# Contents

<table>
<thead>
<tr>
<th>Acknowledgements</th>
<th>page xiv</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>1</td>
</tr>
<tr>
<td>The Legal Imagination</td>
<td>1</td>
</tr>
<tr>
<td>Legal Imagination in Action</td>
<td>4</td>
</tr>
<tr>
<td>Imagining Starts at Home</td>
<td>8</td>
</tr>
<tr>
<td>A World of White Men</td>
<td>12</td>
</tr>
<tr>
<td>A Note on Textual Conventions</td>
<td>14</td>
</tr>
</tbody>
</table>

## Part I  
**Towards the Rule of Law**  

### 1  
**Legal Imagination in a Christian World:**  
**Ruling France c. 1300**

<table>
<thead>
<tr>
<th></th>
<th>page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clericos laicos and <em>Unam sanctam</em></td>
<td>25</td>
</tr>
<tr>
<td>“Ecclesia habet universale dominium . . .”</td>
<td>31</td>
</tr>
<tr>
<td>Roi très Chrétien</td>
<td>35</td>
</tr>
<tr>
<td>Rex Franciae in regno suo princeps est</td>
<td>40</td>
</tr>
<tr>
<td>Philip in Context 1: “Feudalism”</td>
<td>52</td>
</tr>
<tr>
<td>Philip in Context 2: The Economy</td>
<td>59</td>
</tr>
<tr>
<td>Ruling Humans and Owning Land</td>
<td>66</td>
</tr>
<tr>
<td><em>Ius gentium</em> As Christian Authority 1: Systemic Aspects</td>
<td>72</td>
</tr>
<tr>
<td>Example: <em>Ius gentium</em> in Aquinas</td>
<td>78</td>
</tr>
<tr>
<td><em>Ius gentium</em> As Christian Authority 2: Universal History</td>
<td>83</td>
</tr>
<tr>
<td><em>Ius gentium</em> and Christian Authority 3: Property</td>
<td>88</td>
</tr>
<tr>
<td>Towards Economic Justice?</td>
<td>94</td>
</tr>
<tr>
<td>Common Good As the “Higher Law”</td>
<td>98</td>
</tr>
<tr>
<td>Reconciling Jurisdiction and Property</td>
<td>107</td>
</tr>
</tbody>
</table>
## Contents

A Human *Dominium*: John of Paris 111
Conclusion: Legal Imagination in the King’s Service 114

2 **The Political Theology of *Ius gentium*: The Expansion of Spain 1526–1559** 117
- The Court of Conscience 118
- The View from Salamanca 130
- The Salamanca Concept of “Law” 138
- *Ius gentium* As Justice 143
- Justice As *Dominium* 148
- *Dominium* in the Indies 155
- The Salamanca Reaction 163
- No Universal *Dominium* 170
- *Dominium* *Jurisdictionis* 174
- An Empire of Private Rights 181
- War and *Dominium* 198
- Conclusion 210

3 **Italian Lessons: *Ius Gentium* and Reason of States** 212
- An Italian Lesson 215
- The Lawyer As Humanist Warrior 221
- A New Jurisprudence 228
- Sovereignty as the Virtue of Moral Ignorance 234
- Domestic Sovereignty: Absolute and Legally Confined 236
- Law between History and Philosophy 239
- The Work of *Ius gentium*: Equity, Utility, Necessity 244
- The Trouble with Theology 248
- Imperial Statecraft 254
- Expanding Civilisation and Protecting the Oppressed 258
- Imperial Ambivalence 264
- The Limits of Gentili’s Jurisprudence 267
- Another Italian Lesson – Botero and Counter-Reformation Statehood 271

4 **The Rule of Law: Grotius** 280
- Interpretative Perspectives 284
- A Political Theology of Moderation 287
- The Search for Obedience: From Religious to Legal Obligation 294
Contents

Natural Law As Frame 299
A World of Rights 306
Law As a Moral Science 311
Sovereigns and Subjects: De iure praedae 317
“[T]he Law (especially that of Nations), is in a State, like the Soul in the Human Body” 326
Public Power and Rights of Commerce: Celebrating the Dutch Experience 332
The Primacy of Civil Society: Property and Contract 334
A World Seen through Law 343

PART II  FRANCE: LAW, SOVEREIGNTY AND REVOLUTION 347

5 Governing Sovereignty: Negotiating French “Absolutism” in Europe 1625–1715 349
Statehood 351
Reasons of Statehood 357
Jean Bodin 1: Towards Universal Jurisprudence 362
Jean Bodin 2: Not Tyranny, Sovereignty 365
Jean Bodin 3: From Sovereignty to “Government” 369
States in the World 372
Ordering Public and Private: Loyseau 374
The State As a “Participatory Enterprise” 377
Thinking about Commerce 384
Europe: Between Security and Dynastic Rights 391
Law for a Broken Humanity: Domat 400
Law of Nations and Moral Regeneration; Fénelon and D’Aguesseau 404
Utrecht 409
A Profession in Dire Straits 412
A First Diplomatic School 414

6 Reason, Revolution, Restoration: European Public Law 1715–1804 417
Peace, Rule of Law and Political Science: Saint-Pierre 421
Peace and Commerce: Melon 428
States and War: Rousseau 431
The Link between Statehood and Property 434
Montesquieu: The Natural Laws of Commerce 436
Towards the Brilliant Future 441
## Contents

- **Commercial Statecraft** 444
- **The Natural Laws of the Economy: The Physiocrats** 447
- **Natural Rights and the Legal Order: Sieyès** 455
- **Revolutions 1: Europe** 457
- **Exporting the Revolution?** 463
- **From Rights to Science** 475
- **European Public Law Restored: Rayneval** 480

### 7 Colonies, Companies, Slaves: French

*Dominium in the World 1627–1804* 488

- **Slavery and the Philosophes** 491
- **Colonisation As Struggle of Proprietary Rights:**
  - Early Developments 500
- **Rule by Company 1: Nouvelle France** 508
- **Rule by Company 2: Caribbean** 512
- **The Return of the State: Colbert** 515
- **Sugar, Slavery and Feudal Rights: Crozat** 520
- **An Empire of Commerce?** 526
- **“Pearl of the Antilles”** 530
- **Revolutions 2: Saint-Domingue** 534
- **Slavery or Independence?** 547
- **Ending ... and Starting Again** 552
- **Epilogue: A Legal Anomaly** 556

**PART III BRITAIN: LAWS AND MARKETS** 559

### 8 The Law and Economics of State-Building:

*England c. 1450–c. 1650* 561

- **Corpus mysticum economicum** 564
- **The Economics of Law and Government: Thomas Smith** 569
- **Two Concepts of the Law of Nations** 574
- **Common Law Views** 579
- **The Structure of Commercial Power: Companies and State** 585
- **Commercial State: Mercantile Law** 592
- **Monopolies As Law of Nations: The East India Company and Sandsy Case** 599
- **Prerogative vs. Property Rights** 603
- **Ship Money; Quis judicabit?** 608
- **From “Opinion” to Authority: Hobbes** 611
- **Natural Law As the Science of Government** 616

© in this web service Cambridge University Press & Assessment

www.cambridge.org
Contents

9 “Giving Law to the World”: England c. 1635–c. 1830 622
Mare Clausum 623
The Dutch Problem 627
1688: Towards a Mercantile State 630
Rule by Property: John Locke 633
Giving Law to the World 640
The “Blue Water Strategy” 643
The Laws of a Commercial World 648
Imagining Commercial Society: David Hume 656
The Benefits of Commerce 660
“Foundation of the Laws of All Nations”: Adam Smith 664
The Unity of Morality, Law and Commerce 667
Diplomacy, War, Empire 671
The Laws of “Utility” 674
“International Law”: Jeremy Bentham 679
“Universal Jurisprudence” As Political Economy 682
“Omission and Neglect of . . . International Law, As a Science” 687
Governing a Commercial World 695

10 Global Law: Ruling the British Empire 699
The Laws of Improvement 700
The Game of Justifications: From Conquest to Settlement 712
Locke: Government by Improvement 723
Colonialism As Feudalism: Transformations of Proprietary Rule 726
Thinking about Native Inhabitants 736
Asserting Sovereignty 1609–1763 744
Sovereignty from Property Rights 1763–1776 751
Into a New Commercial Order: Pownall 754
Another Kind of Property: Slaves 757
Fighting Property: The East India Company 1600–1757 764
The EIC after 1765: “Farmers to the Public” 768
“The Merchant Is Become the Sovereign” 772
Paramountcy 775
The Move to Protection: China 777
A Global Rule of Law 783
Contents

PART IV  GERMANY: LAW, GOVERNMENT, FREEDOM  795

11  A Science of State-Machines:  Ius naturae et gentium  As a German Discipline c. 1500–1758  797
The Rise of State-Science: From Piety to Utility  801
Empire vs. the Territories  807
Westphalia in Context  811
Reception of Grotius: Setting Up the Frame  816
Rethinking the Empire: Pufendorf  819
A New Science of Society  823
A Natural Law of Sovereign Will  829
A New Law of Nations  832
 Ius gentium  As Diplomatic Propriety: Thomasius  837
Law As Government of the State-Machine: Gundling  842
“Nobody Trusts Alliances”  848
“In Germany, There Are No Despots”  851
Generating Welfare and Security: Wolff  856
Between Humankind and a System of European States: Vattel  860
A Law of Security and Welfare  865
Monsters and Hypocrites: Understanding Europe  869

12  The End of Natural Law: German Freedom 1734–1821  873
The Göttingen Project  878
Transformation of Natural Law 1: Into Empirical Political Science: Schmauss  880
The Many Ways of State-Wisdom: Achenwall  884
Transformation of Natural Law 2: Into Economics: Justi  891
The Rise of the “Economy”  897
Transformations of Natural Law 3: Into Philosophy: Kant  901
The Laws of Freedom  904
Between Freedom and Nature  909
World-Wide Freedom  915
Freedom and Human Rights  919
The Rights of the “Nation”  924
Transformations of Natural Law 4: Restoration Diplomacy As Modern Law of Nations: Martens  926
“External Public Law”  930

xii
Contents

Into the Modern World: Hegel 939
The State As Freedom 942
Law and Universal History 946
The Legacy of German Imagination 949

Conclusion and Epilogue 952

Bibliography 968

Index 1070