

Index

- Abelard, Peter (d.1142, theologian),
213, 327
Ethics, 101, 212–13
- Abels, Richard, 354
- abjuration
after confession, 286
and sanctuary, 288
and women, 292
of approvers, 283
of the realm, 171
- abuse of law, 167
- accessory. *See* accomplice
- accomplice
appealed, 298–9
fate tied to principal, 295–7, 298
pled separately, 300
principal stood mute, 299–300
principal used benefit of clergy, 299
separate fate to principal, 299–301
upon outlawry of principal, 297, 299
- acquittal, 22, 112, 246–8, 405
medieval perspective, 198
rates, 113
- Adam, 155–6, 214, 333–4, 335, 336. *See also* Eve
- adultery, 95, 157, 207, 210, 304, 326
- adversarial trial, 82, 120
- Ælfric (d.c.1010, Abbot of Eynsham), 52
- agency
of defendants, 22, 82, 396, 413, 414
of peasants, 397, 413, 415
of victims, 10
- Alain of Lille (d.1202, theologian), 199
- Albert the Great (d.1280, theologian),
320
- Alcuin of York (d.804, scholar and
poet), 327
- Alford, John, 16, 321
- allegory, 166, 325, 327, 334–5
- almoner
royal, 228–9
- alms, 57, 62, 71, 96, 199, 209, 229,
323, 357
- almsgiving, 200, 202
- Ambler, Sophie, 338, 384
- Ames, Christina Caldwell, 8
- Anarchy, the (1135–53), 353, 359
- Ancienne Coutume de Normandie*, 50
- Annales Paulini*, 45, 107
- Annals of Bermondsey*, 388
- Annas (d.c.40, high priest), 23, 307,
311–13, 314, 318
- Anonimale Chronicle*, 109
- appeal, 186
abandoned, 91
as coercion, 28–9
as private prosecution, 89, 91
decline of, 93
exception against, 128
for theft, 129
larceny, 201
likelihood of conviction, 114
out of hate and spite, 128, 146
process, 28, 99, 114, 355

Index

449

- risk to appellor, 28, 114, 116, 150
 standing mute on, 30, 82, 89, 90, 91,
 94, 326, 403
 approver, 23, 69, 79
 appeals, 66, 282
 approvement process, 282–3, 284–5
 as a delaying tactic, 282–90, 411
 barred to women, 284
 excluded groups, 284
 expectations for, 282
 king's, 282, 287, 302
 number who stood mute, 268, 286
 untrustworthiness, 283
 Aquinas, Thomas (d.1274, theologian)
 on anger, 236
 on capital punishment, 222
 on justice, 216
 on mutilation, 244
 on pain, 203, 320
 on positive law, 161
 on standing mute, 87
 theory of the Common Good,
 221–3
 arbitration
 and coercion, 28
 archbishop
 Boniface of Savoy (d.1270,
 Canterbury), 56, 192, 224
 Edmund of Abingdon (d.1240,
 Canterbury), 386
 Richard Scrope (d.1405, York). *See*
 Scrope, Richard
 Simon Islip (d.1366, Canterbury), 56
 Stephen Langton (d.1228,
 Canterbury), 345
 Thomas Arundel (d.1414, York and
 Canterbury), 328, 374, 376
 Walter Giffard (d.1279, York), 160
 William Melton (d.1340, York), 108
 Wulfstan (d.1023, York), 208
 Aristotle (d.322 BCE, philosopher)
 Nicomachian Ethics, 338
 Politics, 222
 Arnold, John, 367, 368, 371
 arraignment
 confession at, 284, 287
 defendant's role at, 83, 84, 395
 process, 108, 134, 279, 303, 304, 400
 typical, 83
 arson, 210
 association with popular protest, 115
 Arthur of Brittany (d.1203, Duke of
 Brittany), 40
 Articles of Lincoln (1304), 276
 articles of the eyre, 143, 358, 361, 362
 asceticism, 11, 22, 54, 402, 406
 heroic, 203–4
 Ashby, George (d.1475, poet), 81
 “Complaint of a Prisoner in the
 Fleet,” 398
 assault, 75, 86, 127, 281, 357
 Assize of Clarendon (1166), 51, 143, 144,
 145, 146, 152, 355–6, 357, 367
 Assize of Northampton (1176),
 355–6, 367
 Assize of Windsor (1179). *See* Grand
 Assize
 assize rolls, 11
 Aymer de Lusignan (d.1260, bishop-elect
 of Winchester), 228

 bail, 69
 bailiff, 17, 255, 276, 278, 281
 Baker, John, 46, 165
 Bakhtin, Mikhail, 349
 barbarity, 5–6, 7, 9, 188, 196, 240, 243,
 249, 405
 barley bread, 3, 35, 72, 83, 235, 236,
 239
 Bartlett, Robert, 360
 Bassett, Margery, 60
 Beattie, John, 82
 Becket, Thomas (d.1170, Archbishop of
 Canterbury)
 and hard prison, 238
 and Henry II, 363
 tomb, 237
 unsainted, 377
 Behrmann, Carolin, 306
 Bellamy, John, 48, 113, 114, 186,
 268, 269
 Bellomo, Manlio, 161
 benefit of clergy, 23, 99, 181, 209,
 266, 283
 and branding, 244
 as a delaying tactic, 271–5, 302, 411
 clericus convictus (convicted clerk), 57,
 192, 266, 272, 301
 excluded women, 273
 ineligibility, 126, 275
 “neck verse,” 274
 not available in Heaven, 305

- benefit of clergy (cont.)
 privilege expanded to laity, 274–5
 scriptural basis, 303
 signs of clerical status, 274
 to avoid execution, 186
- Berger, Benjamin, 135
- bestiality, 87
- Bevis of Hampton*, 17, 24, 342–5, 402
- Bible
 Corinthians, 222
 Daniel, 307, 325, 327
 Deuteronomy, 157
 Exodus, 207
 Genesis, 155–6, 157, 303
 Hebrews, 118
 Isaiah, 378
 John, 157
 Leviticus, 227
 Luke, 303, 308, 327
 Mark, 220
 Matthew, 122, 222, 303, 304
 Proverbs, 216
 Psalms, 274, 304, 305
 Romans, 203
- bigamy, 275
- Biggs, Doug, 372
- bill, 58, 128, 328, 361
- Birrell, Jean, 364
- bishop
 bishop's ordinary, 57, 125, 126, 266, 272–5, 301
 Gilbert Foliot (d.1187, Hereford and London), 56
 Richard Wich (d.1253, Chichester), 385
 Robert Grosseteste (d.1253, Bishop of Lincoln). *See* Grosseteste, Robert
 Roger de Meyland (d.1295, Coventry and Lichfield), 160
 Roger of Gloucester (d.1179, Worcester), 56
 visitation. *See* visitations, episcopal
 Walter of Cantilupe (d.1266, Worcester), 212
 William Raleigh (d.1250, Norwich and Winchester). *See* Raleigh, William
- Black Death, 393, 395, 396
- Blackstone, William (d.1780, jurist)
Commentaries [on the laws of England], 18, 94, 250–1, 295
 on arraignment, 295–6
 on informed silence, 132
 on medieval legal practice, 9
 on peine forte et dure, 5, 12, 34, 46, 48, 76, 77, 188
 on right to legal counsel, 127
 on silent defendants, 23
 on standing mute, 82, 94
 on treason, 95
- blinding
 as a punishment, 243, 244
- Bloyou (also, Bloyho), Sir Ralph de (d.1302), 11, 37, 259, 281, 282
- body, 249
 and soul, 203–4, 406
 body politic, 369, 370, 397
 pain of the, 203–4
 punishment of, 54, 406
- bótleas* (or bootless) offenses, 152, 356
- Bracton, Henry de (d.1268, justice)
 background, 7
 borrowing from Roman law, 7, 122
Bracton (treatise), 15, 167
 comparing judge to God, 131
 member of the clergy, 160
 on choosing a proof, 134
 on contempt of court, 101
 on deaf and “dumb,” 178
 on dying unconvicted, 254
 on evidence, 122
 on felony forfeiture, 254
 on God, 407
 on how to make a defense, 91–2, 123
 on jury trial, 176
 on king's relationship with God, 226, 370, 371, 389
 on mercy, 336
 on *murus strictus*, 58
 on natural law, 155
 on possession of stolen goods, 263
 on revolt, 370
 on sanctuary seekers, 58
 on the king has no equal, 226
 on theft, 112
- Bradshaw, John (d.1659, jurist), 330, 331, 332
- Brand, Paul, 141
- branding
 as a punishment, 73, 244
- Briouze (also, Braose), William de (d.1211, Lord of Bramber), 40
 son (William), 40
 wife (Matilda de St. Valéry), 40

Index

451

- Britton, 15
 as an abridgement of *Bracton*, 92
 on arraignment, 84
 on exit fees, 61
 on felony forfeiture, 254
 on irons (shackles), 35–6, 177
 on peine forte et dure, 27
 on standing mute on appeal, 92
 on the starvation diet, 35–6
 on time to prepare a defense, 123
- Brown, Peter, 149
- Brut*, The, 105
- Burchard of Worms (d.1025,
 canonist), 217
- burial of criminals, 224–5, 406
- Byrne, Philippa, 11, 167, 192, 410
- Caiaphas, Joseph ben (d.c.46, high priest),
 23, 307, 309, 311–13, 314,
 315, 318
- Cain and Abel, 325
- Campbell, James, 354
- cannibalism, 389
- canon law, 15
 and common lawyers, 161–2
 and the Gregorian reforms, 194
 as international law, 159
 influencing English common law, 11,
 29, 117–19, 153–61, 206–9,
 410
 on clergy shedding blood, 148, 272
 on flight, 87
 on justice and mercy, 337
 on restitution, 200–2
 on rights of the individual, 155–9
 on rules of evidence, 154
 on self-incrimination, 117–18
 on three-fold admonition, 156
 training, 11
- canon lawyers
 celebrated, 159
 developing protections for defendants,
 118, 154–9, 404
 on allowing sinner to escape
 uncorrected, 198, 405
 on being innocent until proven guilty,
 156, 404
 on due process, 155
 on informed silence, 87
 on oaths, 118
 on rights of excommunicate, 27
 on silence as contumacy, 87
 on sinful nature of crime, 87
- canonists. *See* canon lawyers
- Capgrave, John (d.1464, historian and
 hagiographer), 323, 375
- capital punishment, 76, 221
 and manifest guilt, 262–3
 and peine forte et dure, 2–4, 12, 18, 40,
 43, 76–8
- Caroll, Stuart, 6
- Carpenter, David, 383
- Cartlidge, Neil, 104
- carucage*, 367
- Cassiodorus (d.c.585, monastic
 founder), 188
- castration
 as a punishment, 243, 244
- centralization of monarchy, 136, 141
- Challet, Vincent, 364, 366
- charity
 as alms. *See* alms
 prohibited for able-bodied, 71
 to those in prison, 62
- Charles I (d.1649), King of England and
 Scotland, 134, 329
 as a type of Christ, 331, 332, 346
 cult of, 332
 execution, 331
 standing mute, 329–30, 331
 trial, 329–31, 332, 346
- Charter of the Forests (1217), 337
- Chateau d'Amour*, 17, 24, 332–8,
 368, 408
- chattels
 debtor's, 30
 definition of, 253
 of a mute defendant, 94, 170,
 253–61, 284
 of outlaws, 253
 return of, 28
 seizure as distraint, 28
 underappreciated by jurors, 251
 villeins as, 366
- Chaucer, Geoffrey (d.1400, poet), 16, 323
- Christianity
 and morality, 16
 as a communal religion, 22, 218–25,
 249, 409
 as rebellion, 367, 368–78
 as superstition or irrationality, 8,
 189–90, 193, 407

- Christianity (cont.)
 mercy in, 332–45
 obedience in, 367
 redemption in, 204, 218–25, 249
chronicles, 37, 40, 105, 106, 109, 384,
 385, 389, 395, 399
 as evidence, 12
Chrysostom, John (d.407, early church
 father), 118
Church Council
 Lambeth (1261), 224
 Lateran IV. *See* Fourth Lateran Council
 London (1075), 148
 Oxford (1222), 345
 Vienne (1312), 221
Clarke, Peter, 15
Clement of Alexandria (d.c.215,
 theologian), 234
clergy
 as divine judge, 161
 banned from purgation, 56
 crimes committed by or against, 57, 87,
 103, 192
 excluded from trial by combat, 145
 prohibited from participating in
 duels, 360
 prohibited from pronouncing sentences
 of death or mutilation, 148
 prohibited from shedding blood, 148
 rebellious priests, 25
 to be tried by ordinary. *See* bishop,
 bishop's ordinary
 turning approver, 284
 who failed purgation, 57
Clitheroe (also, Clitherow), Margaret
 (d.1586, saint and martyr), 1–4,
 6–7, 9, 18, 19, 23, 31, 43, 44, 84,
 85, 110, 129, 133, 232, 250–1,
 302, 306, 313, 399, 400–1
Cobham, Eleanor (d.1452, Duchess of
 Gloucester), 98
Cockburn, James, 111
coercion
 appeals process as, 28–9
coercive devices, 27–31
 distrainment, 28, 30, 78, 400
 excommunication, 27–8, 400
 gage, 28, 78
 imprisonment, 28, 29–30, 78, 179,
 400
 isolation, 78
 outlawry, 29, 361
 peine forte et dure, 30–1, 400. *See* peine
 forte et dure
 prison forte et dure, 21
 starvation, 400
 subpoena, 30
 torture, 241. *See also* torture, judicial
Cohen, Esther, 196, 205, 216, 323, 410
Cohn, Samuel, 350, 367
Coke, Edward (d.1634, jurist), 34,
 100, 121
 Institutes of the Laws of England,
 94, 121
Colman, Rebecca, 9
common law
 Angevin reforms, 136, 152, 191,
 195, 201
 as the king's law, 28, 99, 123, 141,
 352, 362
 available to free peasants, 383
 Christian outlook of, 10, 194–7
 coercive devices in, 28–31, 179
 development of, 7, 141
 discrepancy with canon law, 272
 discrepancy with Continental and
 canon law, 88, 117–19, 138,
 241, 403
 equity in, 89
 expansion of, 136, 141
 failing to answer according to, 85
 failure to adopt Roman law standards
 of evidence, 148, 269
 failure to respond to a court summons,
 29, 88, 101
 Frederic Maitland on, 7, 194–5
 gaps in, 161–2, 403
 influence of canon and Continental
 law, 403
 influence of canon law on, 15, 117–19,
 153–61, 206–9, 410
 influence of Continental law on, 15, 122
 influence of Roman law on,
 153–61, 189
 language of, 24
 law of the land, 352
 memorization of, 48
 noise of, 176
 on accessories to a felony, 295–7
 on anger, 236
 on consent, 174
 on felonious women, 291

Index

453

- on jury challenges, 19, 86, 99, 277
- on moveables, 253
- on outlawry, 88
- on prisoners' families, 251, 254, 260
- on self-defense, 247
- on self-informing jury, 267
- on standing mute, 27, 89–94
- on trial jurors, 276–7
- on unconvicted felon's lands, 256
- pleading requirements, 83, 119
- pro-plaintiff bias, 298, 360
- rejection of, 31, 99, 100, 103, 352, 365, 397
- relationship with conscience, 89
- secularization of, 7–8
- unwritten, 176
- communion. *See* Eucharist
- comparative legal history, 402
- compensation
 - as part of penitential process, 200–2
 - culture, 200–2, 403
 - disappearance, 356
- complaint
 - about church's leniency, 272
 - about corrupt officials, 276
 - about jail conditions, 63, 65
 - about jailer behavior, 67
 - about *maltolt*, 391, 394
 - list of episcopacy's, 337
 - literature, tradition of, 166–8, 408
 - of nobility, 349, 391
 - oral, 128
- compurgation, 7
 - abandonment, 137, 152
 - and civil disputes, 151
 - and social hierarchy, 143, 151
 - as method of proof, 135, 141, 184, 414
 - as normal means of trial, 142–5, 184
 - as pro-defendant, 144
 - best suited to those in small villages, 143
 - excluded from, 135, 141, 143, 144
 - in church courts, 143, 151, 191
 - in City of London, 145, 151
 - in manorial courts, 143
 - manipulated by professional criminals, 143
 - persistence, 143, 151, 191
- Concerning True and False Penance*, 199, 215
- confession
 - as a communal enterprise, 219
 - as court of conscience, 177
 - as court of penance, 210
 - became mandatory, annual, 177, 210, 219
 - component of penitential process, 210, 213
 - denial of confession, 221
 - evidence, 2
 - flight as, 297
 - of approvers, 282, 284, 286
 - origins, 304
 - prior to execution, 221
 - prisoner's right to, 223–5, 406
 - refusing confession to prisoners, 221, 224
 - silence as, 86, 87, 169
 - torture to extract, 148, 242
 - voluntary nature, 210, 215
- confessional
 - box, 219
 - seal, 210
- confessor, 234
 - confessor-general, 210
 - manuals, 16, 211–12, 218
- consent
 - as a customary right, 20, 134–40
 - as recognition of jurisdiction, 20, 134–40, 174, 185, 352, 404
 - extract, 21, 172
 - James Masschaele on, 20, 138, 172, 187, 403
 - oral, 139, 176–8
 - to be tried, 134–40, 171–2
 - withholding, 4, 135, 138, 139
 - written, 139, 174–6
- Consolation of Philosophy*, 243
- Constitutions of Melfi (1231), 166, 405
- contempt of court
 - and hard prison, 100
 - and imprisonment, 102
 - and *peine forte et dure*, 66
 - and standing mute, 99–103
 - as contumacy, 101
 - as disobedience to the king, 101
 - standing mute as, 77, 99, 133
- Continental law, 15. *See ius commune* and Roman law, 189
 - on execution, 173
- contumacy, 26, 27, 29, 100, 101, 130
- conviction
 - as prerequisite for felony forfeiture, 254

- conviction (cont.)
 conviction against acquittal ratio, 113
 death before, 254
 for arson, 115
 for petty treason, 114
 on appeal, 114
 plea of former conviction, 186
 standing mute as, 94
- Cooper, John, 399
- Corbin, Alain, 413
- coroner
 administraton of sanctuary, 192
 as jurors, 276, 278
 burial of a body without view of, 280
 confession to, 284, 287, 289, 290
 creation of position, 357
 inquest, 78, 114, 186, 384
 investigation into lands and
 chattels, 257
 nature of the job, 357
 reports or rolls, 5, 11, 78
- Corporal Acts of Mercy, 62
- Corpus Juris Civilis*, 7, 154, 194
 and rediscovery of Roman law, 189
- Cotton, Bartholomew (d.1321/22,
 chronicler), 39
- Historia Anglicana*, 36
- court
 church/ecclesiastical, 86, 87, 118, 145,
 159, 192, 209, 210, 215, 272, 275,
 311, 314, 407
 Continental, 148
 county, 114, 387
 definition of, 84
 hundred, 209
 Inns of. *See* Inns of Court
 king's, 313, 314, 357, 361, 367,
 387, 396
 language of, 84
 manorial, 28
 of Chancery, 34, 160, 192, 361
 of Chivalry, 103
 of Common Bench, 93, 183
 of common law, 83, 86, 87, 119,
 147
 of Common Pleas, 86
 of King's Bench, 128, 281, 361
 of penance. *See* Confession
 records, 21, 32
 shire, 209
 silence in, 87, 117
- credit
 "Great Depression" of the Middle
 Ages, 262
 creditors, 30, 201
 creditworthiness, 261–2
- crime
 affluent's, 137
 and insanity, 182, 186
 and penitential process, 52–3, 209–18
 and sin, 197–203, 206–7, 214,
 218–25, 405
 as breach of the king's peace, 123, 136,
 356, 361, 403
 before the twelfth century, 135–8, 152
 by night, 114
 cross-border, 97, 103
 in hot-blood, 75, 213, 236, 280
 intra-familial, 87, 141
 of desperation, 389, 391–2, 394–5
 organized, 282
 petty, 357
 political, 18, 39, 50, 51
 premeditated, 75, 114
 punishment of, 213
 redefinition, 184, 356–7, 403
 royal monopoly on, 136
 secret. *See* secret crime
 serious, 18, 75, 81, 86, 95, 111, 119,
 123, 136
 spree, nationwide, 389
 victimless, 199
- criminal justice system
 medieval perspectives on, 317–18
 perceptions of, 21
- crop failure, 388, 389, 393
- Crown of Thorns, The*, 329
- crown, the
 needs of, 171, 354, 361
 officials, 354
 pleas, 144, 357
 records, 197
 revenues, 358, 363, 384
 wards of, 358
- crush barriers, 44
- cum manuopere*, 143, 262, 265
 caught in possession, 114, 131
 caught red-handed, 112
 mainour, 112, 263
- customal
 Alrewas, 383
 Norman, 50

Index

455

- Damaška, Mirjan, 10
- Danby, Sir Robert (d.1474, justice), 131
- Darley, John of (d.1302), 11, 37
- darrein presentment, 359
- David of Augsburg (d.1272, mystic)
De Inquisitione Hereticorum, 55
- Dawtre, Thomas, 374, 378
- deaf(ness), 178, 271, 314, 404
- debt
- imprisonment for, 28, 29–30
- debtors
- coercion of, 29–30
 - in London, 62
- Decretals of Gregory IX, 118
- defendant
- ability of to speak, 180
 - absent, 29
 - agency of, 10, 22, 82, 396, 413, 414
 - behavior in court, 82, 84, 271, 397
 - cannot consult legal counsel, 82, 119–27, 407
 - chattels of, 23, 251, 253–62
 - children of, 3, 250–1, 252, 257, 259–61
 - competence of, 127–8, 178–83, 407
 - knowledge of evidence, 121
 - landed property, 253–62
 - numbers who stood mute, 386
 - on appeal, 89–94
 - perspective of, 141, 142
 - poverty of, 120, 128, 257, 261, 302
 - pro-defendant law, 144, 154, 158, 186, 404, 406–7
 - reluctant, 30
 - silent, 10, 23, 45, 82, 132, 171, 266, 365, 397, 400, 403, 413
 - supplying with practical instruction, 83, 124
 - testimony of, 120
 - their sins, 115
 - unconvicted, 23, 91, 254, 257, 412
 - uncooperative, 102, 138, 139, 170, 396, 397
- defendant's choice, 20, 135
- defendant's consent, 20, 26, 102, 138–40, 171, 172, 183
- and English legal culture, 185–6, 187, 403–5
- defendant's right(s)
- of reply, 103–10, 156, 184, 371, 405
 - to a fair trial, 21, 83, 122, 131, 133, 138–40, 172, 178, 185–6, 187, 288, 404
 - to choose method of trial, 20, 134–5, 145, 169, 172, 184, 283, 404, 414
 - to communion, 223–5
 - to confession, 130, 223–5
 - to due process, 21, 138–40, 163, 165–8, 187
 - to jury challenges, 277
 - to know their accuser, 146, 163, 405
 - to know their accusers, 185
 - to legal counsel, 20, 119–27
 - to read written indictment, 167
 - to silence, 117–19, 153
- defense
- counsel for, 20, 119, 121, 122, 123, 124, 126, 133, 407
 - strategy, 19, 82, 133, 411
- deodand*, 357
- Despenser, Hugh the Elder (d.1326, Earl of Winchester), 96, 105, 107
- Despenser, Hugh the Younger (d.1326, Baron le Despenser), 96, 105, 233
- deterrence, 22, 196, 231, 408, 410
- Dialogue Concerning the Exchequer*, 16, 195
- Diocletian, Emperor (d.311, Roman emperor), 340–2
- disability, 187
- exclusion from trial by combat, 145
- dissolution of the monasteries, 192
- distrain, 28, 30, 400
- Domesday Book, 366
- double jeopardy, 186
- Dudum* (papal decretal, 1207), 158
- due process, 155. *See also* defendant's right(s)
- Durantis, William (d.1296, canonist)
Speculum iudiciale, 118
- Dyer, Christopher, 365, 367
- Early South English Legendary*, 238
- edict of William I (1072/76), 209
- Edwards, John, 110
- Eikon Basilike*, 329
- Eleanor of England (d.1275, Countess of Leicester)
- wife of Simon de Montfort, 338
- Elegy upon the most Incomparable King Charles the 1, An*, 332

- Elijah, 234
- Emperor, Holy Roman
 Frederick II (d.1250), 166, 228, 405
 Henry IV (d.1106), 237
- Empress, Holy Roman
 Isabella of England (d.1241), 228
- Enders, Jody, 206
- English exceptionalism, myth of, 11,
 166, 402
- English Rising of 1381, 71, 73, 319, 346,
 349, 350, 364, 368, 396
- Enlightenment
 separation of church and state, 8,
 194, 407
- escheator, 23, 61
- Eucharist, 214, 219, 406
 denied to criminals, 223
- European cattle panzootic, 388
- Eusebius of Caesarea (d.c. 339/40,
 polemicist)
 Church History, 341
- Eustache the Monk, 379
- Eustace Busquet (d.c. 1217,
 mercenary), 379
- Eve, 155–6, 214, 333–4. *See also* Adam
- evidence, 412
 of the person, 84
 standards of, 121, 122, 148, 154, 269
- Examination of William Thorpe, The*, 328
- excommunication, 224
 admonitions, 156
 and outlawry. *See* outlawry
 as a form of coercion, 27–8, 210, 400
 of King John, 38
 variations, 29
- execution, 59
 and damnation, 173–4, 219
 Aquinas on, 222
 as a form of vengeance, 217
 as penitential justice, 197, 239,
 248, 410
 hanging as a means of, 262, 263–4
 of a bishop, 374–6
 of Margaret Clitheroe. *See* Clitheroe
 (also, Clitherow), Margaret
 peine forte et dure as means of, 98, 400
 political, 40
 process, 248
 public, 97, 262, 263
 rites for traitors, 233, 326
 ritual, 248
 site of, 108
 symbolic means, 233, 248
- Exempla*. *See* sermon stories
- exile
 and standing mute, 170
 as punishment, 170
 monastic, 51
- Fairfax, Sir Guy (d.1495, justice), 86
- Fairfax, Thomas (d.1671, Lord Fairfax of
 Cameron), 331
- Faith, Rosamund, 366
- Fasciculus Morum*, 116
- fasting, 46, 50, 58, 79, 179, 204, 208, 219,
 234–6, 399, 408, 412
- Fawkes, Guy (d.1606, rebel), 398
- fear of conviction, 23, 115, 267, 270,
 277, 302
 indications of guilt, 268
- felony, 403
 appeal of, 279
 arson, 115, 356
 as personal attack on the king, 123
 breakdown by type, 267
 conviction of, 59
 criminal collaboration, 356
 forfeiture. *See* felony forfeiture
 forgery, 356
 harboring a Catholic priest, 1
 homicide, 14, 36, 37, 52, 68, 90, 356
 indictment of, 10, 13, 66, 67, 83, 112,
 123, 265, 357
 jail-break, 45, 169, 284, 294
 origins, 136
 rape, 87, 126, 192
 receiving, 14
 redefinition of, 152–3, 184, 356–7
 reputation, 112
 theft, 356
 treason. *See* treason
 trials, 119–27
- felony forfeiture, 90
 abolished, 251
 and outlawry, 29
 and standing mute, 14, 23, 94, 251,
 253–62
 and treason, 251, 259–61
 as punishment, 136, 253
 in the Garden of Eden, 333
 number of forfeitures for those who
 stood mute, 258

Index

457

- on appeal, goods returned to
 - appellor, 91
- profits of, 357
- to pay prisoners' expenses, 61, 254
- feud
 - culture, 354
- fihtwite*, 136, 356
- Fitz Waryn, Fouke, 379
 - Fulk III Fitz Warin (d.c.1258, nobleman), 379
- Fitzgerald, Christina, 314, 318
- Fitzherbert, Anthony (d.1538, judge)
 - La Graunde Abridgement*, 298, 299, 300
- FitzNeal, Richard (d.1198, bureaucrat), 16
 - Dialogue Concerning the Exchequer*. See *Dialogue Concerning the Exchequer*
- FitzThedmar, Arnald (d.c. 1274/75, chronicler), 385
- flagellation, 11
- Fleta*, 15, 88
 - abuses in prison, 64
 - as an abridgement of *Bracton*, 92
 - defendant's role in arraignment
 - process, 83
 - on conviction as a prerequisite to felony
 - forfeiture, 254
 - on felony forfeiture, 254
 - on Jesus Christ, 216
 - on peine forte et dure, 27
 - on standing mute on appeal, 92
 - penitential language in, 188, 214, 216
- flight, 247
 - and felony forfeiture, 29. See felony forfeiture
 - and outlawry, 88
 - as a confession, 87, 297
 - of felons, 59
 - role in self-defense, 247
- Florentine (in *The Seven Sages of Rome*)
 - as a type of Christ, 340–2, 345
- Forest Charter, 380
- forgery, 210
- Forrest, Ian, 364, 366
- Fortescue, John (d.1479, Chief Justice of King's Bench), 240, 241, 298
 - De Laudibus*, 173
- Foucault, Michel, 205, 246
- Fourth Lateran Council, 158, 164, 173, 359
 - abolition of the ordeal, 7, 20, 137, 148, 152, 184, 414
 - and judicial torture, 30
 - and legal reform, 191
 - mandating annual confession, 210, 219
- Fox, John C., 100, 101
- Foxe, John (d.1587, martyrologist)
 - Book of Martyrs*, 328, 329
- Franklin, Peter, 382
- Freedman, Paul, 365
- Friedland, Paul, 221
- Fueros de Aragón* (1247), 166, 405
- fugitive, 168, 253, 255, 285, 358
 - women as, 292
- Gabrielus, Antonius (d.1555, canon lawyer), 118
- gage, 28
- Game of Thrones*, 398
- Gamelyn, 379
 - Tale of Gamelyn*, 379
- Gascoigne, William (d.1419, Chief Justice), 76, 256, 288–9, 374–5, 378
 - and the York mystery play, 317
 - and trial of Richard Scrope, 317
- Gatrell, Vic, 6
- Gaveston, Piers (d.1312, Earl of Cornwall), 104
- Geltner, Guy, 244
- Geoffrey de Bruil (also, Breuil) of Vigecois (d.c.1184, chronicler), 38
- Gillingham, John, 106
- Given, James, 112, 246
- Glanvill*, 15, 28, 167
 - on contempt of court, 101
 - on standing mute, 91
 - written by, 16, 195
- Glanvill, Ranulf de (d.1190, Chief Justiciar), 16
 - and *Glanvill*, 195
 - Tractibus*, 154
- Gluckmann, Max, 354
- God
 - act of, 255, 290
 - and Adam and Eve, 214, 333–4
 - and oaths, 116
 - and presumption of innocence, 158
 - anger, His, 217, 220, 385

- God (cont.)
 contempt for, 101, 213
 does not punish for the same crime
 twice, 219
 forgiveness, His, 203, 215, 221, 235
 four daughters, His, 333, 334–5
 honor, His, 213
 immanence, 193
 judgment of, 8, 22, 127, 141, 147,
 154–6, 189, 304–5
 judgment, His, 406
 king's justice as a complement to His,
 193, 214, 216, 249
 mercy, His, 142, 149, 214, 218
 monarch as His appointed
 representative, 225–32, 248, 385
 natural law as His law, 154–6, 161,
 403
 on perjury, 115–17, 193
 reconciliation to, 54, 148, 197, 198,
 206, 214, 405, 408
 relationship to king, 226, 370, 389
 sin as an affront to His majesty,
 101, 231
 two swords, His, 193
 vengeance, 215, 320, 375
 working through His elements, 147, 220
- Goering, Joseph, 211
- Golden Legend*, 323
- Gower, John (d.1408, poet), 17
Mirour de l'Omme, 17, 117
- Grand Assize, 359–60
- Gratian (active twelfth century, canon
 lawyer), 200
Decretum, 158
- gravamina, 337
- Great European Famine, 388–9, 390, 391,
 392, 393
- Great Rumor, the, 366
- Green, Richard Firth, 269, 307
- Green, Thomas, 246
- Gregg, Joan Young, 237
- Gregorian reform, 194
- Greig, Hannah, 399
- Grosseteste, Robert (d.1253, theologian
 and philosopher), 119, 214, 333,
 336–7, 338, 368, 408
 and Simon de Montfort, 337–8, 386
Chateau d'Amour. See *Chateau
 d'Amour*
 on sin, 218
- Gui, Bernard (d.1331, papal
 inquisitor), 149
Practice Inquisitionis, 55
- guilds, 220, 310–11, 368
- gunpowder, 398–9
- Hali Meðhad*, 412
- Hamilton, Bernard, 53
- Hanawalt, Barbara, 4, 13, 112, 246,
 266, 389
- hanging
 as a punishment, 197, 233
 as punishment for excessive jury
 challenges, 279
 revival after, 264
- hard prison. See prison forte et dure
- Hargreaves, Paul, 364
- Harrison, Thomas (d.1660, regicide), 332
- Hartrich, Eliza, 350
- Hawkins, William (d.1750, barrister), 121
- Helmholz, Richard, 144, 145, 159, 162,
 359, 409
- Henry of Ghent (d.1293,
 philosopher), 159
- heresy, 79, 119
 Cathars, 55, 351
 Lollards, 73–4, 328
 punishment of, 233, 400
 Waldensians, 351
- Hereward the Wake (d.c.1072,
 nobleman), 379
- Herod (d.1 BCE, King of Judea), 309
- Herod Antipas (d.39, tetrarch of Galilee),
 23, 303, 307, 308, 309, 313–14,
 329, 331, 345
- Hilton, Rodney, 367
- Hoccleve, Thomas (d.1426, poet), 17, 81
Regement of Princes, 80
- Holsinger, Bruce, 306
- homicide
 Alfred on, 208
 appeal of, 170
 as a private offense, 136, 152, 356
 atonement for, 53
 criminalization, 136, 138, 153, 184,
 356, 360
 death sentence as, 20
 excusable, 29
 planned or premeditated, 75
 revolution in law of, 136
 secret, 268

Index

459

- simple, 75
- sin of, 65
- trials, 174–6
- Homo quidam*, 53, 54, 207
- Honorius of Kent (d.1210, canon lawyer), 159
- Hoskin, Philippa, 338
- Hoveden, Roger (d.1201, chronicler), 16
- Howard, Henry (d.1547. Earl of Surrey), 60
- hue and cry, 114, 169, 176, 349
- Huguccio of Pisa (d.1210, canon lawyer)
 - Summa*, 405
- humoral theory, 236–7
- Hundred Years' War, 393
- Hungarian Golden Bull (1222), 166, 405
- Hyams, Paul, 137, 146, 193, 366, 367
- idler, 69–73, 79, 400
- Imitatio Christi*, 24, 204, 206, 239, 306, 308, 319, 329, 345, 346, 371, 375, 411, 412
- Immaculate, Sister Mary, 334
- indictment
 - anonymity of process, 137, 141, 146, 355
 - defective or spoiled, 128
 - detention without, 34, 74
 - king's, or at the king's suit, 135, 146, 170, 284, 286
 - language of, 113, 267–8
 - numbers of those who stood mute on, 92, 115
 - presentment as, 137, 144
 - process, 185, 407
 - public prosecution, 89, 91
 - read out loud, 84
 - standing mute on, 90, 91, 94
 - what it must include, 185
- Inns of Court, 12, 88
 - as literary center, 17
 - Inner Temple, 17
- inquest into muteness, 100, 125, 132, 271, 284, 287, 404
 - as a test of competence, 178–83
 - in literature, 340
 - numbers of, 180
 - on appeal, 279
 - origins, 180
 - pro forma, 180, 182
 - staffed by prisoners, 179–80
- Inquisition, 407, 413
 - post-mortem, 258
- inquisitors, 55, 118
- Ireland, Richard, 33, 263
- irrationality, 7–9, 196. *See* Christianity, as superstition or irrationality
- Isidore of Seville (d.636, scholar), 249
 - Etymologiae*, 205
- isolation, 65, 78, 79, 399, 408
- ius commune*, 15, 118, 122, 138, 153, 189, 241
- Jacquerie (1358), 368
- Jahner, Jennifer, 333
- jail. *See* prison
- jail delivery
 - attendance at, 276
 - cases, 13–14, 23
 - commission of, 84, 174, 175
 - duration, 182
 - justices of, 36, 42, 48, 66, 84, 123, 131, 132, 133, 174–6, 239, 285, 288, 407
 - process, 49
 - records or rolls, 5, 11, 13, 18, 33–4, 35, 75, 84, 92, 102, 197
- jail-break. *See* felony
- jailer
 - abuse by, 64
 - accused of improperly supplying prisoner with food and drink, 41, 293, 294–5
 - and approvers, 69
 - and peine forte et dure, 32, 65, 67–9, 79
 - corrupt, 273
 - cruel or immoral, 67
 - inquiry into, 68–9
 - payment of, 35, 61
 - Swedish, 51
- Jesus Christ
 - and peine forte et dure, 315, 321–2, 343
 - and treason, 313, 319
 - as a guildsman, 318–19
 - buffeting, 312, 318
 - Christus Patiens*, 206
 - Christus Triumphans*, 206
 - circumcision, 320
 - fasting, 234
 - Man of Sorrows, 206
 - meekness, 322–4
 - pacifism, 319

Jesus Christ (cont.)

- pain, 203, 204, 206, 320, 411
- Prince of Peace, 335
- prison, 245, 318
- sacrifice, 214
- sepulcher, 245
- standing mute, 23–4, 87, 306, 307, 308–22, 331, 345, 347, 371, 378, 412

Jews, 39, 220, 315, 316, 320, 325, 332, 339, 344, 358

John Duns Scotus (d.1308, theologian), 201

John of Kent (d.1220, theologian), 211

John of Salisbury (d.1180, philosopher) *Policraticus*, 397

John of Tynemouth (d.1221, canon lawyer), 159

Jong, Mayke de, 52

judges (justices)

- as counsel for the defendant, 20, 121, 123, 124–6, 129–32, 133, 407
- as literati, 16–17
- as prelates, 11, 16, 160–1, 177, 192, 209, 410
- compared to Pontius Pilate, 312–13, 317
- consciences, 32, 122, 131, 138–9, 148, 173–4, 187, 404, 406
- in eyre, 124, 144, 169, 171, 361, 384
- king's or royal, 49, 120, 123, 254, 395, 396
- legal knowledge, 48
- of jail delivery. *See* jail delivery
- of King's Bench, 255
- of laborers, 70
- use of legal treatises, 15

Judgment Day, 216, 217, 219, 339, 390, 407

jurisdiction, 23, 70, 86, 102, 104, 105, 311, 316, 330, 403

- overlapping, 407

jurisprudence, 118, 133, 138, 154, 157, 159, 162, 189, 191, 276, 300, 346, 404

jurors

- and premeditated crimes, 213
- and reconciliation, 22, 405–6
- and social hierarchy, 270
- as community representatives, 142, 354, 364

- as oath-helpers, 144

- as representatives of the community, 271

- as royal informants, 357–8

- as the “country,” 84, 85, 92, 99, 125,

- 131, 134, 135, 303, 352, 414

- association with the king, 352, 355,

- 361, 363–4, 365, 396

- challenges. *See* jury challenges

- consciences of, 20–1, 138–9, 142, 187, 404, 406

- corruption of, 276, 277

- exemptions from jury service, 171

- failing to appear, 49, 268, 276

- forced, 363

- of presentment, 120, 357–8

- on indictment process, 407

- requirements to be, 275–7

- self-informing, 120, 247, 267, 275, 358, 363

- sympathy with family of accused, 251

- tendency to acquit, 22, 122, 246–8,

- 269, 405, 411

- trial, 114, 120

jury

- Anglo-Saxon practice, 191, 353

- as emblem of rationalism and

- modernity, 7, 9, 24, 140,

- 189–90, 191

- as royal overreach, 24, 352, 396, 415

- assembling a, 275–7

- challenges. *See* jury challenges

- composition of, 126, 143, 355

- defect in, 276, 294, 364

- democratizing, 141, 151

- duty, 25

- emergence of trial by jury, 20

- exemptions from jury service, 364

- government by, 355, 396

- indicting, 277

- inquest, 114

- mixed jury, 103

- mouth of, 130

- oath, 193

- of Apostles, 304

- of one's peers, 126, 359

- of presentment, or presenting, 112, 137,

- 143, 146, 186, 355, 357, 359, 362,

- 364, 414

- of prisoners, 85, 179–80

- origins, 149

- pool, 275, 278, 362

Index

461

- rejection of, 24, 140, 415
- replacing ordeals, 137
- service, 362
- special jury of knights, 170, 171, 359
- sworn inquest, 354
- system, expansion of, 354, 355–63, 365, 396
- trial, 50, 69, 84, 184, 355, 359, 362, 396, 414
- trial, choice of, 134
- verdict, 59, 69, 75, 269, 359, 411
- jury challenges, 23, 86, 99, 103, 125, 126
 - and peine forte et dure, 77, 301
 - as a delaying tactic, 275–9, 302
 - as contempt of court, 277
 - as standing mute, 277
 - numbers who challenged, 278
 - right to, 186
- Justinian (d.565, Emperor of Byzantium), 189
- Novellae*, 154
- Kamali, Elizabeth Papp
 - Felony and the Guilty Mind*, 410
- Kantorowicz, Ernst, 225
- Kastleman, Rebecca, 346
- Keen, Maurice, 107
- Kesselring, Krista, 202, 332
- Keynes, Simon, 354
- king
 - above the law, 330
 - Æthelberht II of East Anglia (d.794), 226
 - Æthelberht of Kent (d.616), 226
 - Æthelred (d.871), 152
 - Æthelred II (d.103), 208
 - Alfred (d.899), 173, 207, 226
 - Andrew II (d.1235, Hungary), 166
 - Angevin, 37, 136, 243, 353, 355, 363–5, 366–7, 386
 - Anglo-Saxon, 356
 - as a type of Christ, 226, 247
 - as candidates for canonization, 227
 - as Count of Poitou, 37
 - as Duke of Aquitaine, 37
 - as vicar of Christ, 226, 370, 406
 - Charles I (d.1649, England and Scotland). *See* Charles I (d.1649)
 - Charles IV (d.1328, France), 106
 - Christian model of kingship, 389
 - Cnut (d.1035), 136, 152, 208, 223, 243
 - Edmund the Martyr (d.869), 226
 - Edward I (d.1307), 61, 228, 229, 230, 231, 386, 389, 390
 - Edward II (d.1327), 45, 68, 95, 104–10, 227, 240, 260, 278, 370, 390, 393
 - Edward III (d.1377), 103, 107, 109, 227, 369–70, 393–4
 - Edward the Confessor (d.1066), 226
 - Edward the Elder (d.924), 223
 - Edwin of Northumbria (d.c.632/33), 226
 - Guthrum (d.890, East Anglia), 223
 - Henry I (d.1135), 243, 361
 - Henry II (d.1189), 20, 24, 37–9, 51, 136, 137, 141, 143, 147, 153, 184–5, 191, 194–5, 227, 229, 237, 238, 353–7, 359–60, 363, 366, 396, 399
 - Henry III (d.1272), 16, 104, 227, 228, 337, 363, 364, 384, 385
 - Henry IV (d.1413), 109, 229, 284, 317, 371–6, 412
 - Henry V (d.1422), 80
 - Henry VI (d.1471), 81, 227
 - Henry VIII (d.1547), 98, 193, 377
 - James I (d.1437, Scotland), 51
 - James VI and I (d.1625), 398
 - John (d.1216), 39–40, 164, 229, 363, 367, 379
 - Louis X (d.1316, France), 106
 - Norman, 353
 - Oswine of Deira (d.651), 226
 - Philip IV (d.1314, France), 150
 - Philip V (d.1322, France), 106
 - Plantagenet, 104, 369
 - relationship with his subjects, 21, 225–32, 317–18, 353, 370–1, 389, 413, 415
 - relationship with the church, 193
 - Richard I (d.1199), 29, 39, 229, 357, 367
 - Richard II (d.1400), 371, 373
 - Stephen (d.1154), 137
 - William I (d.1087), 209, 353
- King, Pamela, 317
- kingship, sacral, 225–32
 - beata stirps* (holy stock), 226–7
 - royal almsgiving, 228–9. *See* almoner
 - royal touch, 227
- Klein, Daniel, 331
- Klerman, Daniel, 144, 360

- Knights Hospitallers, 225
Kuskowski, Ada Maria, 154
- Lake, Peter, 3, 5
Lambert, Tom, 136, 143, 153
Lander, Jack, 260
Lanercost Chronicle, 260
Langbein, John, 117, 252
Langland, William (d.c. 1386, writer), 17, 71–2, 321, 346
- law
“bureaucratic and rule-bound,” 387
abuses of, 167
and literature, 306–8, 332–45, 346–7, 378–80, 408
and mercy, 187
and national identity, 353
and penance, 194–7
and rationality, 7–11, 189–90, 194
and religion, 7–9, 10–11, 16, 21–2, 194–7, 206–9, 225–32, 249, 402, 405–6, 407–11
as a science, 8, 189, 194, 195
canon. *See* canon law
common. *See* common law
Continental. *See* Continental law
court of, 81, 87, 90, 187, 249, 412
criminal, 355
defect in, 247
disobedience to, 77, 100, 256
enforcement, 29, 73, 186, 192, 213, 246, 379, 383
English, 28–31, 33, 151, 152, 201, 207, 353
favorable to plaintiffs, 298, 360
French, 106
history of, 188–91
labor, 69–73
language of, 17, 84, 154
natural. *See* natural law
Norman, 9, 15, 18, 50, 140
of arms, 103–10, 375, 403
of the land, 32, 89, 100, 129, 144, 165, 330, 352
officers of, 73, 102, 255, 276
orality of, 176, 177
philosophy of, 159
positive, 156, 161, 333
priests of, 195
reforms, 191, 195
rigors of, 73, 170, 186, 192, 300
- Roman. *See* Roman law
royal, 141, 208, 246, 332, 361
secular, 201
sumptuary. *See* sumptuary laws
system(s) of, 24, 31, 159, 322
talion, 189
Welsh, 198
written, 31
- law codes
“barbarian,” 8
Æthelred, 162
Alfred’s *Domboc*, 207–8
and penitentials, 162
Anglo-Saxon, 8, 154, 162
Cnut, 163, 223, 243
Edgar, 162
Edward the Elder and Guthrum, 223
English, 136
Lombard, 8
So-Called Laws of William I, 163
- lawyers, 11, 17, 33, 159, 161, 194, 198, 407, 414. *See also*, pleaders
- legal
administrators, 16
counsel, 119–27
culture, 129, 153–61, 176, 177
experimentation, 139, 172, 175, 400, 404
historians and scholars, 24, 188–91, 246, 352, 362, 401
historiography, 194–5, 353, 402, 406, 407
identity, 172
instrument, 355, 383
language, common, 153
maxims, 86, 118, 122, 156, 157, 404
practices, 31
proceedings, 154
process, 49, 133
protections, 27
record, 14, 18, 37, 66, 71, 74, 101, 140, 182, 235, 346, 352, 397, 400
reform(s), 136, 191, 208
revolution, 188–91, 249, 414
treatises, 15, 27, 214, 410
vocabulary, 17
- Leges Edwardi Confessori*, 201
Leges Henrici Primi, 15
on a defendant’s right to confess, 223
on counsel for the defense, 119

Index

463

- on defendant's right to silence, 164, 185, 308
- on judging, 173
- on oaths, 143
- on presence of the accuser, 157, 405
- on proof, 122
- on rights of the accused, 163, 164, 404, 405
- on sinners, 201, 217
- legislation
 - banning hunting dogs, 70
 - controlling words, 349
 - French, 221
 - labor, 70–3
 - misreading of, 31–3, 48
 - on clerical participation in judicial ordeals, 148
 - on right to confession, 221
 - prison forte et dure in, 31–3, 40, 55
 - prohibiting games and sports, 70
 - regulating clothing and food, 70
- letters
 - general letter of Edward II (1316), 390
- Liddy, Christian, 349
- Lim, L. B., 44
- Little Ice Age, 387
- Lombard law. *See also*, law codes, Lombard
 - Lombard, Peter (d.1160, theologian), 224
 - Sentences*, 207, 210, 223, 337
- Lord Ordainers, 104
- Luther, Martin (d.1546, theologian), 327
- Magdalene, Mary, 218
- Magna Carta (1215), 337
 - and due process, 165–6
 - and natural rights, 21, 404
 - Chapter 39, 126, 164–5
 - Chapter 40, 165
 - on compurgation, 144
 - on indictment, 186
- Maidstone, Clement (d.1456, writer), 378
 - Martyrium Richardi*
 - Archiespiscopi*, 373
- Maitland, Frederic, 5, 24, 32
 - agnostic views of, 195
 - and legal history, 194–5
 - History of English Law Before the Time of Edward I*, 9
 - legal training, 195
 - on homicide, 356
 - on jury trial, 140, 354
 - on law and religion, 8–9
 - on year books, 12
- maltolt*, 391, 394
- manbot*, 136, 201
- manifest guilt, 262–70, 302
 - number of those taken in possession of stolen goods, 265
- Mannynge, Robert (d.c.1338, chronicler), 231
- Mansfield, Mary, 201
- Map, Walter (d.c.1210, writer), 16, 160
- marginal notations, 14, 34, 41, 47
- Martin of Pateshull (d.1229, judge), 160
- martyrdom, 4, 14, 23–4, 87, 248, 250, 262, 302, 319, 322–4, 329, 331, 367, 371, 375
- martyrs, political, 377–8, 412
- Mary, the Virgin, 335, 344
 - example to women, 291
- Masschaele, James, 4, 20, 138, 172, 187, 403
- Matlock, Wendy, 307, 347
- McHardy, Alison, 57
- McKenna, Catherine, 198, 411
- McKenzie, Andrea, 76, 78, 110–11, 261, 400, 401, 415
- McNair, Michael, 360
- McSheffrey, Shannon, 192
- McSweeney, Thomas, 192, 402, 410
- Medieval Warm Period, 387
- mens rea*, 208, 213, 410
- Merback, Mitchell, 196
- mercenary, 90, 379
- Mirk, John (active c.1380–c.1420, writer)
 - Festial*, 323, 339–40
- Mirror of Justices*, 15
 - and Maitland, 15
 - as complaint literature, 166–8
 - on abuses, 64, 122, 166–8
 - on approvers, 168
 - on exit fees, 61
 - on ignorance of the law, 127
 - on judges, 157, 173
 - on Magna Carta, 167
 - on peine forte et dure, 65
 - on penance, 214
 - on time of trial, 312
 - on weights, 44
- Modus Tenendi Parliamentum* (1321), 105

- Monachus, Johannes (also, Jean Lemoine, d.1313, canon lawyer), 158
Glossa Aurea, 155–6
- Monfortian Revolution, 384
- Montfort, Simon de (d.1218, Earl of Leicester), 166
- Montfort, Simon de (d.1265, Earl of Leicester), 108, 109, 338, 384, 385
 “Lament for Simon de Montfort,” 385
- Montfortian saints
 Edmund of Abingdon (d.1240, Archbishop of Canterbury). *See* Archbishop
 Richard Wich (d.1253, Bishop of Chichester). *See* bishop
 Robert Grosseteste (d.1253, bishop of Lincoln). *See* Grosseteste, Robert
- More, Thomas (d.1535, Chancellor), 60, 377
- mort d'ancestor*, 359
- Mortimer, Roger (d.1326, Lord of Chirk), 107–8
- Mortimer, Roger (d.1330, Earl of March), 106, 107–8, 393
- Moses (prophet), 157, 234
- Mowbray, Thomas (d.1405, Earl of Nottingham and Norfolk), 372, 373–4, 375
- Müller, Miriam, 381, 383, 392
- murder, 75, 210
morð, 152
murdrum fine, 152
- murus largus*, 53
 rates, 55
- murus strictus*, 401
 and heresy, 55
 and the laity, 57–8
 as coercive measure, 55, 58
 as forerunner of prison forte et dure, 19, 50, 53–4, 55
 as in *stricto carcere*, 53
 as punishment, 55
 in England, 56–8
 rates, 55
- Mush, John (d.c.1612/13, hagiographer), 1–4, 5, 313, 399
- Musson, Anthony, 120, 202, 286
- muteness
 as a test of competence, 178–83
 feigned, 72, 84, 178, 180, 181–2, 271, 279
 legal standing, 85
 link with mental illness, 181–2
 mute by malice, 85, 183, 253, 289, 313
 naturally mute, 85, 179, 181, 187, 404
 short-term infirmity, 181
- mutilation
 as a punishment, 73, 197, 243–4
- mystery plays, 17, 24, 326, 347, 367, 368
 and the common law, 309–10
 as a teaching tool, 318
 Chester, 308, 312, 314
Cornish Ordinalia, 315
 for illiterate audiences, 308–9
 history of, 310
 importance of the locality, 310–11
 N-Town, 314
 Townley, 312, 316
 Wakefield, 314
 York, 308, 311–13, 317, 378
- naked(ness), 3, 18, 46, 58, 76, 237, 239, 325, 334, 340, 399, 408
 barefoot and bareheaded, 237
- natural law
 and human rights, 21, 138–9, 185, 404–5, 406
 as God's law, 154–6, 161
 Pan-European, 166, 185
 relationship with common law, 161–2, 163
- Neville, Cynthia, 411
- Neville, Ralph (d.1425, Earl of Westmorland), 372, 373, 374
- nihil dicit*. *See also*, standing mute
 excessive use of jury challenges, 85, 403
 failing to answer properly, 85, 403
- Nineveh, 234
- Noah, 335
 and Ham, 325
- noctanter*, 114, 268
- non compos mentis*, 186, 213, 314. *See also*, disability
- Normandy
 Battle of Hastings, 208
 Norman Conquest, 208, 223, 354
 Normans, 9, 50, 201, 353, 379
 origins of prison forte et dure, 18, 50, 401
- North English Legendary*, 323
- Northern Homily Cycle*, 322, 336

Index

465

- notoriety
 conviction against acquittal ratio, 113
 notorious felon, 32
novel disseisin, 359
- O'Brien, Bruce, 152, 202
- oath
 de veritate dicenda, 118
 false, 116
 oath-breaking, 52
 oath-helpers, 142, 143, 144–5
 oath-swearing, 116
 of fealty, 116, 367
 of office, 116
 trial by. *See* compurgation
- office-holding, 364
- Old Testament, 24, 325
- Oldcastle, John (d.1417, Lollard leader),
 34, 74
- Olson, Trisha, 193, 410
- Ordinances of 1311, 104, 109
- Ormrod, W. Mark, 160, 368, 377
- outlawry, 88
 and excommunication, 29
 as punishment, 29, 361
 in the Garden of Eden, 333
 literature, 25, 26, 378–80
 origins, 29
 principal's. *See* accomplice
 process, 29, 285, 361
 waivery, 292
- Outlaw's Song of Trailbaston, The*, 26,
 35, 36
- Owl and the Nightingale, The*, 307
- Oyer and terminer, 68, 294
- pain
 Aquinas on, 203, 320
 as an avenue to knowledge, 196
 Christ's, 204, 206, 320
 in penance, 11, 196–7, 202–18, 243–4,
 245, 406, 410
 to reorient the mind, 196, 406
- Panormitanus (also, Nicolò de' Tudeschi,
 d. 1445, canonist), 118
- papal bull, 221
- pardon, ecclesiastical
 universal, 227
- pardon, royal, 23, 302
 and military service, 96
 and peine forte et dure, 41, 98, 279–82
 and standing mute, 412
 and women, 98, 115, 291
 brokering for approver, 284
 cost, 131
 de cursu, 298
 does not extend to future crimes, 282
 for judges, 107
 for long suffering, 280
 general, 227
 number pardoned, 279, 291
 victim's rights despite, 91, 280–1
- Paris, Matthew (d.1259, chronicler), 363
- parliament, 108, 129, 398
 "Process and Record," 373
 House of Commons, 105, 330, 331,
 373
 member(s) of, 31, 34, 71, 73, 160
- Passion, 307, 309, 318, 320, 325, 331,
 345, 368, 378, 410, 412
- passive non-cooperation, 380, 381, 386,
 395, 397, 415
 as a form of resistance, 319, 351–2, 365
- Pastoralia, 198
- paternalism, heroic, 252, 253, 261
- peine forte et dure
 and approvers, 286, 288
 and Christ, 318, 321–2
 and contempt of court, 66
 and failed benefit of clergy, 271–5
 and felony forfeiture, 14
 and gender, 97–8
 and heretics, 55, 73–4
 and isolation, 65
 and jury challenges, 103, 277–9
 and literature, 332–8
 and manifest guilt, 262–70
 and martyrdom, 323–4
 and outlawry, 30
 and pleading the belly, 292–4
 and prison forte et dure, 13, 18, 31,
 33–4, 46–50
 and refusal to plead, 138
 and social status, 31
 and standing mute, 94, 100, 301
 and starvation, 35
 and strait keeping, 71
 and treason, 95–6
 and unjust authority, 338–45, 347, 408
 as "non-statutory," 33
 as barbarity, 5–6, 9, 188, 196, 240,
 249, 405

- peine forte et dure (cont.)
 as capital punishment, 2–4, 12, 31, 40, 76–8, 79, 90, 98, 130, 232, 239, 332, 400
 as coercive measure, 4, 6, 9, 12, 22, 27, 30–1, 46–50, 65, 66, 76, 78, 126, 128, 138–40, 239, 264–5, 332, 347, 400, 408
 as marginal notation, 15, 34–5
 as non-statutory penalty, 33
 as penance, 16, 19, 21, 22, 24, 36, 46–50, 54, 75, 76–7, 196, 197, 232–9, 249, 332, 402, 408
 as penitential justice, 239
 as protest, 17
 as punishment, 5, 31, 66–76, 82, 100, 132, 400
 as scribal error, 46–7
 as social control, 69–73
 as torture, 6, 239–42, 249, 402
 compared to regular prison, 65
 date of first use, 36–9
 emergence, 7, 12
 gradations of, 36
 in literature, 308
 in modern media, 398–9
 in mystery plays, 315
 origins, 9–11, 19, 27, 46–50
 pardons for, 279–82
 to protect heirs, 111
 unsanctioned use of, 68
 women, 110, 115
- penal cloistering, 51–2
 and laity, 51
- penance
 and pain, 209–18
 as a branch of theology, 31, 51, 52, 210, 211, 212, 221
 as a sacrament, 210
 Carolingian dichotomy, 52
 external forum, 210
 gradations, 52, 68
 internal forum, 213
 performance of, 198–9, 202–3, 221
 perpetual, 45, 54, 56–7, 218
 public, 51, 52, 210, 233, 401
 sacrament, 213
 tariff to arbitrary/discretionary, 211
 until death, 45, 77
 weights, 237–8
- penitential, 8
 crusade, 229
 fare, 234–6
 handbooks, 211–12, 218
 justice, 22, 79, 225–32, 239, 242–8, 408, 411
 language, 74, 214
 practice, 18, 22, 204, 232
 process, 179, 249
 theology, 54, 207, 233
- penitential process
 absolution, 200, 210, 219
 contrition, 52, 198–9, 215, 230
 making amends, 199–200
 reconciliation, 196, 197, 206, 214, 249, 405, 408
 restitution, 200–2
 satisfaction, 202–3, 214, 230–1
- perambulation, 220
- Percy Rebellion, 317
 Henry Percy (d.1403, nobleman), 374
- perjury, 115–17
 and compurgation, 143, 145
- Peter of Poitiers (d.c.1205/15, theologian), 219
Sententiarum libri quinque, 199
- Peter the Chanter (d.1197, theologian), 211
- philopassianism, 196
- phrases of afforcement, 114, 269
- Piers Plowman*, 71–2, 102, 321
 as a rallying cry, 71, 346
- Pihlajamäki, Heikki, 241–2
- Pike, Luke, 6
- Pilate, Pontius (Roman governor of Judaea, c. 26–37), 23, 303, 307, 309, 312–17, 320–1, 329, 331
- pilgrimage, 376
 as a political act, 377
 crusade, 229
 penance, 205
 perpetual, 229
 to the Holy Land, 229, 231, 245, 318
- Pistil of Swete Susan, The*, 17, 325–6
- Placita Corone*, 15, 124, 135, 224, 261, 271
- Plato (d.c.348/347 BCE, philosopher)
 platonic ideals, 203
- plead
 failure to, 271

Index

467

- refusal to, 2, 5, 10, 19, 20, 26, 31, 42, 77, 89, 92, 100, 111, 112, 130, 133, 175, 252, 263, 315, 316, 371, 386, 392, 403
- pleaders, 100
- in year books, 76, 288
- professional, 128, 387
- pleading
- and religious confession, 177
- as consent, 102, 103, 115, 135, 405
- at bar, 128
- insufficiently or incorrectly, 129, 131
- language of, 128
- process, 125, 127, 153
- pleading the belly, 23, 302
- and standing mute, 292–4
- as a delaying tactic, 271, 290–5, 411
- benefit of the belly, 292
- difficulties with, 295
- execution after, 292
- jury of matrons, 293, 294
- to avoid execution, 186
- pledges for good behavior, 169
- Plucknett, Theodore, 24, 135, 140, 150, 250
- Pogiali, Johannes de (fourteenth century, Franciscan inquisitor), 154
- Pollock, Frederick, 5, 32, 356
- Poos, Lawrence, 70, 396
- Pope
- Alexander III (d.1181), 194
- Boniface VIII (d.1303), 227
- Clement V (d.1314), 221
- Gregory IX (d.1241), 118
- Gregory VII (d.1085), 194
- Innocent III (d.1216), 38, 148, 158, 164, 205, 210
- Innocent IV (d.1254), 55, 118, 194
- Innocent VII (d.1406), 376
- Sixtus (d.125), 323
- positive law. *See* law, positive
- possessory assizes, 360
- Powell, Edward, 202, 246
- pre-indictment sorting process, 144
- premeditation, 75, 292
- presentment. *See* jury
- pressing, 232
- and peine forte et dure, 36, 399
- date of first use, 41
- press rooms, 43, 111
- with weights, 37, 331, 400, 408
- presumption of guilt, 112, 253, 262
- presumption of innocence, 158
- prison
- as earthly purgatory, 244–6, 408
- bishops' or ecclesiastical, 53, 56, 57, 58, 192
- building campaign and orders, 51, 192, 357
- capacity of, 49
- compared to modern prison, 59, 64
- conditions, 50, 51, 59–60, 63–4, 409
- death rates, 63. *See* rates
- fees, 60–2
- Fleet, 59, 62, 398
- funding, 60
- jail fever, 63
- lack of, 26
- Marshalsea, 61
- monasteries as, 51–2
- Newgate, 62, 63, 68, 78, 224, 239, 257, 275, 278, 392
- parallels with purgatory, 244
- penitential nature, 45, 52, 78, 179, 215, 232, 244–6, 405, 408
- physical location of, 59, 64
- public nature, 63, 64
- reasons for return to, 49
- reform movement, 5, 408–9
- sentence to life in, 45, 283
- term “penitentiary,” 52, 232
- women in, 60
- prison forte et dure
- and contempt of court, 102
- and manifest guilt, 263
- and public penance, 53
- and starvation, 35
- as “hard prison,” 18, 24, 34
- as “statutory” penalty, 31–3
- as a choice, 140
- as capital punishment, 32
- as coercive measure, 21, 32, 175, 179, 187
- elsewhere in Europe, 50–1, 55, 241–2, 401
- emergence of, 21
- first appearance in legislation, 55
- limitations of, 32
- origins, 46–50
- rates, 34
- prison personnel
- chamberlain, 61

- prison personnel (cont.)
 guards, 60
 jailer, 61, 62. *See* jailer
 keeper, 60
 porter, 61
 sheriff, 60, 84
 warden, 60, 62, 63, 78
 prisoners
 access to a confessor, 224
 awaiting trial, 59
 complaints about their welfare, 63, 64, 65, 67
 freed by saints, 368
 permitted to beg, 62
 permitted to work, 62
 pernoctate, 62
 wives and families, 64
 private prosecution. *See* appeal
 profits of justice, 137, 256, 356–7, 360–1
 proofs
 and social standing, 134
 as God's judgment, 139, 141
 as irrational, 189, 191
 choice of, 134–5
 forms of. *See* compurgation; trial by combat; trial by ordeal.
 transition to trial, 140–2, 152, 153, 171, 184, 189–90, 353, 404, 407
 protest. *See* resistance
 Protestant Reformation, 228
 Provisions of Oxford (1258), 104
 Provisions of Westminster (1259), 384
 Pryce, Huw, 232
 public fame, 157
 public prosecution. *See* Indictment
 Pugh, Ralph, 30, 74
 Pullen, Robert (d.c.1146, theologian)
 Libri Sententiarum VIII, 223, 225
 punishment
 and mercy, 338
 and penance, 22, 36, 54, 203–9, 232, 408, 411
 and vengeance, 21
 as compensation for an offense, 52
 as deterrence, 21, 22, 196
 as penance, 21
 as public performance, 65
 as vengeance, 22, 196
 blinding. *See* blinding
 burned to death, 233
 capital, 173. *See* capital punishment
 castration. *See* castration
 corporal, 243
 fits the crime, 233
 hanging. *See* hanging
 mutilation. *See* mutilation
 pain of, 410
 peine forte et dure as. *See* peine forte et dure
 treason, 95
 purgation, 56, 57, 143, 283
 purgatory, 218, 244
 Puritans, 118
 purveyance, custom of, 369–70, 391
 Putnam, Bertha, 73
 Queen
 Anne (d.1714, Great Britain), 228
 Anne of Bohemia (d.1394, England), 41
 Eleanor of Aquitaine (d.1204, France and then England), 37
 Eleanor of Castile (d.1290, England), 231
 Emma of Normandy (d.1052, England, Denmark, and Norway), 151
 Isabella of France (d.1358, England), 106
 Isolde (fictional), 151
 Margaret of Anjou (d.1482, England), 81
 Teutberga of Lotharingia (d.875, Lotharingia), 151
 Questier, Michael, 3, 5
 Radding, Charles, 8
 Raleigh, William (d.1250, judge and bishop), 160
 Ralph of Coggeshall (d.c.1227, chronicler), 345
 rape. *See* felony
 rates
 acquittal, 88, 113, 197, 246–8
 benefit of clergy, 271
 conviction, 22, 75, 122, 186, 269
 conviction of appeals by approvers, 283
 crime, 389
 cum manuopere, 265
 deaths in prison, 63
 defect in jury, 364
 execution, 173
 exemption from jury service, 364
 felony forfeiture, 258
 jury challenges, 278

Index

469

- murus largus*, 55
- murus strictus*, 55
- pardons for peine forte et dure, 279
- pardons for women, 291
- peasant resistance, 365–8
- peine forte et dure, 34–5, 36, 241
- prison forte et dure, 34
- standing mute, 5, 13, 48, 92, 169, 266, 387
- starvation diet, 35
- theft, standing mute on, 392, 394–5
- turning approver, 268
- women committing felonies, 112, 291
- women standing mute, 111
- rationality, 7, 8, 9, 189, 190
- reasonable doubt formula, 173
- rebellion
 - last resort of peasant resistance, 396
 - of jurors and reeves, 364
 - tradition of, 365–80
- receiving. *See* felony
- rehabilitation
 - spiritual, 22, 52, 54, 58, 75, 197, 206, 400, 408–9, 410
- Remonstrance of 1297, 391
- resistance
 - against the king, 383–6, 415
 - attacking tax collectors, 391
 - brewing without summoning the ale-taster, 381
 - by the nobility, 38, 383–6
 - challenging right to collect fines, 381
 - clerical, 368–78
 - clothing as, 351
 - defaulting on obligations, 381
 - failure to act as suitors, 319, 415
 - failure to pay a toll, 351
 - failure to perform labor services, 25, 319, 351, 365–8, 381, 397
 - feigned elections, 382–3
 - for local autonomy, 38
 - ignoring jury duty, 364
 - ignoring summons, 25, 351, 381
 - letting buildings fall into disrepair, 381
 - manifestation from the bottom up, 352–3
 - marrying without the lord's permission, 351, 381
 - models for, 23–4, 367, 368
 - moving sheep grazing, 381
 - non-attendance at court, 319, 397
 - of laborers, 70
 - peasant, 25, 351–2, 365–8, 380–96, 397, 413, 415
 - poaching, 381
 - poverty, 351
 - refusal to bear witness against one's neighbors, 319
 - refusing to use lord's mill, 381
 - remembering ancient customs, 381
 - rent strikes, 25, 319, 381, 415
 - silence, 87, 386–96
 - standing mute as, 99, 386–96, 415
 - symbolic, 378
 - tax evasion, 319, 381, 391, 415
 - tools of, 24–5, 382, 415
 - venerating political martyrs, 25, 377–8, 386
- restitution. *See* penitential process
- revolt
 - premodern paradigm of, 350–1
 - soundscape, 348–50, 413
- Rex et Famulus*, 334
- Reynolds, Susan, 402, 414
- Riddle, James, 378
- right of reply. *See* defendant's right(s)
- rights. *See* defendant's right(s)
- Robert de Seilhac (also, de Sillé and Sillet) (d.1240, nobleman), 38, 39, 399
- Robert le Ewer (also Lewer) (d.1322, constable), 42, 54, 95, 232, 260
- Robert of Flamborough (d.c.1219/33, theologian)
 - Liber penitentialis*, 211
- Robin Hood, 379
- Roger of Wendover (d.1236, chronicler), 38
- Roman law, 10, 154, 403
 - and modernity, 321
 - and natural rights, 153–5
 - and the twelfth-century revolution, 8
 - and the long twelfth century, 153–61, 189
- evidentiary standards, 148, 154
- influence on canon law, 157
- on proof, 122
- rediscovery of, 7, 11
- standards of evidence, 189
- rosary, 220
- royal
 - authority, expansion of, 24, 354, 355, 360–2, 414

- royal (cont.)
 authority, limits of, 40, 378, 395, 397
 cure of souls, 230
 overreach, 319, 353
 paternalism, 230–2, 371, 389, 415
 touch. *See* kingship, sacral
- Royer, Katherine, 221
- Rudé, George, 349
- sacrament, 210, 213
- sacrilege, 210
- Saint
 Æthelwold of Winchester (d.984), 368
 Agnes of Rome (d.c.304), 324
 Ambrose of Milan (d.397), 327
 Anselm of Canterbury (d.1109),
 203, 212
 Augustine of Hippo (d.430), 116, 173,
 203, 249, 323, 324, 389
 Bede the Venerable (d.735), 327
 Bernard of Clairvaux (d.1153), 220,
 229, 333
 Cuthbert of Lindisfarne (d.687), 368
 Dunstan (d.988), 368
 Dysmas (d.c.33), 218
 Edward Martyr (d.978, King of
 England), 368
 Erkenwold (d.693), 368
 Francis of Assisi (d.1226), 206
 James (d.44), 339–40
 Jerome (d.420), 219
 John Chrysostom (d.407). *See*
 Chrysostom, John
 John the Baptist (d.c.30), 235
 Katherine of Alexandria (d.c.305), 324
 Laurence (d.258), 323–4
 Leonard of Noblac (d.599), 245, 368
 lives, 245, 377
 Margaret Clitheroe. *See* Clitheroe,
 Margaret
 Martin of Tours (d.397), 245
 Mary. *See* Mary, the Virgin
 Mary Magdalene. *See* Magdalene,
 Mary
 Mildreth (d.732), 368
 Ninian of Whithorn (d.432), 245
 Paul the Apostle (d.c.64 X 67), 118,
 203, 245
 Peter (d.c.64 X 68), 235, 245
 Philip the Apostle (d. first century), 339
 stylite, 54, 408
 Thomas Aquinas (d.1274). *See*
 Aquinas, Thomas
 Thomas More. *See* More, Thomas
 Veronica (active first century), 320–1
 Saint German, Christopher (d.1540,
 polemicist), 92, 94
Doctor and Student, 89–91
 salvation, 11, 196, 245, 249, 406, 412
 and penance, 209–18
 communal strategies for, 219–20
 of the falsely accused, 24
 sanctuary, 124, 209
 and common law, 192
 as a delaying tactic, 271
 denial of food to seekers, 57–8
 denied, 169
 restitution, 201
 rites, 197
 to avoid execution, 186
 Saracens, 342–5
 Saxoferrato, Bartolus de (d.1357, law
 professor), 118
 Schofield, Phillipp, 381
 Scott, James
Weapons of the Weak
Everday Forms of Peasant
Resistance, 380–1
 scribes, 14, 33, 34, 36, 47, 75, 84, 99, 140,
 300, 302, 303, 415
 Scrope, Henry le (d.1336, Chief
 Justice), 77
 Scrope, Richard (d.1405, Archbishop of
 York)
 and York mystery play, 317
 cult of, 376–7, 378
 martyrdom, 371, 374–6, 377, 378,
 412
 rebellion, 371–4
 standing mute, 378
 tomb, 376
 secret crime, 75
 intolerance for, 270
 Seipp, David, 159, 167
 self-defense, 213, 247, 271, 298, 343
 self-incrimination
 privilege against, 117–18, 119
 serjeant-at-law, 129
 as legal counsel, 124
 in appeals, 127
 sermon stories, 237–8, 303–6, 327,
 368, 377

Index

471

- and peine forte et dure, 338–45
 - on women, 291
- sermons, 16, 24, 25, 235, 291, 323, 327, 329, 332, 336, 345, 377
- Seven Sages of Roman, The*, 17, 24, 340–2, 344, 345, 402
 - Buke of the Sevyne Sagis, The*, 340
- shackles, 36, 46, 58, 177
 - sewet, 35, 57, 60, 61
- Shakespeare, William (d.1616, writer)
 - Richard II*, 80
 - Troilus and Cressida*, 80
- shame
 - in peine forte et dure, 3
- sheriff, 17, 209, 276, 358
 - and outlawry, 29
 - as prelates, 192
 - corrupt, 373
 - geographic limits of office, 285
 - inquest into muteness, 180–3
- silence, 80, 81
 - and treason, 103
 - as admission of guilt, 86, 87, 88, 169, 330, 403
 - as confession, 86
 - as consent to trial, 314
 - as contempt of court, 102, 330
 - as contumacy, 87, 330
 - as ignorance, 127, 129
 - as protest, 164, 252, 302, 316, 319, 412, 415
 - as refusal to plead, 86
 - as religious confession, 87
 - as resistance, 10, 306, 322–4, 326–9
 - informed, 87, 127–32, 139
 - mortal sin, 87
 - on charges of treason, 19
 - upon appeal, 19
- Simon of Southwell (d.c.1205, canon lawyer), 159
- sin
 - affront to God's majesty, 52
 - and crime, 115, 196–7, 206–7, 210, 214, 218–25, 249, 405
 - as a disease, 199–200, 222, 243
 - as contempt for God, 101
 - as dishonor to God, 101, 212, 213
 - interiority, 213
 - luxuria* (lust), 235
 - mortal, 214
 - original, 214
 - parts, 213
 - wrath, 236
- Sizer, Michael, 348
- Smail, Daniel Lord, 191
- Smith, Roderick, 44
- Smith, Sally, 351
- Smith, Thomas (d.1577, diplomat)
 - De Republica Anglorum*, 43, 240
- sodom, 234
- sodomy, 87
- "Song against the King's Taxes," 394
- "Song of the Husbandman," 393
- soul, 249, 405
 - and pain, 203–6
 - of criminals, 218–25
- South English Legendary*, 320, 323
- Southern, Richard, 336
- Speculum Christiani*, 328
- speech
 - criminalization of, 177
 - in medieval legal culture, 176–8
- Staley, Lynn, 327
- standing mute, 36, 42, 48, 69
 - and approvers, 286–90
 - and benefit of clergy, 99
 - and manifest guilt, 262–70
 - and martyrdom, 302, 412–13
 - and peine forte et dure, 82
 - and pleading the belly, 292–4
 - and prison forte et dure, 32, 89, 169
 - and the abolition of the ordeal, 168
- as a choice, 2, 10, 23, 132, 133, 250–3
- as a delaying tactic, 19, 23, 27, 114–15, 182, 252, 270–1, 279–82, 284, 294, 302, 403, 411
- as a special kind of guilty plea, 5, 19, 91, 94, 98–9, 252
- as contempt for the Crown, 82, 99–103, 238
- as *nihil dicit*, 84
- as plea of not guilty, 5, 83
- as protest, 24, 102, 110, 141, 153, 164, 185, 302, 371, 386–96, 397, 411, 413, 415
- as rejection of common law, 352
- before God, 305
- breakdown by felony type, 267
- collectively, 14, 392–3, 395
- inspiring others, 14, 169, 395, 413
- non-violent resistance, 352
- on appeal, 30, 82, 403

- standing mute (cont.)
 on political crimes, 50
 on treason, 19, 82, 403
 origins, 140, 153
 out of family pride, 261–2, 264, 302
 process of, 84, 88, 124
 rates, 48, 92
 scriptural basis, 304, 306
 to protect heirs, 23, 76, 250–1, 252,
 253–62, 265, 296, 302, 411, 412
 to save an accomplice, 14, 287, 302
- starvation
 as coercive measure, 35, 38–43, 97
 as political weapon, 40
 rates, 35
- statutes
 25 Edward III 5, 30
 28 Edward I (1300), 285
 36 Edward III, Stat. I, c. 15 (1362), 129
 42 Edward III, c. 3 (1368), 165
 25 Henry VIII, c. 3 (1533–4), 99
 33 Henry VIII, c. 12, iv (1541–2), 98
 34 Edward III (1360), 276
 5 Henry IV (1402–1403), 284
 Act of 1827, 5
 “An Acte for stondyng muet &
 peremptorie challenge” (1533–
 4), 99
De Donis Conditionalibus (1285), 252
 Felony and Piracy Act (1772), 5
 Great Treason Statute (1352), 32
 Ordinance of Laborers (1351), 69,
 382, 395
 Statute of 1541–2, 98
 Statute of Acton Burnell (1283), 30
 Statute of Additions (1413), 185
 Statute of Gloucester (1278), 271
 Statute of Laborers (1349), 69, 71,
 382, 395
 Statute of Marlborough (1267), 361
 Statute of Merchants (1285), 30
 Statute of Westminster I (1275), 32, 56,
 58, 74, 89, 91, 92, 94, 257, 263, 352
 Statute of Winchester (1285), 46
 Statute *pro clerico* (1352), 57
 Statutes of Exeter (1287), 224
 The Statute of Persons to be put in
 Assises and Juries (1293), 276
 Statutes of Pamiers (1212), 166, 405
Statutum in favorem principum (1231),
 166, 405
- Staunford, William (d.1558, jurist), 121
 Stephen of Tournai (d.1203,
 theologian), 158
 Strohm, Paul, 17
 Sturges, Robert, 316
 subpoena. *See* writ
Summa Angelica, 89
 Summerson, Henry, 12, 18, 48, 195, 252,
 261, 286
 sumptuary laws, 70, 237, 351
 Susannah
 and Florentine (*The Seven Sages of
 Rome*), 342
 as a type of Christ, 24, 307, 325, 326–7,
 329, 345
 silence, 24, 307, 325, 326–9
 Suso, Henry (d.1366, writer and mystic),
 204, 327
 Swanson, Robert, 377
- taxation, 367, 368, 369, 371, 372,
 381, 393
 and protest, 393–4
 lay subsidies, 390–1
 Taylor, Andrew, 336
 Taylor, Scott, 146, 149, 153
 Templars, 240
 theft
 before the twelfth century, 136
 common thief, 36, 113, 185
 Dysmas the good thief, 218
 hand-having thieves, 112, 131, 262
 larceny, 74–6
 petty, 86
 thieves, 77, 79, 400
 theologians, 11, 101, 138, 148, 199, 200,
 202, 203, 206, 210, 212, 214, 215,
 220, 320, 404
 theological treatises, 16, 410
 third warning, requirement of, 132
 Thomas of Chobham (d.1233/36,
 theologian), 211
 Thomas of Lancaster (d.1322, Earl of
 Lancaster and Leicester)
 canonization request, 109–10
 cult of, 108–10
 execution, 104–6, 107
 Thomas, Arvind, 211
thwert-ut-nay, 84
 Tinkle, Theresa, 309, 317
 Tkacz, Catherine, 327

Index

473

- torture, judicial, 6, 30
 and English identity, 240–1
 and peine forte et dure, 6, 240
 ecclesiastical sanction, 55
 Tracy, Larissa, 240
 treason
 and sorcery, 98
 by word, 95, 97–8
 consorting with the enemy, 97, 103
 counterfeiting, 97
 execution rites for traitors, 95, 233
 in French law, 106
 in the Scottish marches, 97
 not a clergyable offence, 95
 petty, 114, 233
 rebellion, 104
 standing mute on charges of, 19, 82,
 114, 259–61, 319, 331, 403
 Treaty of Winchester (1153), 359
 trespass, 214, 281, 357, 387, 403
 as civil jurisdiction, 127
 standing mute upon, 86, 256
 trial
 duration, 120, 132, 271
 process, 120, 124
 proper time of day, 312
 trial by battle or combat, 7
 and civil disputes, 151
 and social hierarchy, 146, 151
 as method of proof, 134, 184, 359–60
 associated with approver, 147, 282–3
 discontinued, 147, 152
 exclusions, 145, 284
 fear of, 287
 indictment exclusions, 135
 on appeal, 91, 135, 137, 145–7
 persistence, 151, 191
 trial by ordeal, 7
 abolition of, 7, 14, 137, 140, 148, 168,
 249, 263, 407
 and social hierarchy, 150–1
 as method of proof, 135, 184
 criticism, 148
 elsewhere in Europe, 191
 on appeal, 150
 persistence, 149–50
 restored, 150
 trial by fire, 137, 147–8, 150–1
 trial by water, 137, 147, 150–1
 trial by sworn inquest
 and hard prison, 50
 trial jury. *See also*, jury
 accusers on, 126
 establishment, 7, 149
 trustworthiness, 143, 151, 184
 truth
 defendant's moral integrity, 269
 Turner, Ralph, 363
 Turning, Patricia, 63
 Tydeman, William, 309
 Ulpian (d.228, jurist)
 Digest, 154
 unfree. *See* villein
 university
 and canon-law training, 11, 159,
 211
 legal training, 414
 of Bologna, 159
 of Paris, 159
 of Sheffield, 44
 Oxford, 159
 Usk, Adam (d.c.1430, chronicler),
 374, 377
 Usk, Thomas (d.1388, writer), 17
 uxoricide, 78, 258
 vagrancy
 criminalized, 73
 vagrant(s), 59, 72
 Van Caenegem, Raoul, 189, 363
 Vane, Henry (d.1662, MP), 331
Venerabilem (papal decretal, 1202), 158
 vengeance, 217–18
 verdict. *See* jury
 vernacular legality, 306
 villein(s), 366–7, 382, 383
 villeinage, 366–7
 Vincent, Nicholas, 229
 violence
 as the last stage of resistance, 350
 culture of, 319, 406
 Foucauldian, 406
 self, 11
 visitations, episcopal
 articles of the visitation, 358
Vita Edwardi Secundi, 42, 54, 95–6, 105,
 232, 388
 wager of law. *See* compurgation
 Walsingham, Thomas (d.1422,
 chronicler), 109, 375

- Waltheof of Northumbria (d.1076, Earl of Northumbria), 104
- war
and taxes, 390–1, 393
between England and France, 390
between England and Scotland, 390
civil, 104, 105, 349, 379, 384
Hundred Years'. *See* Hundred Years' War
- Waugh, Scott, 386
- wergeld*, 136, 162, 200–2, 356
Frederic Maitland on, 7
- whipcord, 110
- Whitman, James, 173, 362
- William of Pagula (d.1332, canon lawyer)
Speculum Regis Edwardi III, 369–71, 391
- Willoughby, Sir Richard (d.1362, justice), 93
- Winroth, Anders, 190, 414
- Winter, Christine, 63
- witnesses, 118, 120, 412, 415
compelled to testify, 362–3
reputation of, 270
- women
and appeals, 170
and intercession, 291
and pardons, 97–8, 115, 291
and sanctuary, 124, 291–2
and treason, 341
barred from approvement, 291
barred from benefit of clergy, 272, 291
excluded from trial by combat, 145
felonies, 112
- numbers who stood mute, 111
- peine forte et dure, 115
- petty treason, 114
- prison forte et dure, 50
- standing mute, 13–14, 19, 97–8, 110–15, 125, 133, 265
- trial by ordeal, 150–1
- Woodbine, George, 188
- writ
de bono et malo, 49, 139, 174–6, 187, 404, 411
- escheat, 257
- nihil habet*, 61
- of approvement, 284
- of peace, 360
- original, 128
- prohibition, 119
- restitution of goods, 201
- subpoena, 30
- venire facias*, 288
- Wyatt, Thomas (d.1542, poet), 60
- Wycliffe, John (d.1384, theologian), 73
- year books, 11, 12–13, 159
- and mystery plays, 315
- and peine forte et dure, 34
- on accessories, 297–300
- on disobedient defendant, 99
- on felony forfeiture, 254–6
- on lands of unconvicted felons, 257
- on silent approvers, 286–90
- on women standing mute, 111