehrlich, Eugene, 4–5
- Elias CJ, Sian, 261–262
- Elizabeth I (England), 15–16, 92
- Ellesmere, Lord Chancellor (Thomas Egerton), 100
- Elsyng, Henry, 119
- Elwes, John, 122
- England
- Australian High Court, English law in (*See* Australian High Court, English law in)
 - British Colonial Office, 295
 - Chancery, 94
 - commercial prosperity in, 237–238
 - Common Law Procedure Act 1854, 240
 - comparative commercial law and, 254–255
 - comparative law, efforts to codify, 242–243
 - continuous easements in (*See* Continuous easements)
 - Conveyancing Act 1881, 186
 - Hanoverian succession, 163
 - Law of Property Act 1925, 186
 - Mercantile Law Amendments Act 1856, 246–247, 250
 - Privy Council (*See* Privy Council)
 - slave laws in West Indies (*See* Slave laws in West Indies)
 - Star Chamber, 86, 88, 93–102, 107, 115–116, 118
 - status of slaves in English territory, 313–317
 - Statute of Artificers 1563, 319–320
 - Union of Crowns (1603), 51
 - Vagrancy Act 1547, 318
- Enlightenment, 207–208
- Entanglements, 8
- Epitome feudorum* (Jean de Blanc), 35–39, 42–43
- Erle CJ, William, 198
- Estienne, Robert, 134
- Evangelical Continental Society, 238
- Faber, Basil, 134
- Faber, Peter, 133
- de Ferrière, Claude-Joseph, 131–132, 135
- Feudal kingship, 77–78

- Feudal law
 Carolingian era, emergence in, 27–28
 case law, 35–38
 common law and, 45–46
 comparative legal history and, 16–17
 contract law, 42–44
 fiefs and, 32–33, 36–38, 41–42, 45
 homage and, 39–42, 45
ius commune and, 25, 30–31, 38, 45–46
lèse-majesté and, 39–42
Libri feudorum and (See *Libri feudorum* (Italian law book))
 overview, 16–17, 25–27
 practice in, 35–38
 Roman law versus custom, 25–27
 spontaneous emergence of, 27–28
- Fiefs, 32–33, 36–38, 41–42, 45
- Field, Davis Dudley, 254
- Filangieri, Gaetano, 250
- Fischer, Carsten, 19–20, 22–23
- Fitzherbert, Anthony, 132
- Fletcher, Ned, 275
- Foelix, Jean-Jacques Gaspard, 244
- Ford, John, 107
- Fortescue, John, 101, 132, 142
- Foster, Michael, 135
- Foucher, Victor, 244
- France
 Civil Code, 241–242
Code de Commerce, 241–242, 244, 248
 comparative commercial law and, 254–255
 continuous easements in (See Continuous easements)
- Frankfurter J, Felix, 290, 293–294, 296–297, 303
- Frederick I (Germany/Emperor), 41
- Frederick II (Germany/Emperor), 73
- Fullagar J, Wilfred Kelsham, 290, 295, 297
- Gail, Andreas, 209
- Gaius (Roman jurist), 120
- Gale, Charles, 14, 187–190, 192–201, 204
- Galloway, Patrick, 100
- Gambarini, Dullius. See Dullius Gambarini
- Ganshof, François-Louis, 27–29
- Gaspar, David Barry, 306, 318–319
- Gatzert, Christian Hartmann Samuel, 20, 22–23, 169–178
- A General Abridgement of Cases in Equity, Argued and Adjudged in the High Court of Chancery etc.*, 133–134
- George II (England), 166
- George III (England), 122
- Germany
Bürgerliches Gesetzbuch (Civil Code), 211
 case law in, 18, 206–207 (See also *Seuffert's Archiv*)
 civil law in, 206
 collections of court decisions in, 208–209
 English law, interest in, 161–164
gelehrte Zeitschriften (learned journals) in, 164–165, 181–182
 General German Commercial Code (ADHGB), 248–249, 252
 General Law on Bills of Exchange, 248–249
Göttingische gelehrte Anzeigen (See *Göttingische gelehrte Anzeigen* (German legal journal))
Kameralliteratur, 209
 obligation to state reasons for court decisions in, 207–208
Seuffert's Archiv (See *Seuffert's Archiv*)
- Gibson, Edmund, 132
- Gibson, James, 91
- Gilbert, Jeffrey, 133–134
- Giovanni d'Andrea (canonist), 66
- Glanvill* (English legal treatise)
 generally, 13–14
 bail in, 72
 custom in, 82
Göttingische gelehrte Anzeigen and, 169–170
 Harris translation of *Institutes* (Justinian) and, 132, 135
Institutes (Justinian) and, 71

- Glanvill* (English legal treatise) (cont.)
maiestas (majesty) in, 71
Regiam maiestatem, as textual
 authority for, 51–56, 62–71, 85
 translation of, *Regiam maiestatem* as,
 68–69
 writs in, 62–63
- Gleeson, Murray, 287–288
 von Gneist, Rudolf, 161–162
- Godolphin, John, 132
- Goffredus Tranensis (Goffredo de
 Trano) (Italian jurist), 52, 62, 65,
 67, 74–75
- Goodare, Julian, 87, 106
- Göttingen University, 166, 170–171,
 177
- Göttingische gelehrte Anzeigen* (German
 legal journal)
 anonymity of authorship,
 167–168
 Blackstone in, 20, 167–170, 172–177,
 180–181
 challenges of comparative legal
 history and, 22–23
 Coke in, 169–170
Commentaries (Blackstone) and,
 167–168, 180–181
 comparative legal history and, 19–20
 contemporary ascriptions, 167–168
 difficulty of comparing German and
 English law, 178–179
 English common law in, 169–172,
 180–181
 English law books, reviews of,
 166–167
 founding of journal, 165–166
Glanvill and, 169–170
 hints at authorship, 167–168
 influence of, 181
ius commune and, 179–181
 language barriers between German
 and English, 176
 motivations for reviews in, 173–174
 overview, 19–20, 161–164
 Scottish law in, 178
 superficiality of reviews, 178
 types of English text referenced in,
 176–178
- Gratian (canonist), 31
- Great Cause (1291–1292), 76, 83–84
- Great Exhibition (1851), 246
- Gregorius (Roman jurist), 128
- Gregory IX (Pope), 133
- Grey, Earl (Viscount Howick), 276
- Griffith, Samuel, 295–296
- Grimm, Jacob, 162–163
- Gronovius, Johann Friedrich, 131–132
- Grotius, Hugo, 131–132, 148–149
- Gudelinus, Petrus (Pierre Goudelin),
 135
- Guicciardini, Francesco, 140
- Guillaume Durand (canonist), 39
- Gundermann, Joseph Ignaz, 161–162
- Günzl, Clara, 18
- Gutteridge, Harold Cooke, 256
- Gyb, James, 112–113
- Habeas corpus*, slaves and, 316
- Haldane, Richard (Viscount), 284
- Hale, Matthew, 8, 132, 145, 148
- Hallifax, Samuel, 130
- Halpérin, Jean-Luis, 256
- Hamburger unpartheyischer
 Correspondent* (journal), 165
- Hamilton, John (Lord Sumner), 283
- Hamilton, Marquess, 99
- Hannay, Robert Kerr, 89
- Harding, Alan, 53–55
- Hardes, Thomas, 133–134
- Hardwicke, Lord (Philip Yorke), 315
- Harris, George, 21, 121–124. *See also*
 Harris translation of *Institutes*
 (Justinian)
- Harris, John, 121
- Harris translation of *Institutes*
 (Justinian)
 advertisement, 127
 assessment of, 136–138
 ‘A Brief Account of the Rise and
 Progress of the Roman Law’,
 127–129
 challenges of comparative legal
 history and, 23
 Coke and, 132–135
 comparative legal history and, 21
 dedication, 126–127

- editions of, 124–126
Glanvill and, 132, 135
 notes, 129–134
 overview, 21, 120–121, 138–139
 sources, 129–136
 subtitles, 130
 supplement, 134–135
 Hawkins, William, 132
 Hawley, Henry, 122
 Hegel, Georg Friedrich Wilhelm, 162
 Heineccius, Johann Gottlieb,
 131–132
 Heirbaut, Dirk, 29
 Heise, Georg Arnold, 211, 216
Hengham Magna (English legal
 treatise), 69
 Henricus de Segusio. *See* Hostiensis
 Henry II (England), 64, 70, 77
 Henry VII (England), 84, 102
 Hermogenes (*sic*) (Roman jurist), 128
 Herodotus, 130–131
 Hickford, Mark, 279
 Historical School of Law, 161
*History of British Commerce and of the
 Economic Progress of the British
 Nation 1763–1870* (Levi), 253
 Holdsworth, William Searle,
 187–188
 Holt, John, 135, 314–315
 Homage, 39–42, 45
 Homer, 130–131
 Hooke, Nathaniel, 125
 Hoppe, Joachim, 131–132
 Hostiensis (Henricus de Segusio)
 (Italian jurist), 31
 Hotman, François, 131–132
 Houïard, David, 57
 Howard, Thomas, 115–116
 Hudson, William, 100–101
 Hudson Bay Company, 269
 Hugh IV (Burgundy), 38
 Huntly, Earl of, 117
 Hywel Dda (Wales), 64

 Iacobus de Ardizzone (Italian jurist),
 16–17, 30–31, 34–39
 Iacobus de Aurelianus (French jurist),
 16–17, 42–45

 Ibbetson, David, 7
 Imbrication, 5
 Indentured servants, slaves compared,
 308, 313, 319
 Indigenous peoples. *See* Radical versus
 aboriginal title
 Innocent III (Pope), 37
 Institute for Legal and Constitutional
 Research, University of St.
 Andrews, 1
Institutes (Justinian)
 generally, 38, 64–65
 educatory purpose of, 22
 Glanvill and, 71
 Harris translation of (*See* Harris
 translation of *Institutes*
 (Justinian))
 Regiam maiestatem and, 71
 International Academy of Comparative
 Law, 256
International Commercial Law (Levi),
 21, 247–249, 252
 Iohannes Bassianus (Italian jurist), 39
 Ireland, Mercantile Law Amendments
 Act 1856, 246–247, 250
 ‘Italophobia’, 26
 Italy
 Ancona Chamber of Commerce,
 239
 Catholicism in, 238
 comparative commercial law and,
 249, 254–255
 feudal law in (*See* Feudal law)
 Jews in, 236–237, 239
 Libri feudorum (*See* *Libri feudorum*
 (Italian law book))
 Risorgimento (unification),
 239, 249
Ius commune
 Commentaries (Blackstone) and,
 144–148, 150–151
 feudal law and, 25, 30–31, 38, 45–46
 Göttingische gelehrte Anzeigen and,
 179–181

 Jacques de Revigny, 33
 Jacques d’Orleans. *See* Iacobus de
 Aurelianus

- Jamaica
 martial law in, 320–321
 Militia Act 1664, 321
 Slave Code, 321
 slave laws in, 320–321
- James I (England)/James VI (Scotland)
 as judge
 appropriateness of, 102–116
 Biblical ideas of kingship and,
 97–100, 106–107
 Chancery and, 94
 Coke and, 88, 94, 101, 103–104,
 115–116, 118
 comparative legal history and, 15–16,
 116–117
 England, cases judged in, 91, 93–97
 exemplarity and, 111, 115
 informal acts by, 88–89
 infrequency of judging, 115–116
 interventions in legal process, 89
 on King as judge, 87, 97–102
 legacy of, 117–119
 lessons of comparative legal history
 and, 23
 literary ideas of kingship, 101
 meaning of judging and,
 88–89
 mercy and, 114–115
 Overbury scandal and, 106, 108, 112
 overview, 15–16
 partiality and, 104–105
 political expediency and, 105–106
 religion and, 110
 royal duty and, 106–112, 115
 Scotland, cases judged in,
 90–93
 Scottish Privy Council and, 87–88,
 90–92
 self-limitations, 103–105
 sentencing and, 112–115
 Star Chamber and, 86, 88, 93–102,
 115–116
 theory versus practice, 87
 as two Kings, 86–87
 worthiness of cases and, 105
- James I (Scotland), 47, 49, 79
 James II (Scotland), 59
 James III (Scotland), 59
- James VI (Scotland). *See* James I
 (England)/James VI (Scotland) as
 judge
- Jasanoff, Maya, 267
- Jean Blanc (French jurist), 16–17,
 35–39, 42–43, 45
- Jean de Blanot (French jurist), 16–17,
 38–43, 45
- von Jehring, Rudolf, 212
- John XXII (Pope), 54, 77
- John the Scot, 77
- Josev, Tanya, 18–19
- Journal des Savans*, 165, 244
- Journal of the Royal Statistical Society*,
 252
- Journal of the Society of Comparative
 Legislation*, 255
- Justinian (Rome)
Authenticum (a text of *Novels*), 28–29
Code, 129–130, 153
Digest (*See Digest* (Justinian))
 Harris translation of *Institutes* (*See*
 Harris translation of *Institutes*
 (Justinian))
Institutes (*See Institutes* (Justinian))
Novels, 28–29, 130, 134–135
- Kay J, Edward Ebenezer, 191–192
- Keilway's Reports*, 133–134
- Kemble, John Mitchell, 162–163
- Kennedy, Duncan, 4, 6, 10–11, 23–24
- Kennefick, Ciara, 14–15
- Kennett, Basil, 134
- Kent, Ambrose, 122
- Kent, James, 276–277
- Kern, Fritz, 26
- Killeen, Kevin, 99
- King's College London, 239, 256–258
- Kingship and Law* (Kern), 26
- Kinloss Abbey, 79
- Knowles, Captain, 315–316
- Korporowicz, Łukasz Jan, 21–23
- Kritische Zeitschrift für die gesamte
 Rechtswissenschaft* (journal), 245
- Kuntze, Johannes Emil, 212
- Lake, Thomas, 96–99, 106, 108–112, 116
- Lambert, Edouard, 253

- Lambeth Palace Library, 121–123, 136
La norma giuridica (Cortese), 153–154
 Latham, John, 297
 Law Amendment Society, 240–241
 Lawson, Harry, 203
Lectura authentici (Jacques de Revigny), 33
 Lee, George, 126–127
 Legal consciousness, 6
 Legal transplants
 continuous easements and, 184–185, 201–203
 individual rules, 14–15
 as metaphor, 184
 overview, 8
 political principles, 13–14
 Regiam maiestatem as, 67–68
 slave laws in West Indies as, 306
 villeinage as, 312
Lehnsrecht und Staatsgewalt (Mitteis), 27
 Leibniz, Gottfried Wilhelm, 165
Lèse-majesté, 39–42, 78–81
Les six livres de la République (Bodin), 157
 Levi, Leone. *See also* Comparative commercial law
 comparative commercial law and, 21–22, 240–259
 in England, 240–242
 legacy of, 254–259
 liberalism and, 253–254
 life of, 236–239
 methodology of, 23
 politicians, relationships with, 240–241
 pragmatism of, 258
 on similarities between laws of different countries, 241–243
 statistics and, 247–248, 252
 translation and, 243–244
 on working conditions, 258
Levine's King's Bench and Common Pleas Reports 1660–1697, 133–134
 Lewison LJ, Kim Martin Jordan, 187, 192
Lex Julia (Roman law), 72
Lex Si imperialis (Roman law), 153–154
Liber Augustalis (Frederick II), 73
Liber domini Symonis (Symon Vicentinus), 30
Liber extra (Gregory IX), 64–65, 133
Liber sextus (Boniface VIII), 64–66
Libri feudorum (Italian law book)
 acceptance of, 31–33
 conceptions of legal practices and, 29–30
 contract law in, 42–44
 custom in, 33–35, 38–42, 45
 emergence of, 28–29
 evolution of, 30–31
 fiefs and, 32–33, 41–42, 45
 homage and, 39–42, 45
 legal practices independent of, 29
 lèse-majesté and, 39–42
 overview, 16–17
 Liebermann, Felix, 162
 Lincoln's Inn, 239
 Littleton, Thomas, 132, 135, 169–170
 Liverpool Chamber of Commerce, 238, 240–241
 Living law, 4–5
 Lombard, feudal law in. *See* Feudal law
 Long, Edward, 311
 Lugard, Frederick, 284
 Lyon-Caen, Charles, 255–256
 Machiavelli, Niccolò, 159
 Mackenzie, George, 134
 MacQueen, Hector, 50–51
 Mael Coluim, 55, 58
 Magnus VI (Norway), 78
Maiestas (majesty)
 in *Glanvill*, 71
 princeps versus, 73–74
 in *Regiam maiestatem*, 71–77, 85
 superior versus, 73–74
 Maine, Henry, 9–10
 Maitland, Frederic William, 2, 5, 11–12, 22, 162–163
 Mamdani, Mahmood, 283–284
 Manners, Anne (Lady Roos), 96
 Manners, John (Lord Roos), 96
 Mansfield, Lord (William Murray), 316
Margarita feudorum (Dullius Gambarini), 31
 Marinus de Caramanico, 73–74

- Marlow, John, 316
 Marshall, John, 276–277
 Marshall, Susan, 56
 Martial law, slaves and, 308–309, 319–321
 Martin CJ, William, 277
 Marxism, 4–5
 McHugh, Paul, 269, 271
 McLachlin CJ, Beverly, 262–263
 McNeil, Kent, 280
Measure for Measure (Shakespeare), 101
 de Medicina, Pillius. *See* Pillius Medicinensis
 Ménage, Gilles, 131–132
 Menzies, Douglas, 297–299, 301
 Menzies, Robert, 300–301
 Merlin, Philippe-Antoine, 192, 196
 Merton, Robert, 202
 Metaphor, 184
 Milsom, Stroud Francis Charles, 10, 23–24
 Milton, John, 134
 Mitteis, Heinrich, 27–29
 Mittermaier, Karl Joseph, 244, 255
Monatsgespräche (journal), 165
 Montagu, Henry, 118
 Montesquieu, 134, 155–157, 202
 Monti, Annamaria, 21–23
 Morice, James, 101–102
 Morris, Thomas, 318
 Murray, William (Lord Mansfield), 316
 Mynsinger von Frundeck, Joachim, 131–132, 209
- Napier, Barbara, 93, 98–99, 102–108, 111, 114
 Napoleon, 184
 Neilson, George, 49, 51
Neue Zeitungen von gelehrten Sachen (journal), 165
 New Zealand, radical versus aboriginal title in. *See also* Radical versus aboriginal title
 aboriginal title, 275–277, 279–280
 case law, 261–262
 historical evolution of, 274–282
 Land Claims Act 1840, 278
 Land Claims Ordinance 1841, 278, 281
 Land Titles Protection Act 1902, 281
- Maori customary rights and, 261–262, 274–282
 Maori Land Claims Adjustment and Laws Amendment Act 1904, 281
 Native Land Act 1909, 279–281
 Native Land Claims Adjustment and Laws Amendment Act 1901, 281
 Native Land Court, 278, 280–281
 Native Rights Act 1865, 281
 Privy Council and, 279–282, 284–285
 Rangitane people and, 280
 statutory law and, 278–279
 Treaty of Waitangi (1840), 274–278, 281–282
 Treaty of Waitangi Act 1975, 275
 United States law and, 276–277
 Waitangi Tribunal, 275
- New Zealand Company, 275–276
New Zealand Journal, 276
 Nicholson, Bradley J., 317–318
 Nigeria, radical versus aboriginal title in, 283–285
Nineteen Eighty-Four (Orwell), 183, 204
Novels (Justinian), 28–29, 130, 134–135
- Obertus de Orto (Italian jurist), 16–17, 30, 33–35, 38
 Odofredus de Denarii (Italian jurist), 30–31, 38–39
 d’Orleans, Jacques. *See* Iacobus de Aurelianis
 Orto, Obertus de. *See* Obertus de Orto
 Orwell, George, 183, 204
 Ottoman Empire, comparative commercial law and, 256–258
 Oughton, Thomas, 133
Outlines of an International Code (Field), 254
Oxford Companion to the High Court of Australia, 296
- Paraphrase* (Theophilus), 130–131
 Pardessus, Jean-Marie, 194–197, 244–245
 Paris, Matthew, 146–149

- Parke, James (Baron), 197
- Parmensis, Bernardus. *See* Bernardus Parmensis
- Pearce, Edward (Baron), 290, 298, 301–302
- Penman, Michael, 53–54
- Pennington, Kenneth, 74
- Pere Albert (Catalan jurist), 39
- Peter of Spain, 44
- Philosophical Transactions of the Royal Society*, 165
- Pierre Jame d'Aurillac (French jurist), 32–33
- Pillius Medicinensis (Pillius de Medicina) (Italian jurist), 30–31, 35–36
- Plowden, Edmund, 133–134
- Plutarch, 130–131
- Pocock, John Greville Agard, 266
- Police law, slaves and, 308–309, 317–319
- Pothier, Robert-Joseph, 192–193, 196, 203
- Potter, John, 134
- Pound, Roscoe, 7
- Precedent
 - Australian High Court, English law in, 291–293
 - Commentaries* (Blackstone) and, 152–154
 - overview, 18–19
 - Seuffert's *Archiv, Präjudizien* and, 212–213, 223
- Prendergast CJ, James, 281–282
- Presbyterian Church of England, 238
- Principles of Politics and Government* (Ullmann), 77–78
- Privy Council
 - generally, 290
 - Australian High Court and, 18–19, 287–289, 294–304
 - radical versus aboriginal title and, 17, 261, 269–273, 279–282, 284–285
- Prussia, obligation to state reasons for court decisions in, 207–208
- Qu'est-ce-que la féodalité?* (Ganshof), 27
- Quoniam attachiamenta* (Scottish law book), 49–50
- Rabin, Dana, 315
- Radical versus aboriginal title
 - aboriginal title generally, 260–261, 279–280
 - in Australia (*See* Australia, radical versus aboriginal title in)
 - Blackstone and, 266–268, 273
 - in Canada (*See* Canada, radical versus aboriginal title in)
 - case law, 279–280, 285
 - Commentaries* (Blackstone) and, 266–268, 273
 - comparative law analysis, 261
 - comparative legal history and, 17
 - feudalism versus capitalism, 266–267
 - inconsistencies in law, 268, 285
 - legal fiction, radical title as, 265–267
 - in New Zealand (*See* New Zealand, radical versus aboriginal title in)
 - in Nigeria, 283–285
 - overview, 17
 - Privy Council and, 17, 261, 269–273, 279–282, 284–285
 - radical title generally, 260
 - in Southern Rhodesia, 282–283
 - terra nullius* and, 261
- Randolph, Thomas, 79–80
- Rastell, John, 132
- Raymond, Robert (Lord), 133–135
- Realty, slaves as, 310
- Recolentes* (Alexander III), 37–38
- Regiam maiestatem* (Scottish law book)
 - archaicising nature of, 58
 - bail in, 72
 - Bute manuscript, 51–52, 58, 60–61
 - change in, 58–59
 - communitas regni* and, 81–82
 - comparative legal history and, 13–14
 - compilation of, 51–56, 60–63
 - David I, references to, 63–67, 70–71
 - difficulties of, 57
 - editorial techniques in, 62–63
 - Glanvill* as textual authority for, 51–56, 62–71, 85
 - historiography of, 57
 - influence of, 50
 - Institutes* (Justinian) and, 71
 - jurisdiction in, 81

- Regiam maiestatem* (Scottish law book) (cont.)
- as legal transplant, 67–68
 - lèse-majesté* in, 78–81
 - maiestas* (majesty) in, 71–77, 85
 - origins of, 49–56, 83
 - overview, 13–14, 47–49
 - political theory in, 83–85
 - as single work, 62
 - survival of manuscripts, 57–59
 - as translation, 68–69
 - treason in, 78–81
- Reid, John (Baron), 290
- République* (Bodin), 99
- de Revigny, Jacques. *See* Jacques de Revigny
- Revue Foelix* (journal), 242
- Rex in regno suo*, 145–152
- Reynolds, Susan, 29
- Reyscher, August Ludwig, 212, 223
- Richmond J, Christopher William, 280–282
- Robert I (Robert the Bruce) (Scotland), 13–14, 52–55, 77–84
- Robert of Naples, 84
- Roffredus Benevenantus (Roffredo da Benevento) (Italian jurist), 39, 43
- Romulus (Rome), 127
- Roos, Lady (Anne Manners), 96, 109
- Roos, Lord (John Manners), 96
- Ross, Thomas, 91
- Royal prerogative, 145–152
- Royal Proclamation 1763, 269–272
- Royal Statistical Society, 239, 246–247
- Rugemer, Edward, 306
- de Saint-Joseph, Fortuné Anthoine, 241–247, 251
- St. Germain, Christopher, 132
- Saleilles, Raymond, 253
- Salkeld, William, 133–134
- Sanders, Thomas Collett, 126
- Saxony, obligation to state reasons for court decisions in, 207–208
- Schönfeld, Karl, 156–157
- Scienza della legislazione* (Filangieri), 250
- Scotland
- Brig O'Dee Rebellion (1589), 117
 - Declaration of Arbroath (1320), 77, 82
 - High Commission, 92
 - Jacobite rising (1745–1746), 51
 - James VI (*See* James I (England)/ James VI (Scotland) as judge)
 - Mercantile Law Amendments Act 1856, 246–247, 250
 - North Berwick Witch Trials, 93
 - Parliament, 87
 - Privy Council, 87–88, 90–92
 - Quoniam attachiamenta*, 49–50
 - Regiam maiestatem* (*See* *Regiam maiestatem* (Scottish law book))
 - Soules Conspiracy (1320), 54, 79–81
 - Union of Crowns (1603), 51
- Secher, Ulla, 280, 282
- de Segusio, Henricus. *See* Hostiensis
- Selden, John, 140–142, 148–150
- Servitudes. *See* Continuous easements
- Seuffert, Ernst August, 210
- Seuffert, Johann Adam, 209–212. *See also* Seuffert's *Archiv*
- Seuffert's *Archiv*
- application of legal rules to cases, 222
 - comparative legal history and, 18
 - first questions of law, 218–219
 - guiding principles, 218
 - headlines, 218
 - importance of, 223
 - integration of theory and practice in, 211
 - 'one and only solution', search for, 214
 - opinions, 220–221
 - origins of, 209–212
 - overview, 18, 207, 223
 - Pandektensystem* in, 211
 - Präjudizien* and, 212–213, 223
 - process of court file to entry in, 215–218
 - second questions of law, 219–220
 - statements of judges, 221–222
 - structure of, 210–211
- Sextus Aelius (Roman jurist), 128
- Sextus Papirius (Roman jurist), 127
- Seybert, Phillip Heinrich, 168–169, 173–176

- Sharp, Granville, 316
 Shower, Bartholomew, 135
 Siderfin, Thomas, 133–134
 Sidney, Philip, 101
 Simonds, Gavin (Viscount), 290, 293, 301–302
 Simpson, Alfred William Brian, 4–6, 14, 184–185, 189–190
 Simpson, Andrew, 49–50
 Simpson, Edward, 127
 Skene, John, 47–49, 57, 65, 77. *See also* *Regiam maiestatem*
 Slattery, Brian, 269
 Slave laws in West Indies
 Barbados (*See* Barbados)
 chattels, slaves as, 309–310
 claims to property rights, 310, 313–315
 comparative legal history and, 15
 control of slaves, 306, 308
 habeas corpus and, 316
 indentured servants compared, 308, 313, 319
 Jamaica, 320–321
 as legal transplant, 306
 martial law and, 308–309, 319–321
 non-English laws, influence of, 306–307
 overview, 321
 passes, 319
 police law and, 308–309, 317–319
 property, slaves as, 306, 308
 race, legal definitions of, 306
 realty, slaves as, 310
 rebellions of slaves, 308
 statistics of slavery, 305–306
 trespass actions to recover slaves, 313–315
 trover actions to recover slaves, 313–315
 vagrancy law and, 308–309, 317–319
 villeinage and, 311–317
 Smith, Thomas, 132
 Société de Législation Comparée, 255
 Society of Comparative Legislation, 255
 Solomon (Biblical king), 97, 106–107
 Somerset, James, 315–317
 de Soules, William, 80
 Southern Rhodesia, radical versus aboriginal title in, 282–283
 Spain, comparative commercial law and, 254–255
Speculum iudiciale (Guillaume Durand), 39
 Stair, Viscount (James Dalrymple), 85, 134
 Starke J, Hayden Erskine, 297
 Staunford, William, 101
 Stella, Attilio, 17
 Stephen CJ, Alfred, 272–273
 Stewart, Archibald, 178
 Stewart, Charles, 315–316
 Stewart, Robert (Scotland), 51–52, 79–80
 Stillingfleet, Edward, 133–134
 Stracca, Benvenuto, 258–259
 Strahan, William, 131–132
 Strange, John, 133–134
 Suetonius (Roman historian), 130–131
 Sugden, Edward, 197
Summa decretalium (Hostiensis), 31
Summa feudorum (Iacobus de Ardizzone), 30–31, 34–35
Summa feudorum (Iacobus de Aurelianus), 42
Summa feudorum (Odofredus), 30–31
Summa feudorum (Pillius), 30
Summa super titulis decretalium, 52, 62, 65, 67, 74–75
 Sumner, Lord (John Hamilton), 283
 Swinburne, Henry, 132
 Symon Vicentinus (Italian jurist), 30
 Tacitus (Roman historian), 130–131
 Talbot, Charles, 315
 Tamaki, Nireaha, 280–282
 Tarquinius Priscus (Roman king), 127
 Taylor, Alice, 13–14
 Taylor, John, 131–132
Terra nullius, 261
Tetrachordon (Milton), 134
 Teubner, Gunther, 186
Thémis (journal), 242
 Theocratic kingship, 77–78
 Theodosius (Rome), 128, 130–131

- Theophilus (jurist), 130–131
Thesaurus eruditionis scholasticae (Faber), 134
Thesaurus linguae latinae (Estienne), 134
 Thomasius, Christian, 165
 Thompson, Edward Palmer, 5
 Thomson, Thomas, 48–49, 57, 59, 65
 Tijani, Amodu, 284
Titles of Honor (Selden), 148–150
 Tomlins, Christopher, 306, 308
 Toullier, Charles-Bonaventure-Marie, 188, 193, 195, 197
 Tout, Thomas Frederick, 162–163
 Tranensis, Goffredus. *See* Goffredus Tranensis
 Treason, 78–81
 Treaty of Paris (1763), 269
 Treaty of Perth (1266), 78
 Treaty of Waitangi (1840), 274–278, 281–282
 Trespass actions to recover slaves, 313–315
The Trew Law of Free Monarchies (James I/James VI), 97–98, 108
 Trover actions to recover slaves, 313–315
 Tullis, Sarah, 70
- Ullmann, Walter, 77–78
 Ulpian (Roman jurist), 72
 Ungoed-Thomas J, Lynn, 191
 UNIDROIT, 256
 United Kingdom. *See* England; Scotland
 United States
 comparative commercial law and, 254–255
 New Zealand, reliance on United States law regarding radical versus aboriginal title, 276–277
- Vagrancy law, slaves and, 308–309, 317–319
 van der Made, Simon van Groenewegen, 131–132
 de Vattel, Emer, 249
 Vaughan, John, 133–134
 Vernon, Thomas, 133–134
 Vicentinus, Symon. *See* Symon Vicentinus
 Villeinage
 in gross, 311–312, 314
 as legal transplant, 312
 regardant, 311–312, 314
 slave laws and, 311–317
 slavery distinguished, 313–314
 Viner, Carl, 178
 Vinnius, Arnold, 127, 129, 131–132
 Voet, Johannes, 135
 Voltaire, 172
- Walkin, Thomas, 316
 Wallace, William, 78, 80
 Watson, Alan, 312, 317
 Watson, William (Lord), 270–273
 Weber, Adolph Dietrich, 214
 Wentworth, John, 122
 Wesenbeck, Matthew, 131–132
 Westbury, Lord (Richard Bethell), 194–195, 197
 West Indies, slave laws in. *See* Slave laws in West Indies
 Wiecek, William M., 313–314
 Wilde, Thomas (Baron), 190, 198
 Willes, William Henry, 198–201, 204
 William II (England), 146–147, 149
 Williams, David V., 17
 Williams, Ian, 15–16
 Williams, John (Bishop), 102
 Williams, William Peere, 135
 William the Lion (Scotland), 58, 65, 77, 83
 Wilson, Adelyn, 49–50
 Windeyer J, William John Victor, 290, 297, 299–300
 Wishart, Robert, 83–84
 Władysław (Poland), 77
 Wood, Thomas, 131–132
 Wormald, Jenny, 87
- Yorke, Philip (Lord Hardwicke), 315
- Zaller, Robert, 118–119
Zedlers Universal-Lexicon (legal encyclopedia), 175