

Index

abbot, 16, 22, 27 patron the owner of parish church in actio in personam, xlvi, 77 twelfth century, 14 uses 'King' not 'Crown', 40 actio in rem, xlvi, 77 Board of Trade, 47, 109 ad opus, 53, 83, 85 advowson, xlvi, 17, 57 body politic, xviii, 11, 16, 27, 34, 35-6, 46 aid, xlvi, 22, 27 boroughs, 123, 124-5 Bosanquet, Bernard, xxvi, 5 al oes, 53, 83, 85 Alexander III, Pope, xl, 16-17 British North America Act (1867), xlvii, 44 Broke, Sir Robert, xli, 10-12, 14, 21, 26 Amalgamated Society of Railway Servants (ASRS), xxiii Bürgerliches Gesetzbuch (B.G.B.), xx-xxi, America, 2. See United States of America 12-13, 53, 58, 61, 76, 100, 113, 121 Anson, Sir William, xl, 40 Anstalt, 57, 59, 97, 98, 103, Canada, 44-5 canon law, xlvii, 10, 17-18, 33, 39, 44, 83, 107 archdeacon, 27 107, 125 associations, 67-8 cestui que trust, xlviii, 55, 56, 58-9, 89, Attorney-General, 58 Austin, John, xxvi, xl, 4, 5, 72 cestui que use, xlviii, 89 Chamberlain of the City of London, 14, 46 Australia, 44, 46 autonomous institution, 98 Chancellor, 54, 87, 89, 90, 92 Chancery, Court of, 55, 84, 90, 91, 92, 94, bailment, xlvii, 53 95, 99, 116 Balfour, Arthur, Lord, xli, 63, 70 chantry priests, 12-13, 100 charities, charitable trusts, xix Barker, Sir Ernest, xxvi, xxxviii-xxxix benefice, xlvii, 17 and boroughs, 124 beneficial owner. See destinatory and incorporation, 58 beneficium, xlvii, 17 and law of trusts, 57 Bermudas, 43 and personification, 59 and religious organisations, 104 bishop, xv, 15-16, 27, 98 Blackstone, Sir William, xli as Anstalt or Stiftung, 57-8 on corporation sole, 10 as non-autonomous institution on fiction of law, 63 (unselbstständige Anstalt), 98, 99-101 on glebe, 16 destinatory not a juristic person, 100 on the state, 38 enforcement by Court of Chancery, 99



Index

charities, charitable trusts (cont.) commonwealth, 38 exclude perpetuities, 100 as republic, 38 not persons, 19 as way out of British mess, 41, 121 not strictly classified by courts, 103 federal, 46 origins in feoffment to uses, 86 king and, 30 some similarity to medieval parish Companies Act (1862), 41, 121 church, 19 concession theory, 46, 51, 58, 65-6, 107, 123 typically confided to natural persons, not congrégations, 67 Connecticut Company, 42 corporations, 101-2 Charity Commissioners, 100 conscience, xx, 55, 61, 90, 92 Charles II, 50, 66, 122 consolidated fund, 40, 51 chattels, xlviii, 82 contract, xxiv, 54, 88, 90, 111 Civil Service, xvi, 41 co-operative, 109. See Genossenschaft Clerks of the Peace, 48 copyhold, 47 clubs, xxiii corporateness, criteria, 13, 116, 117, 118, and incorporation, 117, 120 124 as origin of London Stock Exchange, 108 corporations as Privatvereine, 106, 110 aggregate, xi, xiv, xvii, xix, 9, 16, 26, 28, as Vereine without legal capacity, 112, 116 41, 57 assets, 112, 114-16 American, xxvii, 121 individualistic constitution as a and trusts in America, 129-30 Privatverein, 110 as king in a suppressed sense, 41 legal character disguised by trustees, 111 as troublesome entozoa, 66, 116-17 no ascertainable liability, 113 capacity to sue and be sued, 66, 116-17 not partnerships (Gesellschaften), 110-12 chartered, 118 not persons, 113 clubs with a profitable purpose, 120 connections with trusts in England, passive testamentary capacity, 116 quasi-judicial power over members, 100-10 corporate liability, 114 Coke, Sir Edward, xlii king, lords and commons in Parliament, Chamberlain of City of London and 34 King as corporations sole, 46 life of their own, xv church sues in the person of the parson, like states, xii like federated states, 45-6 classification of persons, 9, 12, 36 municipal, 124 corporations aggregate and sole, 11-26, of public law, 102 privileged, 107 corporations are persons incorporate and right-and-duty-bearing units, 63-4 Roman doctrine of, xi, 66. See also politic, 26 parson's power over the glebe, 14, 27 concession theory Cole, G. D. H., xxvi sole, xi, xiii, xiv-xix, xxiii, xxvii, 9-30, 32, 47, 57, 66, 98 colonies, xviii, xxvii, 2, 41-6 acting as persons in law, 42 taxed, 111 as beneficiaries of trusts, 43 without conscience, 55 as bodies politic within a body politic, 46 county, 123, 124 colonial assemblies, 42 county council, 124 control of royal expenditure, 43 creditors, 55, 92-3, 95, 101, 111 supposedly not corporations, 43 common law, courts of common law, 11, always under age, 33, 49 13, 34, 53, 55, 57, 58, 83, 88, 89, as beneficiary of trusts, xxiii as commonwealth, 41



Index

as corporation aggregate of many, 41 as partnership, 112 as corporation sole, xvi, 32-48, 98 circumstances of compulsory as substitute for king or queen, 40 incorporation, 120-1 as suppressed corporation aggregate, 41 Gierke, Otto von, xi-xiv, xxvi, xlii as trustee, xxiii, 127 and Savigny, 51 demise of, 37-8 criticised by Pollock, 30 legal responsibilities of, xxvii on clubs without legal capacity, 114-16 not a person known to the law, 40 on towns, 124 private law stopgap, xvii glebe, li appurtenance of church, 20 Darwin, C., 1 fee simple of, 11-23, 26, 27 destinatory, Destinatär, 89-90, 92-5, 99, parson's powers over, see Parson 100, 104, 111, 115, 126 as proprietary right of patron, 17 Dicey, Albert Venn, xlii, 63, 65 as objectified advowson, 17 diligence, 92, 95 Green, T. H., 62 discontinuance, xlix, 24-5 Hales, Sir James, xliii, 36, 49-50 East India Company, 2, 39, 42, 45, 127 Henry II, 17 Edward VI, 35 Henry IV, 86 Henry VI, 11 ejectment, xlix-l, 27 Henry VII, 12, 35 Elizabeth I, 38, 57 Henry VIII, xvii, 34-5, 56, 59-60, 96, empire, xxvii, 2 equitable ownership, equity, xx, 53, 55, 58, 122-3 Hobbes, Thomas, xxii, xxv, xxxvii, xliii, 35, 80, 92, 93-4, 97, 111 escheat, l, 54, 55, 60, 85, 93, 122 50, 66, 72 estates, 1, 21-22, 27, 83-4, 90 ethics, xxvi, 62 immovable property, 78, 82, 83, 116 executors, 83 incorporation, xix, xxv, 57, 102, 107, 108, 109, 114, 118, 124 family settlement, 96 individual, individualism, xviii, 66, 110 Innocent IV, xliii, 65 federalism, xxvii, 66 fee simple, 1, 14, 19, 21, 22, 23, 24-6, 27 Inns of Court, xix, 61, 106-7, 119, 123, feoffees/feoffment to uses, li, 53-4, 85-9, 125 intestacy, 93 feudal lord, 54, 85, 88, 93, 96 investiture, lii, 17 fiction theory, 10, 30, 51, 55, 58, 61, 73-4, investment, 56, 61, 94-5 93, 107, 114 Ireland, 2 fideicommissum, li, 85, 110 Irish Church, 28 fiducia, fiduciary, li, 85, 100-1, 126, iurata utrum ius commune, 17 Figgis, J. N., xxvi, xxxviii, 21, 73 ius in personam, xx, lii, 54, 77 Fitzherbert, Sir Anthony, xlii, 12 ius in re, xx, lii, 54, 77 Free Church of Scotland, 71, 73-4 ius patronatus, 17 free transaction, 92 Jamaica, 43 Genossenschaft, xii, 103-4, 106, 109, 122 Jockey Club, xix, 110, 116, 125 John of Gaunt, 86-7, 88 Genossenschaftstheorie, 3 George III, 37 joint-ownership, 85, 101, 111 Germanism, 51, 75 joint-stock companies, 5-6, 114, 118-21 Gesamthandschaft, 85, 101, 111 Judaism, 99

Justinian, xliii, 2

Gesellschaft, 107, 112, 115



Index

king	objectification, xiv, 20
and his subjects together compose a	Obligationenrecht, 76–7, 89
corporation, 46	Otis, James, xliv, 43
always lord, never tenant, 88	
as corporation sole, 14, 98	parish church, xiv-xv, 16-20, 21, 33
as trustee for unincorporated groups, 40	parishioners, 21, 28, 57
as two persons, 36	parliament
Crown more or less identifiable with, 40	as trustee for a colony, 127
intervenes against trustees, 100	of King, Lords and Commons as
'private and politick capacity', 39, 83	corporation by the common law, 13
	parson, xi, xiv–xvi
Laski, H., xxvi, xxxviii, 74	a corporation according to Broke,
leasehold, 47	11-12
legal ownership, xx, 53, 93	the nature of his estate in the glebe, 14,
Leviathan. See Hobbes	17–18, 19–20, 22–7
lien, 84	bearer of person of church, 19
Littleton, Sir Thomas, xliii–xliv, 11–12,	partnership, 67, 115
24–6, 88	patron, xv, liii, 16–18, 24, 25
Lloyd's, 107–8	patron saint, 18
local government, xxiii, xxviii, 75, 124-5,	perpetuities, xxiv, 99-100, 110, 115
126	personal actions, 78
Local Government Act (1888), 48, 51	personal property, 78
Lombard law, 79–82	personality, 59, 67-8, 99, 104, 107
London	moral and legal personality, 114
citizens of, 66	persons
corporation of, 122	artificial persons, xliv, 9-10, 32, 39
London Stock Exchange, xix, l, 53, 54, 55,	natural persons, 9, 26, 29, 32, 63, 65,
108, 111, 112	101, 103, 108
	persona ficta, xiii, xvi, xxi, xxxvii, 26, 58
Maitland, F. W., ix-xxix	65
Markby, Sir William, 9	Petition of Right, 44
marriage	Plowden, Edmund, xliv, 35-7
as maritagium, a feudal incident, 54,	pluralism, xxi, xxvi
85	politick capacity, 39
settlements, 96, 97	Pollock, Sir Frederick, xliv, 9, 39
Martineau, J., xliv, 62	on Gierke's doctrine of real personality,
Massachusetts Company, 2, 42	30
Michoud, L., 30	on the state as an artificial person, 32
Montserrat, xii, 42	reaction to Maitland's 'The Crown as
moral philosophy	Corporation', 48
mortmain, liii, 13, 116, 122	pope, 18, 34
movable property, 78, 82, 83	Postmaster-General, xvii, 41, 47
	Presbyterianism, 99
nation, 66	primogeniture, 83
national debt, xvii, 39-40	prince, 2, 38, 65–6, 67
negligence, 92	private law, xii, xvii–xxiii, 77, 84, 102, 124
New Zealand, 43-4	126
nicht rechtsfähiger Verein. See Verein	Privatverein. See Verein
non-autonomous institution, 98, 101, 102.	public, 'publick', xvii-xxiii, 38-41
See also clubs, societies, Verein	public law, xii, xviii, 77, 102, 124
nonconformism, 102, 104	public property, 100



Index

like a corporation, xii queen, 39, 40 macadamising tendencies of the French, real action, 78 66 real property, 78 not the destinatory of all charitable realism, realists, xvi, xxviii, xxxviii, 3, 10, 69 trusts, 100 reification, 56 relationship with social entities, xxi, relief, liv, 54, 84, 85-122 xxiii-xxvi, 67 religious liberty, xxviii, 102-3 state-church, 102 Statute of Uses (1536), 56, 61 representation, xi representative suits, 116, 123 Stephen, Sir Leslie, xlv, 62 republic, 38 Stiftung, 57, 97, 98, 99, 100, 102 Rhode Island Company, 42 Stop of the Exchequer, 39, 50 Roman Catholic Church, xix subjectification, xiv, 18, 20 as a charitable trust, 99 synagogues, 55, 100, 103 as possessed of a real will, 3 its sanctions less awesome than those of Taff Vale Case, xxiii, 52, 60 Jockey Club, 110 testaments of land, 56, 100 on a par with a sports club, accordingly Trades Disputes Act (1906), 60 well protected in England, 103 trade unions, xix, xxiii, 60, 63, 113, 125 unincorporate, 125 treason, 38-47 Roman law, xlix, 53, 65, 85 Treasurer of Public Charities, 38-47 Treuhand, 79-82 royal supremacy, 16 Treuhänder, 79-82, 85, 88, 93, 100 Sachenrecht, 76, 77, 78, 89 Treuhandschaft, 79-82 Salomon v. Salomon & Co., 5-6 trust, xiii, xx, xxii, xxiv Savigny, Friedrich Karl von, 51 a commonplace of political debate, 127 Secretary of State with Seals of the War an elastic form of thought, 126 Department, 47 ancient connection with corporation, Selden, John, xliv-xlv, 16 122-3 and boroughs, 124-5 self-government, 123 Sidgwick, Sir Henry, 62 and clubs, 110 Smith, Sir Thomas, 38 and corporations in America, 129-30 Solicitor to Treasury, 47 and feoffment to uses, 84-6, 122 societies (see also clubs, Verein) as protective shell for whatever lies compared with Anstalt and Verein within, 105 without juristic personality, 103, 107 breach of, 90, 95 private, as Inns of Court, 106-7 in land, 53 religious societies and German public in Lombard law, 79-82 law, 102 of a public nature, 124 without legal capacity, 112-14, 117 origin of Lloyd's, 108 sociology, 3 origins, 85, 90 South Sea Bubble, 119 private, 104, 124 Spencer, Herbert, xlv, 5, 62 reification of, 56 unclassifiable, 97 Staatenbund, liv, 2 unknown to and inexplicable by German and corporation sole, xi, 66 law, 76 as a metaphorical trust, xxiv trustees, xx-xxi, 76 as a person in its own right, xvii and principle of joint ownership, 85 as an artificial person, 32 bearers of proprietary right, 94, 126 early synonyms of, 38 in breach of trust, 90 in Lombard law: see Treuhänder legal fictions dependent on, xiii



Index

trustees (cont.) as the Jockey Club, 110 of clubs, 115 as unincorporated body, 107, 108, 112 of towns, 123 in litigation, 116 of trade unions, 114 individualistic theory alone applicable in of unincorporated joint-stock companies, English circumstances, 110 its assets, 120 powers defined by deed of trust, 103 passive testamentary capacity, 116 represent interests of trust in litigation, without juristic personality, 107 100, 116 vesting order, 101 Victoria, Queen, 37 Universitas, 2, 30, 65 village property, 67 unincorporate body, xiii, xix-xxiii, 52-61, 70, 104-22 wardship, lv, 54, 85, 122 United States of America, 45-6, 72-3 Wesleyans, 100, 104, 125 uses. See also feoffment to uses will, 3, 10 as origin of trusts and charities, 86 wills and testaments, 83, 84, 88, 89, 100 testator's own, 87 women, xxi, 56, 69 writs, lv, 84 Venezuela, 71, 72-3 writ cessavit, 22 writ of right, lv, 19, 24 Verein [Privatverein, nicht rechtsfähiger Verein] writ praecipe quod reddat, liii, 22 and clubs, 107-18 writ scire facias, xlviii, liv, 22 and societies, 103 Zweck, Zweckvermögen, 99, 100, 101, 104, as Inn of Court, 107-18 as London Stock Exchange, 109 126, 127