

Index

- ABA. *See* American Bar Association
- Abbott, Benjamin Vaughn, 133, 136
- Abernathy, Charles, 34, 41
- abstract review, 262
- Adair, Joseph, 93
- Adams, Jasper, 117
- Adams, John, 29, 267
 - Eulogies for Lawmaker, 54–6
 - Massachusetts Constitution or Frame of Government*, xvii
 - Thoughts on Government* (1776), 31, 35
- Adams, John Quincy, 109
- adapting law to changes in time, xvi
- Affordable Care Act, 254
- age of statutes, xxviii, 23, 71, 97
- Alabama State Bar Association, 233
 - Committee on Judicial Administration (1880), 268
 - Committee on Jurisprudence (1879), 68
- Aldisert, Ruggero J., 20, 24, 281
- Alito, Justice Samuel A., Jr., 257
- alternative framework, 323
- American Bar Association
 - Committee of International and Comparative Law, 311
 - 1878 Report of the Committee on Legal Education and Admissions to the Bar, 310
 - 1892 Report, 22
 - Division for Public Education, 6
 - Magna Carta Commemoration (2015), 30
 - Committee on Comparative Law (1907), 311
- Standards and Rules of Procedure for Approval of Law Schools, 23
- Field's Address as President in 1889, 144
- Report of the Special Committee Appointed to Consider and Report Whether the Present Delay and Uncertainty in Judicial Administration Can Be Lessened, and If So, and By What Means? (1885), 165
- Special Committee on Drafting of Legislation (1914), 186, 224
- America the Beautiful, xvii
- American exceptionalism, xxvii–xxviii in 1876, 10
- American Jurist and Law Magazine*, 102, 114, 116, 119–20
- American Jurist, 92–3, 97, 103, 107, 115, 117, 123, 134
- American Jurist on replacing common law with statutes* (1834), 69
- American Jurist, Revision of the Laws in Massachusetts* (1835), 92
- American Law Institute, 237–8, 314
- American Law Review*, 68, 70, 94, 123, 133, 233, 236–7
- American rule of costs, 271
- American Themis* (1844), vii
- Amos, Sheldon, 138
- Andrews, Niel, 272
- Angell, James B., 138
- appeals on rules not rights, 278–80
- appeals, Germany, 295
- applying the law, xix
- Armstrong, Walter P., 238
- Arnold, Guy, 216
- Articles of Confederation (1782), 59

- Association for the Reform and Codification of the Law of Nations, 138
- Association of the Bar of the City of New York (ABCNY), 140 *See* New York City Bar
- Atkins v. Virginia*, 536 U.S. 304 (2002), 306
- Austin, John, 96
- Austria, 261
- authoritative and doctrinal interpretation, 284–9
- authority, lines of, xvi
- Baldwin, Simeon E., 143
- baseball, National League of Professional Baseball Clubs, Constitution and Playing Rules, 137
- Bates, Katherine Lee, xxvii
- Beale, Joseph H., Jr., 140
- Beccaria, 41
- Beck-Texte im dtv, 200
- Bederman, David J., 41
- Bentham, Jeremy
 - common law as “dog law”, 28
- Bergman, Matthew P., 41
- Bessler, John D., 102
- Bicentennial Writers, 30, 97
- Bilgrami, Akeel, 323
- Bishop, Joel Prentiss, 143
- Bispham, G.T., 11, 143
- Blackstone, William, 47, 140
- Blair, John, Jr., Justice, 42
- blood-letting, 23, 300
- Blum, Peter, 198
- Boddie v. Connecticut*, 401 U.S. 371, 374 (1971), 6
- Bogandy, Armin von, 216
- Bouffier, Volker, 6
- Brackenridge, Hugh H., 47
- Bray, Samuel L., 255
- Breyer, Stephen G., 257, 307
- Briffault, Richard, 240–1
- British law in America, 44–54
- Brooks, David, 15
- Brougham, Lord Henry, 275
- Brown v. Board of Education* (1954), 250
- Brown, Elizabeth Gaspar, 46, 63
- Browne, Irving, 124
- Brugger, Winfried, 297
- Bundesrat (Council of States), 195, 218, 246, 263
- Bundestag, 195, 216, 218, 262
- Burdick, William L., 187
- Burns, Robert P., 272
- Bush v. Gore* (2000), 282
- Butler, Benjamin F., 112
- Calabresi, Guido, 15, 235
- California, 62, 126
 - California Codes 1872, 136
 - California Constitutional Convention, 127
 - Field’s Procedure Codes in 1851, 126–7
- Caligula, 7, 93
- Canada, Code for Québec 1857, 137
- Canaris, Claus-Wilhelm, 199
- Cappalli, Richard A., 268
- Cardozo, Benjamin N., 27, 238
- Carpenter, William, 28
- Carrington, Paul D., 268, 277, 289, 297
- Carrington, Paul D., Daniel J. Meador & Maurice Rosenberg, *Justice on Appeal* (1976), 278
- Carroll, Lewis, (Charles Dodgson) *Through the Looking Glass* (1872), 270
- Carter, James C., 17, 140–1, 143–4
- Casper, Gerhard, 231, 238
- Caveat Emptor* [George Stephen], 168
- Census of Governments, 239
- Centennial Celebration Bureau of Protection, xxviii, 11, 28, 135
- Centennial Writers, 57, 67, 69–70, 92, 97, 100, 122, 133, 136, 143
- Certify questions of state law to state courts, 263
- Chase, Salmon P., 118
- Chase, William C., 313
- childbed fever (purperal fever), 301
- Christenson, Gordon A., 118
- Civics for Adults, 74–5
- Civics for Youth, 75–84
- civics, patriotic commemorations, 72–3
- civil law myths
 - codes dictate results, xvi
- civil procedure-Germany, 291–4
 - appeals, 295–7
- civil procedure-US
 - Federal Rules of Civil Procedure, 276–8
 - statutes and civil process, 270–89
 - Clarke, R. Floyd, 310
 - Code Commission, systematizing United States, 140–2
 - Code Commission Report of 1837, 115–17

- Code of Federal Regulations (CFR), 184, 190
- Codification
 - American exceptionalism 1876, 12
- College of New Jersey (Princeton), 132
- Columbia Law School, 127, 133
- Columbia University, 129
- Commissioners on Uniform State Laws, Annual Meeting 1912, 237
- common good and justice
 - element of government of laws, 5
- common law, 15, 17, 20–1, 140
 - not in civics texts, 81
 - English, replaced by American statutes, 69
 - national fiction, 23
- common-law country, 16
- common law fails as rules of law, 19
- common-law method in the 19th century, 53–4
- common law myths, 22–30
- common law of crimes rejected, 123
- common law religion, xv, xx–xxi
- common law–civil law divide denied, xxiii
- Common Ministerial Rules of Procedure
 - (Gemeinsame Geschäftsordnung der Bundesministerien – GGO), 217
- common-law pleading, 27, 274
- common-law pleading and judge-made law, 54
 - comparing laws, xix
 - concentrated review, 263
 - concentration principle, Germany, 199–201
 - concrete review, 264
- Congress of Arts and Sciences (St. Louis, 1904), 311
- Congressional committee staffs, 214
- Congressional Office of Code Counsel, 214
- Congressional Research Service (American Law Division), 213
- Conkling, Alfred, 80
- Connecticut, 57
- Constitution or Frame of Government of the State of Massachusetts-Bay, 5
- Constitution, United States, 13, 59–60
 - as written law, 41–2
- Constitution, Iowa (1844), 63
- Constitution, New York (1846), 63
- constitutional commitments to codes, 120–2
- constitutional complaint, 264
- constitutional convention, California (1849), 62–3
- constitutional convention, Michigan (1850), 63
- constitutional convention, Pennsylvania (1837), 62
- constitutional review, generally, 249–50
- constitutional review, Germany, 260–4
 - concentrated review, 263
 - concrete review, 264
 - constitutional review is not magical, 263
 - court opinions understandable, 264
 - ordinary courts kept from policy decisions, 265
 - selecting justices, 265–6
- constitutional review, US, 262
 - constitutionalizing ordinary disputes, 257
 - court opinions, understanding, 256–7
 - national injunctions by local federal judges, 255
 - ordinary courts and process, 251–3
 - zombie laws, 253–5
- constitutionalizing ordinary disputes-US, 257
- constitutions, unwritten, 60
- constitutions, US and state, 57–61
- contracts law course books and common law, 22–3, 28
- Convention on the International Sale of Goods, 289
- Cook, Charles M., 53, 119
- Cooley, Thomas, 113
- Cooper, Thomas, 110
 - South Carolina codes 1827–1836, 109
- coordination of statutes, xvi
- Coquillette, David R. & Bruce A Kimball, On the Battlefield of Merit (2015), 312
- Corbin, Arthur L., 28, 238
- Cornell University, 15, 158
- Cosgrove, Richard A., 22, 24, 29
- costs of no codes, xiii–xiv
- coverture, English common law, 64
- criminal codes in antebellum America, 122–3
- Cushing, Caleb, 55, 163, 309
- Cushing, William Justice, 42
- da mihi factum, dabo tibi ius* (give me the facts, I will give you right), 292
- Dailey, Joseph P., 281
- Dakota Territory, 126
 - Dakota Territory Codes 1867, 136
- Daly, Charles P., 111
- Davis, Kenneth Culp, 191
- “Dead Laws” (Philip K. Howard), xvi–xvii

- De Bow, James Dunwoody Brownson, 111
 Declaration of Independence of 1776, 34, 57
Delchi Carrier SpA v. Rotorex Corp. 71 F.3d 1024, 1028 (2nd Cir. 1995), 289
DeLovio v. Boit (1815), 236
 democratic responsibility, xvi
 Desha, Joseph, 93
 Dicey, A.V., 29, 312
 Dickenson, John, 46
 Dickerson, Reed, 209, 215
 dicta and holding, 18
 Dillon, John F., 140, 240
 “Does anybody govern?”, xv
 doctrinal interpretation, 284–9
 Doppelgänger Decrees (national injunctions by local federal judges), 255
 Dorsey, Tobias A., 189
Dred Scott v. Sanford (1857), 250
 Duer, John, 112
 Dwight, Theodore W., 127, 133, 143
- E pluribus unum*, 289
 Easterbrook, Frank H., 168
 Edmonds, John Worth, 95
 Edwards, Harry T., 192
 Elmer, Lucius Q.C., 122
 employment-at-will doctrine, 26
Encyclopædia Americana, 74, 84, 94
 Engisch, Karl, 199, 204
 English common law, 45, 140
 enumerated powers doctrine, 234
 Eskridge, Jr., William N., 211, 287
 European Convention on Human Right Art. 6 §1 (fair trial), 272
 European Union, concentrated review of EU law questions, 263
 Evans, Hugh D., 273–4
Ex uno plures (Out of one, many), 289
 experiential courses, 23
- Fate of Scholarship in American Law Schools, 232
 Federal Cabinet role in Lawmaking, 223–9
 Federal Chancery Role in Lawmaking, 223–9
 Federal Constitutional Court, 299
 Selecting Justices, 265–6
 Federal Constitutional Court. *See* Constitutional Review, Germany
 Federal Ministry of Interior role in Lawmaking, 224
- Federal Ministry of Justice and Consumer Protection, 262
 Federal Ministry of Justice and Consumer Protection role in Lawmaking, 223–9
 Federal Ministry of the Interior, 262
Federal Register, 184
 Federal Rule of Civil Procedure 51, 274, 276–8, 285
 Federal Rules of Statutory Interpretation (proposal), 285
 Federalism, Germany
 Historical Note, 242–3
 Many Governments – One Law, 243–6
 State Execution of Federal Laws, 246
 Federalism, United States, 232
 ALI Restatements, 237
 Madisonian Compromise, 235
 many sovereigns-many laws, 234–5
 parallel governments, 235
 State-to-State Coordination, 235–9
Federalist
 No. 37, 191, 282
 No. 62, 31, 42, 91, 186, 209
 Federalism, Germany
 State-to-State Coordination, 246–8
 Ferguso, Elbert C., 237
 Field, David Dudley, xx, 109, 111, 113, 116, 120, 123–6, 138, 142, 144–5, 165, 180, 300–1
 arguments on codification, 94
 Field, Stephen J., 127, 136
 Field’s Codes 1848–1894, 123–6, 301
First Century of the Republic, 12–14, 133
 First World War, 30
 Fisch, William B., 136
 Folkes, W.C., 142
 Foote, John P., 118
 foreign law controversy, 305–9
 Founders’ Vision: A Government of Laws for a New Nation, 34
 Frankenstein’s monster of session laws, United States Code as, 189
 Frankfurter, Felix, 235
 Franklin, Mitchell, 315
 Freyer, Tony Allan, 236
 Frickey, Philip P., 211
 Friedman, Lawrence M., 59, 96, 126, 140, 144
 Fukuyama, Francis, xv
- Garland, Merrick, 266
 Garoupa, Nuno, 15, 22

Index

329

- Garrett, Elizabeth, 211
- Gemeinsame Geschäftsordnung der Bundesministerien (GGO) §§ 45, 46, Appendix 6, 262
- general verdict, 272
- Georgia Code of 1861, 136
- German administrative law, 207
- German advantages in realizing a government of laws, xxviii
- German Constitution (*Grundgesetz*)
 - art. 20, 243
 - art. 20(2), 298
 - art. 28(2), 248
 - art. 31, 245
 - art. 70, 244
 - art. 71, 244
 - art. 72, 244–5
 - art. 72(1), 244
 - art. 73, 244
 - art. 74, 244
 - art. 83, 246
 - art. 84, 247
 - art. 84(3), 246
 - arts. 85 and 86, 246
 - art. 94(2), 264
- German Legislation*, Am. L. Rev (1875), 133
- Germany Civil Code (1896), 145
- Germany Civil Wars and Codes 1860s, 137
- Germany, Constitution Preamble (“the German people, in the exercise of their constituent power . . .”), 230
- gesetze-im-internet.de, 195, 200
- Gibbons v. Ogden* (1824), 234
- Gilmore, Grant, 236
- Ginsburg, Ruth Bader, 257
- Goldstone, Lawrence, 281
- Good laws
 - qualities, 7
- Goodnow, Frank J., 240–1
- Goodrich, Herbert F., 238
- Goodrich, Samuel G., 67, 75, 77, 207
- Gordon, Robert W., 96
- Gould, James, 129, 131
- government of laws, xix, xxi, xxvii
 - American, 7
 - Germany, 8
- government of statute, not government
 - of precedent, 15
- Graham, Kyle, 317
- Graves, F.J., 237
- Great Britain Codes 1860s and 1870s, 137–8
- Great Seal of the United States, 33, 232
- Greenleaf, Simon, 273
- Grimké, Thomas F., 102
- Grimké, Thomas S., 85, 110, 301
- Grinnell, W. Morton., 29
- Griswold, Erwin N., 184, 289
- Grossman, Lewis, 136
- Gunlicks, Arthur B., 240, 242
- Hall, Kermit L., 70, 96
- Halleck, Henry Wade, 64
- Hamburger, Philip, 187
- Hamilton College, 133
- Hammond, William G., 54, 63, 128, 137, 143
- Handbuch Föderalismus*, comprehensive study of federalism, 245
- Harmo, Albert J., 193
- Harper's New Monthly Magazine*, 11
- Harrington's *Oceana* (1656), 35
- Harrison, President Benjamin, 145
- Hart, H.L.A., 20, 25, 268
- Härtel, Ines, 245
- Harvard Law School, 22, 29, 129, 132, 259, 312
- Haschke, Dieter, 248
- Hazard, Jr., Geoffrey C., xxviii, 281, 283
- Head, John, 124
- Herman, Shael, *The Louisiana Civil Code* (1993), 105
- Hines, Eric, 28
- Hirsch, Günter, President of the Federal Supreme Court, 298
- Hitchcock, Henry, 59
- Hoadly, George, 143
- Holmes, Oliver Wendell, Jr., 20, 24, 54, 300, 302
- Holmes, Oliver Wendell, Sr., 300–1
- Holtzendorff, Franz von, 137
- Holy Roman Empire of the German Nation, 242
- home rule, 240
- Homblower, William B., 69
- horse laws, Germany
 - animal cruelty laws, 178
 - horse trailers, 176
 - liability, 178
 - ownership, 175
 - riding on highways, 176
 - sales laws, 179
 - no brands, horse passports instead, 176

- horse laws, Germany (cont.)
 - United States, Sources of equine law
 - Maryland, 168
 - animal cruelty statutes, 173
 - brand laws, 171
 - liability laws, 174
 - ownership, 170
 - riding on streets, 171
 - sales laws, 174
 - trailer requirements, 172
 - veterinary inspections, 172
- Horwitz, Morton J., 70
- House of Representatives, Office of the Law Revision Counsel, 188
- Howard, Philip K., xiii, xxviii, 59, 165, 191, 238, 298
- Hughes, Graham, 71
- Humpty Dumpty, 271
- Hunt's *Merchants' Magazine*, 243
- Huntington, Samuel, xv
- India, 137
- Ingersoll, Jarad, 122
- Ingersoll, Joseph R., 92, 206
- intentionalism, 283
- international law code, 138
- Interstate Commerce Act of 1887, 237
- interstitial lawmaking, 27
- Iowa, 63
- Iowa State Bar Association, 11
- Iredell, James, 43, 101
- Iredell's Revisal (North Carolina), 43
- Isaacs, Nathan, 142
- Issacharoff, Samuel, 272
- Italy civil war and codes 1860s, 137
- Jackson, Robert, 249
- James I, 45
- James, Benjamin, 93
- Jameson, John Alexander, 59
- Jamestown, 45
- Japan civil code (1894), 145
- Jay, John, 42
- Jefferson, Thomas, xv, 31, 54–6, 101, 110, 129
- Johnson, Justice William, 234
- Joint Rules of Procedure of the Federal Ministries, 199, 225
- Jones, Leonard A., 236–7
- judicial supremacy: statutory precedents, 281
- jura novit curia*, 285, 288, 292
- jurisdiction-by-jurisdiction law reform, 26
- justiciability, 256
- justification (*Begründung*), 294
- Justinian, 124, 237
- Kagan, Justice Elena, 257
- Kagan, Robert A., 257
- Kaiser Wilhelm Monument in Hamburg, 242
- Katzmann, Robert A., 286
- Kavanaugh, Brett M., 286
- Kaye Judith, 287
- Kelsen, Hans, 261, 268
- Keltner v. Washington County*, 26, 280
- Kennedy, Anthony, 30, 257
- Kent, James, 112, 129
- Keppler, Joseph, 167, 208
- key numbers, 192
- Kimball, Bruce A., 312
- Kinderhook Law School, 131
- King v. Burwell* (2015), 254
- Kirby Elphraim, reports in 1789 for Connecticut, 51
- Klafter, Craig Evan, 130
- Klett, Mathias, 298
- Knapp, Samuel L., 55
- knowing the law, xvi, xix
- Kommission von Bundestag und Bundesrat zur Modernisierung der bundesstaatlichen Ordnung, 247
- Korea, Constitutional Court, 260
- Kramer, Larry D., 250, 259, 281
- Langbein, John H., xxviii, 22, 294
- Langdell, Christopher Columbus, 22, 29, 142–3
- Larsen, Allison Orr, 19
- Latin America codes, 137
- Law – Made in Germany*, 290
- Law Academy of Philadelphia, 143
- law consists of rules set down beforehand to apply to facts, xx
- Law in America, 1776–1876, 11, 133
- law school
 - first-year curriculum, 28
- law schools
 - first-year curriculum, 22
 - law schools and systematizing laws, 132–3
 - law schools, American
 - legal research, 186
 - Lawes and Libertyes of Massachusetts, 3–4, 186, 267

- lawmaking
 - difficulty compared to litigating, 6
- lawmaking, Germany
 - Cooperation Among Lawmakers, 223–9
 - German model of pre-parliament law crafting, 223
 - Ministerial responsibility, 216–17
- lawmaking, United States, 208–15. *See also* legislative process.
 - agencies and departments at lawmakers, 209
 - Uncoordinated Lawmakers, 213–15
- Lawrence v. Texas*, 539 U.S. 558 (2003), 306
- laws for the people, 5, 91–100, 153, 197, 303
- laws, Germany
 - Civil Code (BCB), 193
 - discretion, 204
 - federal laws and regulations, 194–5
 - finding, 199–201
 - flexibility, 203
 - indefinite legal concepts (general clauses), 204
 - legal publishing, 195–6, 202
 - ordinances, 197
 - principle of concentration, 199–201
 - principle of consistency, 202
 - review for consistency, 188
 - state laws, 196
 - summarized, 194–7
 - sylogistic, 203
 - understandable, 201
- Laws, United States
 - accessing, 185
 - Affordable Care Act, 202
 - Code of Federal Regulations (CFR), 184, 190
 - federal laws, 183–4
 - Federal Register, 184
 - Federal Regulations, 184
 - finding (legal research), 185–6
 - local laws, 185
 - presidential executive orders, 184
 - publishing, 192
 - rigidity, 191
 - state laws, 184
 - summarized, 181–6
 - United States Code, 183, 187
- learning from foreign law, xix
- “learning valuable lessons”, xxii
- Lee, Richard Henry (at 1876 Centennial), 72
- legal certainty
 - as element of government of laws, 5
- legal education
 - “Dwight” method of instruction, 133
 - first-year law school, xx
- legal education and systematizing Laws
 - college chairs, 129–30
 - generally, 127–33
 - proprietary law schools, 130–2
- legal illiteracy: cases before laws, 289
- legal origins theory, 15
- legal Publishing, Germany, 195–6
- legal Publishing, United States, 192
- legal realists, 28
- legal reasoning textbooks, 17
- legal research, 17
 - when to stop research, 19
- legal system
 - broken, xix
 - better by design, xx
 - consistent whole, xix
 - as framework, xiii
 - lack of system, xiv–xv, xix
- legality, principle of, 36
- legislative process, Germany, 210
 - German model of pre-parliament law crafting, 223–9
 - Process in Bundestag and Bundesrat, 218
- legislative process, US, 210
 - School House Rock, I'm Just a Bill, 210
- legislative supremacy: a government of statutes, 297
- Leisner, Walter, 299
- Lepaulle, Jean Pierre, 174, 285
- Lessig, Lawrence, 208
- Levi, Edward H., 302
- Lewis, C.S., 168
- Lewis, William Draper, 238
- Lexis, 169
- Lincoln, Abraham, 91
 - 1861 State of Union Address, 92
- liquidated laws, 191, 282
- Litchfield Law School, 131
- Livingston, Edward, 102, 106, 109
- Livingston's Laws 1824–1833, 106
- Llewellyn, Karl N., 23, 198, 313
- Localism in America, 239–41
- Localism in Germany, 248
- Locke, John, 41
- London Quarterly Review*, 138
- “long-arm” jurisdiction, 258
- LoPucki, Lynn M., 20

- Louisiana and Florida, purchases of civil law territories, 105
- Love, James H., 11
- Lundmark, Thomas, 187
- Madison and United States Constitution, 41–2
- Madison, James, xv, 91, 101, 109, 185, 209, 255, 282
The Federalist No. 62 (1788), 31
- Madisonian Compromise, 235, 255
- Maine, Henry, 107
- Maitland, Frederick William, 193–4
- Mammen, Christian E., 283
- Mann, Thomas E., 208
- Marbury v. Madison* (1803), 249, 252
- Marcello, David, 277
- Marcus, Richard, 277
- Marshall, John, 256
- März, Wolfgang, 245
- Mason, Charles, 79
- Massachusetts, 76
 - Massachusetts Code Commission Report of 1837, 115–17, 131
 - Massachusetts Constitution or Frame of Government of the Commonwealth of Massachusetts (1780), 34–7, 206
 - Massachusetts General Statutes of 1860, 118
 - Massachusetts Revised Statutes of 1836, 114–15, 131
- Massachusetts, State Library of, Hand-List of Legislative Sessions and Session Laws, (1912), 68
- Mattei, Ugo, 235
- Mayflower Compact (1620), 3
- McFaul v. Ramsey*, (1858), 275
- McLachlin, Chief Justice of Canada, on common law methods, 28
- Meador, Daniel J., 235, 295, 297
- Metcalf, Theron, 131
- Meyer, Hans, 245
- Michigan, 63
 - Michigan laws compiled by Cooley, 113
 - Miles, James B., 138
 - Millennial Writers, 97
 - ministerial responsibility Germany, 216
 - Moise, E. Evariste, 144
 - Montana, 126
 - Montana Codes 1895, 136
 - Montesquieu, 41
 - Morriss, Andrew P., 22, 104, 136, 138, 140
 - Morrow, Clarence J., 315
- Moseley, Edward A., 236
- Murray, Peter & Rolf Stürmer, 291
- Murray, T.L., 138
- Napoleon's Codes, xv, 108
- Nast, Thomas, 139, 182
- National Conference of Commissioners for Uniform State Law (Uniform Laws Commision), 237
- National Court of Appeals (proposal), 289
- National Federation of Independent Business v. Sebelius* (2012), 254, 256, 282
- national injunctions by local federal judges, 255
- National Inventory of Collateral Consequences of Conviction, xv
- National Regulatory Control Council (Germany), role in lawmaking, 224
- Needham Law School, 130
- Nelson, William E., 44
- New York, 63
 - New York Civil Code 1887 and 1888, 144
 - New York City Bar Association, 140–2
 - New York City Bar Association, Special Committee "To Urge the Rejection of the Proposed Civil Code", 141
 - New York Codes 1862–1865, 136
 - New York Codes 1870s and 1880s, 140–2
 - New York Constitution (1846), 120–2, 127
 - New York Law Revision Act of April 21, 1825, 187
- New York University, 132
- New York Revised Statutes of 1829, 112–13
- newly available sources, xix, xxi
- Newmyer, R. Kent, 117
- no authoritative text, 288
- "noble dream" or "nightmare"? (H.L.A. Hart), 25
- O'Connor, Sandra Day, 180
- Obama, Barack, 254
- occupational literature of collected statutes, 84–91
- Office of Management and Budget's (OMB'S) Office of Information and Regulatory Affairs (OIRA), 214
- Office of the Law Revision Counsel of the United States House of Representatives, 183, 188

- Offices of Legislative Counsel, US Congress, 213
- Olson, Walter K., xxviii
- Ordronaux John, 230
- Orenstein, Norman J., 208
- Organisation for Economic Cooperation and Development (OECD), 6, 200, 214
- originalism, 283
- Oroville Dam, xvi
- Overby, A. Brooke, 238
- Parker, Alton B., 237
- Parker, Isaac, 132
- Paulding, J.K., 49, 68, 168
- Pennsylvania, 62
- Pennsylvania College, 129
- Pennsylvania Revised Code of 1836, 113
- Peterson, Paul E., 235
- Phelps, John, 79
- Philadelphia Centennial Exhibition, 11
- Phillips, Willard, 122
- Pizzi, William T., 271
- plain language laws, 190
- Plessy v. Ferguson* (1896), 250
- plurality opinions (US), 257
- political question, 256
- Pomeroy, John Norton, 143
- Pope, Herbert, 24
- Popkin, William D., 282–3, 287
- Portalis, Jean-Étienne-Marie, 180, 199, 284
- Posner, Richard A., 30, 192, 214, 279, 283, 306
- Pound, Roscoe, 23, 70, 194, 269
- pragmatism, 283
- presidential executive orders, 184
- Presser, Stephen B., 27, 44
- Price, William, 121, 303
- primitive society and written laws, 77, 165
- principle of non-contradiction of the legal system (*Widerspruchsfreiheit der Rechtsordnung*), 244
- proprietary law schools—generally, 130–2
- Puck*, 167, 208
- puerperal fever (childbed fever), 301
- purposivism, 283
- Quincy, Josiah, 129
- Raisch, Peter, 199
- Randall, John D., 193
- Ray, James Brown, 93, 107
- Rechtsstaat*, 6, 8
- recodification, xvii
- Reed, Henry, 253
- Reeve, Tapping, 131
- regulation, Continental style, 177
- regulation, American style, 172
- Reimann, Matthias, 140
- Reinsch, Paul Samuel, *The English Common Law in the Early American Colonies* (1899), 46
- relating laws to facts (*Relationstechnik*), 291–4
- reliability of law
 - as element of government of laws, 6
- Report of the Special Committee Appointed to Consider and Report Whether the Present Delay and Uncertainty in Judicial American Bar Association, Administration Can Be Lessened, and If So, and By What Means? (1885), 126
- Ressortprinzip*, 216
- Restatement (First) of Statutory Interpretation (proposal), 285
- Restatement (Second) of Contracts
 - consideration, 26
- Revisal of Virginia Laws (Jefferson and Madison), 37–41, 76, 101–2, 129–30
- Revised Statutes of the United States, 92
- Rhode Island, 57
- Richardson, Maynard Davis, 93
- Riesenfeld, Stefan, 323
- ripeness, 256
- Ritchie, Alexander Hay, 123
- Roberts, John G., Jr., 256, 258, 278
- Roberts, Samuel, 51
- Rolston, Arthur, 117, 136
- Roman ideas in founding US, 41
- Roosevelt, Franklin D., 254
- Root, Elihu, 238
- Root, Erastus, 112
- Root, Jesse, 51
- Roper v. Simmons*, 543 U.S. 551 (2005), 305
- Rosenberg, Maurice, 297
- rule of law, xxviii, 19
 - coined by A.V. Dicey, 29
- “Rule of Lawyers” (Walter K. Olson), xxviii
- “Rule of Legal Rhetoric” (Geoffrey C. Hazard, Jr.), xxviii, 8, 269
- “Rule of Nobody” (Philip K. Howard), xxviii
- Rutledge, John, 42
- Rynearson, Arthur J., 190

- Sampson, William 1823 New York Discourse, 111
 sane man and legislatures (1885 ABA Report), 165
 Sanford, H.S., 123
 Saratoga Springs ABA Meetings 1880s, 142
 Scalia, Antonin, 19–20, 158, 191, 234, 245, 257, 259, 273, 282, 284, 286, 292, 306
 Schauer, Frederick, 16, 24–5, 280, 302
 Schlesinger, Rudolf B., xxii, 163
 Schley William, 93
 Schneider, Hans, 244
 Schneider, Judy, 211–12
 Schouler, James, 60
 Sedgwick, Henry, 111
 Sedgwick, Theodore, 113
 self-applying law, 5
 self-administration (*Selbstverwaltung*) German principle, 248
 self-government, 84–91
 Sellers, M.N.S., 41
 Semmelweis, Ignác, 301
 separate property for married women, 64
 Sharwood, George, 59, 114
 Sherman [Antitrust] Act of 1890, 237
 Shobe, Jarad, 215
 Shurtliff, J.B., 78
 Siems, Mathias, 198
 Simitiere, Pierre Eugene du, 232
 Smeddinck, Ulrich, 244
 Smith, Sheldon, 56
 Smith, Walter George, 237
 Snyder, William L., 233
 social compact, 5
 Sodan, Helge, 244
 Solan, Lawrence M., 285–6
 Sotomayor, Sonia, 257
 South Carolina, 85
 South Carolina codes 1827–1836, 109
 Spencer, John C., 75, 112
 “special relationship” between the United States and England, 30
 sporting theory of justice (Roscoe Pound), 269, 276
 standing, 256
 Stanford, Leland, 93
 Stansbury, Arthur J., 77
 Statue of Liberty, 11
 statute law-making in Iowa, 209
 statutes for a new world, 69–71
 statutes replacing English Common Law, 69
 statutes, necessity of, 67–8
 statutory interpretation
 authoritative and doctrinal interpretation, 284–9
 American approaches-textualism, purposivism, pragmaticism, 282
 Germany, 297–9
 United States, appeals on rules not right, 278
 statutory precedent, 18, 191
 statutory *stare decisis* (statutory precedent), 18, 191, 286–7
 Steilen, Matthew, 20
 Steiner Eva, 198, 200
 Stevens, John Paul, 59
 Stevens, Robert, 312
 Stone, Julius, 257
 Stoner, James R., 46, 117
 Story, Joseph, 26–7, 52, 74, 82, 84, 115, 132, 206, 236
 1837 Code Commission, 98
 Suffolk County Bar Association 1821 Address, 116
 Story, William Wetmore, 117
 Strauss, Peter L., 211, 286
 systematizing United States law
 Livingston’s Laws 1824–1833, 106
 Stuntz, William J., 271
 Subrin, Stephen N. & Margaret Y.K. Woo, 277
 subsidiarity (Treaty on the Functioning of the European Union, i.e. (Treaty of Lisbon), 231
 Sullivan, William, 77
 Summers, Robert S., 24, 281
 Sweet, Alec Stone, 263
Swift v. Tyson (1842), 236
 Swift, Zephaniah, 130, 180
 syllogism, 273
 syllogistic reasoning, 20
 synthesis, 19
 synthesize, 17
 systematization
 historians’ skepticism, 96–7
 systematization, Germany, 197
 systematization, United States
American Jurist and Law Magazine, 119
 Bentham: Legislator of the World, 109
 California Codes 1872, 136
 criminal codes in antebellum America, 122–3
 Dakota Territory Codes 1867, 136
 Georgia Code of 1861, 136

- Indiana, 107
- Massachusetts General Statutes of 1860, 119
- Massachusetts Revised Statutes of 1836, 114–15
- Michigan, 113
- Montana Codes, 136
- Napoleon's five codes as models, 108
- New York Civil Code 1887 and 1888, 144
- New York codes 1862–1865, 136
- New York Constitution of 1846, 120
- New York Revised Statutes of 1829, 112
- Ohio, Timothy Walker & Salmon P. Chase, 118
- original 13 states, 100–3
- Pennsylvania Revised Code of 1836, 113
- purchases of civil law Louisiana and civil law Florida, 105
- Revised Statutes of the United States 1874, 136
- Sampson's 1823 New York Discourse, 111
- South Carolina codes 1827–1836, 110
- spreads over American continent, 103
- state constitution commitments to codes, 121
- Toulmin's Southwest Digests 1802–1823, 104
- systematizing, arguments for and against, 94
- systematizing, necessity and difficulty, 92–6
- systematizing, ubiquity, 100
- systematizing: compilations, revised statutes, and codes distinguished, 97–100
- systematizing, Great Britain codes 1860s and 1870s, 137–8
- Systematizing, International Law Code, 138
- Taxquet v. Belgium*, 272
- Taylor, Creed, 130
- Taylor, Hannis, 233
- teleological interpretation, 283
- Tellkampf, J. Louis, 93, 120, 130, 181, 199
- Tennessee, 134
- Tennessee Bar Association, 142
- textualism, 283
- Thayer, Ezra R., 27
- theory of the case, 273
- Thomas, Clarence, 257
- Throop, Montgomery H., 137
- Toqueville, Alexis de, 113
- Torch of Liberty, 10
- Toulmin, Harry, 104, 122
- Toulmin's Southwest Digests 1802–1823, 104
- Treaty on the Functioning of the European Union (Treaty of Lisbon), 231
- Tucker, Henry St. George, 129, 131
- Tullock, Gordon, 20
- Tushnet, Mark, 255, 281
- Tyler, John, 55
- U.S. Const. amend. VII, 280
- U.S. Const. art. I, § 10., 234
- U.S. Const. art. I, § 8, cl. 3., 237
- U.S. Const. art. II, 37–41, 258
- U.S. Const. art. III, § 1., 235
- U.S. Const. art. VI., 234, 245
- U.S. Const. Preamble ("We the People of the United States . . ."), 230
- U.S. House, Committee on the Judiciary, Revision of the Laws of the United States (1848), 92
- umpires, judges as, 258
- unification of East and West Germany in 1990, 245
- Uniform Commercial Code, xvi–xvii
- Uniform Commercial Code (U.C.C. § 1–304 Good Faith; § 2–302 Unconscionability), 204, 280
- Uniform Commercial Code, Art. 2 Sales, 174
- uniform laws, 237–8
- Uniform Laws Commission, 193
- Union College, 130
- United States Code, 183, 187–9
- United States House of Representatives Office of the Law Revision Counsel, 183
- United States v. Texas* (2016), 255
- Upham, Frank, 20
- Uzelac, Alan, 268
- van Schaak, Peter, 131
- Vanderbilt, Arthur T., 124
- Vilshofen on the Danube, 303
- Virginia, 67, 69
- Virginia Act of December 27, 1792 ending application of British statutes, 69
- Virginia laws Jefferson's Revisal, xv, 37–41, 76, 101–2, 129–30
- Virginia State Bar Association, 236
- Walker, Timothy, 50, 67, 118, 132
- Walsh, Robert, 95
- Warren, Charles, 70, 85, 114

336

Index

- Washburn, Emory, 68, 94, 123
Washington, George, 58, 230, 267
Webster, Daniel, 56
WestLaw, 169
Westminster Review, 137
White, G. Edward, 117
White, James J., 238
Whittington, Kieth E., 281
Wiecek, William M., 140
William & Mary College, 129
Williston, Samuel, 16, 316
Wilson, James, 27, 41–3, 76, 101, 129
Wilson's Revisal (Pennsylvania), 43
Winchester Law School, 131
Windham Law School, 130
Winship, Peter, 233
Wirt, William, Attorney General, 55
Wood, Dianne P., 192
Wood, Gordon S., 57
Woodard, Calvin, 22
World Justice Project, Rule of Law Index, 6, 290
Wythe, George, 129
Yale Law School, 132, 143
Yntema, Hessel R., 315
Yoo, John & Robert J. Delahunty, 306
Young, Andrew White, 77
Young, Robert P., Jr., 19
Young, Ernest A., 234
Zimmermann, Reinhard, 192, 291, 294, 297
Zippelius, Reinhold, 199, 244–7, 292, 297–8
zombie laws, 253–5