

INDEX

- abolishment of parliaments, in Ireland,
 175–176
 Government of Ireland Act and,
 176–178, 388, 392
 abolitionists, in Britain, 15
 absolutism, 172, 201, 214, 232, 237,
 246–247
 academic liberalism, 53–54, 57–59
 Act of Settlement, Britain (1701), 383
 Acts of Union with Scotland and
 Ireland, U. K. (1706–1707),
 167–168, 383, 390–391
 parliamentary sovereignty and, 208
 administrative law, 70–75
 Berthélemy on, 299–301
 common law and, 300–301
 denial of, 299
droit administratif and, 299, 301,
 314–316, 319–329
 public law and, 325–326
 subordination of, 321
 in France, 319–329. *See also* *droit*
administratif
 as judicial regime, evolution into,
 322
 public law in, 323
 Gneist on, 304–306
 Maitland on, 306–307
mandamus cases, 306–314
 Mill on, 301–302
 prerogative writs and, 301–304
certiorari, 303–304, 317
habeas corpus, 302–303, 317–318
mandamus, 302–303, 317–319
 prohibition, 302–303, 317
 public law remedies, 316–317
quo warranto, 302–303, 317
 public law and, 305–306
droit administratif and, 325–326
 in France, 323
 prerogative writs and, as legal
 remedies, 316–317
 recognition of, 314–319
 under rule of law, 321
 Allan, Trevor R. S., 6, 253, 297, 360
 Allen, Carleton Kemp, 61, 265–266, 300
The American Commonwealth (Bryce),
 69–70
 Amos, Sheldon, 207–208
Ancient Law (Maine), 59–62, 89–90
Anisminic v. Foreign Compensation
Commission, 283–284
 Annan, Noel, 14–19
 Anson, William, 112, 117, 132–133, 330
 on Government of Ireland Act, 176
 on sovereignty, 215
 anti-intellectualism, common law
 traditions and, 114
 anti-Semitism, 29–30
 Dreyfus affair, 29
 aristocracy. *See* Victorian ‘intellectual
 aristocracy’
 Arthurs, Harry, 124
 Asquith, Herbert, 71
 Asquith, Violet, 71
 Atiyah, Patrick, 253
 Austin, John, 27, 59–61. *See also* legal
 positivism
 Bentham and, 60
 on common law, 65–66
 definition of, 86
 equity in, 93
 Dicey, A. V., influenced by, 85,
 88–89, 234

- Austin, John (cont.)
 in *A Digest of The Law of England with reference to The Conflict of Laws*, 334–339
 on jurisprudence, 61–62, 131–132, 160–161
 analytical approach, 141
 Mill and, 131–132, 160–161
 on parliamentary sovereignty, 162, 179–180
 on sovereignty, 86
 Stephen, J. F., and, 131–132
 theory of law for, 160–161
 authority, parliamentary sovereignty as distinct from, 185
 authority of state. *See* state
- Bachelor of Civil Law (B.C.L.) degree, revival of, 117
- Bacon, Francis, 240, 246–247
- Bagehot, Walter, 26–27, 57, 106
- Balfour, Elizabeth (Lady), 12–13
- Balliol College, Oxford University, 34–37
- Barker, Ernest, 187
- B.C.L. degree. *See* Bachelor of Civil Law degree
- Bell, Clive, 19
- Bell, Julian, 19
- Bell, Vanessa, 17–19
- Bentham, Jeremy, 27, 213–214
 Austin and, 60
 codification of common law, 92–93
 on common law, 65–66
 Dicey, A. V., influenced by, 82, 85
 on parliamentary sovereignty, 162
 Utilitarianism and, 35, 39–40
- Bernard, J. H., 399
- Bernard, Mountague, 77
- Berthélemy, Henry, 299–301
- Bill of Rights, Britain (1689), 201–202, 241–242, 349
- binding of successors, by parliaments
 under common law, 211–212
 on constitutional law, 208–212
 through Irish home rule, 209–210
- Bismarck, Otto von, 385–388
- Blackstone, William, 16, 75–76, 164, 334, 355–356
 on parliament, definition of, 166–167
 on parliamentary sovereignty, 189–190
- body politic, 171–175
 parliament and, 171–175
- Bogdanor, Vernon, 342
- Bonham Carter, Elinor Mary, 71–72.
See also Dicey, Elinor Mary
- Bonham Carter, John, 71
- Bonham Carter, Maurice, 71
- Book of Common Prayer*, 188
- Boutmy, Émile, 340–341
- Bowen, Charles, 309–310
- Bramwell, George, 67
- Brett, William, 309
- Bright, John, 35, 38, 54–56
- Britain. *See also* parliament;
 parliamentary sovereignty;
 Whigs
 abolitionists in, 15
 Act of Settlement, 383
 Anglo-Scottish union and, 9
 Bill of Rights, 201–202, 241–242, 349
 British North America Act, 260, 292, 353–354
 constitutionalism in, 346–348
 constitutional law of, 3–10
 ‘English Constitution,’ 3–10
 ‘English law,’ 90–91
 doctrine of, 199
Habeas Corpus Act, 251–252, 255
 Parliament Act, 165–166, 388
 Petition of Right, 241–242, 349
 political morality in, 39–40
 Intuitionism and, 39–40
 natural law and, 39
 natural rights and, 39
 Utilitarianism and, 39–40
 Reform Act (1832), 24–26, 35, 57
 Reform Act (1867), 57
 Roman law in, 237
 rule of law in, 2, 233. *See also* rule of law
 Septennial Act, 210
 Slave Trade Act, 15–16
 ‘supremacy of law’ in, 96–97, 101

- supremacy of ordinary law in, 2
 Tories in, 24–26
 in reform movements, 35
 Triennial Act, 210
 Whigs. *See* Whigs
- British North America Act, Britain
 (1867), 260, 292, 353–354
- Bryce, James, 11, 26, 31, 37, 52, 57, 339
The American Commonwealth,
 69–70
 on Government of Ireland Act,
 176–177
Law of the Constitution and, 264–266
 as law professor, 77, 110
 in United States, 67–70
- Burgess, John, 339–340
- Burke, Edmund, on constitution as law,
 136–137
- Butterworth, W. H., 52
- Buxton, John, 54
- Cambridge University, 34
 aristocracy at, as finishing school for,
 34
- Canada
 British North America Act, 260, 292,
 353–354
 Supreme Court of Canada, 144
- Cane, Peter, 150
- Carlyle, Thomas, 57
- Carroll, Lewis, 271
- Cavendish, Frederick, 98
- Central Government* (Traill),
 304
- certiorari* writs, 303–304, 317
- chauvinism. *See* national chauvinism
- Churchill, Winston, 398
- circular jurisprudence, 361–367
- City of London v. Wood*, 196–197
- civil law traditions
 common law traditions in conflict
 with, 49
 rule of law in, 236–247
 as academic subject, 239
- civil sovereignty, 187
- Clapham Sect, 14
- classical theory, of sovereignty,
 186–187
- Cockburn, Alexander (Lord Chief
 Justice), 55–57, 277–278
- codification, of common law, 64–67.
See also rules
 Bentham and, 92–93
 of formal legal rules, 133
 methodology of, 64–65
 for pleading, 64
 rejection of, by Dicey, A. V., 115
- Coercion Act. *See* Protection of Person
 and Property Act
- Coke, Edward (Sir), 144, 165, 190–192,
 195–197
 on common law tradition, 238,
 246–247
- Coleridge, John, 67, 70
- Collini, Stefan, 53
- Commentaries on the Laws of England*
 (Blackstone), 16, 75–76,
 355–356
- The Common Law* (Holmes), 86–87,
 89–90
- common law theory, 368–369
- common law traditions, 148–159
 administrative law and, 300–301
 anti-intellectualism and, 114
 Austin on, 65–66
 definitions of concept, 86
 equity in, 93
 Bentham on, 65–66
 body politic and, 171–175
 civil law traditions in conflict with,
 49
 codification of, 64–67, 81–83
 Bentham and, 92–93
 laws as rules in, 149
 methodology of, 64–65
 for pleading, 64
 Coke on, 238, 246–247
 comparative constitutionalism and,
 345–346, 349
 constitutionalism and, 367–375
 integrative approach to, 375
 legality and, 369–370
 parliamentary sovereignty and,
 372–373
 rule of law and, 373
 sovereignty and, 369–370

- common law traditions (cont.)
 theory of truth and, 374–375
 constitutions in
 circular jurisprudence on,
 361–367
 Intuitionism and, 362–363, 367
laissez faire individualism and, 362
 Dicey, A. V., on, 152–154, 156
 development of, 152–153
 as judge-made law, 152–153
 equity and, 93–94
 as form of judiciary law, 65–66
 incorporation of, 171–173
laissez faire individualism in, 362
 necessity doctrine, 278
 parliament under, 168–169, 172–173,
 175
 binding of successors, 211–212
 parliamentary sovereignty in,
 162–163, 199–201
 constitutionalism and, 373
 Pollock on, 156–158
 rule of law and. *See* rule of law
 voided statutes and, 193–202
Comparative Administrative Law
 (Goodnow), 306
 comparative constitutionalism,
 339–354
 American constitutionalism,
 349–351
 common law traditions and,
 345–346, 349
 English constitutionalism, 346–348
 French constitutionalism, 345–347
 historical constitutions and, 348–349
 non-historical constitutions and,
 348–349
 rule of law and, 345
 comparative public law, 169–170
 Comyns, John, 198
 conditioned sovereignty, 187–193
 conflict of laws, Dicey, A. V., on, 81–84
 constituent power, sovereignty through,
 184–185
 constitution as law
 Austinian view of, 137
 Burke on, 136–137
 formalism of lawyers and, 139
 historical approach to, 139–140
 identification of, 136
 legal method and, 139
 legal perspectives on, political
 perspectives as distinct from,
 144
 legal positivism and, 137
 morality and, 135–136
 Paine on, 136–137
 Paley on, 136–137
 political perspectives on, legal
 perspectives as distinct from,
 144
 in political theory, 135–136, 142–144
 principles of, 133–134
 Privy Council and, 146–148
 formation of, 146–147
 function and purpose of, 146–148
 rational approach to, 139, 148
 rule of law and, 144
 true nature of, 137–148
 in United Kingdom, 1,
 3–10
 as history, 135–136
 as law of Britain, 10
 constitutional historians, 140
*Constitutional History of England in Its
 Origin and Development*
 (Stubbs), 95
 constitutionalism. *See also* comparative
 constitutionalism
 common law, 367–375
 integrative approach to, 375
 legality and, 369–370
 parliamentary sovereignty and,
 372–373
 rule of law and, 373
 sovereignty and, 369–370
 theory of truth and, 374–375
 Dicey, A. V., on, conceptualization
 of, 92–104
 rule of law and, 92–94
 in Prussia, 385–388
 rule of law and, 92–94, 373
 English constitutionalism, in
 common law tradition, 236
 Whig, 373
 constitutional law, British

- binding of successors by parliaments
 and, 208–212
 expounding of, 159
 Marshall, G., on, 161
 ordinary legal method and, 159–161
 parliamentary sovereignty and,
 226–227
 parliaments under, 168
 constitutional lawyers, 140
 constitutional theory, 178
 constitutions
 in common law tradition
 circular jurisprudence on,
 361–367
 Intuitionism and, 362–363, 367
laissez faire individualism and, 362
 conventions of, 221–222
 ‘English Constitution,’ 3–10
 flexible, 223–225
 historical, 348–349
 jurisprudential view of, 107–108
 law of, in *Law of the Constitution*,
 131–134
 analytical approach to, 131
 as legal concept, 1, 104–109
 conventions of constitution, 107
 Freeman on, 105–106
 laws of constitution, 107
 legal parts of, 160
 moral basis of, 174
 non-historical, 348–349
 non-legal parts of, 160
 rigid, 223–225
 Whig interpretation of, 105–106
 content-based theory of law,
 156–157
 conventions of constitutions,
 221–222
 Cosgrove, Richard, 389
 courts, 158–159
 Cowell, John, 172, 238–239
 Craig, Paul, 216, 221

 Davies, John, 237–238
 Davitt, Michael, 102
 decrees. *See* executive decrees
de facto sovereignty, 180, 182
de jure sovereignty, 180–182
 democracy. *See* parliamentary
 democracy; representative
 democracy
 Dentists Act, U. K. (1878), 208
 Dicey, Albert Venn, 17, 31. *See also* *The
 Law of Domicil*; *Law of the
 Constitution*
 as academic lawyer, 75–79
 on administrative law. *See*
 administrative law
 as administrative lawyer, 70–75
 as analytical, critiques of, 2
 Anson and, 132–133
 on anti-Semitism, 29–30
 archival sources on, methodological
 approach to, 6–8
 Austin as influence on, 85, 88–89,
 234
 Bentham as influence on, 82, 85
 on Clapham Sect, 14–19
 on common law traditions, civil law
 traditions in conflict with, 49
 on conflict of laws, 81–84
 conflict over conflict of laws,
 330–334
 on constitution as law. *See*
 constitution as law
 constitutionalism for,
 conceptualization of, 92–104
 rule of law and, 92–94
 on constitutional lawyers, 140
 death of, 376
*A Digest of The Law of England with
 reference to The Conflict of
 Laws*, 154–155, 333–334,
 342–343
 discursive legalism of. *See* discursive
 legalism; *specific works*
Domicil of Law
 codification of common law in,
 81–83
 conflict of laws in, 81–83
 legal legacy of, 84
 private international law in, 81–83
England’s Case Against Home Rule,
 176–177
 on ‘English law,’ 90–91
Eyre case and, 54–57

- Dicey, Albert Venn (cont.)
 family influences on, 14–19, 23–26
 constitutional law work influenced by, 19–23. *See also* constitution as law
 as Whig Evangelicals, 26–30
A Fool's Paradise, 394–395, 400–401
 Freeman and, 242, 331, 341
 Gneist as influence on, 120–122
 Hearn as influence on, 120
 Holmes and, 86–88, 90–91, 111, 330
 ideology of, critiques of, 2
 in Jamaica Committee, 54–55
 Laski and, 388
 on law. *See* law
Law and Public Opinion, 14, 19, 42–43, 155, 342–343
 as law professor, 110–114
 Bachelor of Civil Law revived by, 117
 Harvard Law School as influence on, 116–117
 lectures, 118–119
 legal education as focus of, 114–122
 legal positivist conception of law for, 115
 rejection of unofficial legal codes, 115
 required reading, 119–120
A Leap in the Dark, 185–186
 on legal development, public sentiment as element of, 48–49
 legal discourse and writing. *See* discursive legalism
 on legal literature, 58–64
 legal positivist school of, 61–63
 natural law and, 59–61
 as legal positivist, 6, 61–63, 115, 137
The Legal Sufferings of the Jews in Russia, 29–30
 legal turn of mind for, 5
 on legality, 103
 political structures and, 101
 social structures and, 101
 literary influences for, 23
 marriage of, 71–72
 as member of Victorian ‘intellectual aristocracy,’ 14–19, 359–360
 Mill as influence on, 40–44, 86, 362
 ‘oddities’ of, 30–33
 creative intellectual process, approach to, 32–33
 physical limitations, 30–31
 writing, approach to, 32–33
 on parliament, definition of, 162, 165–166
 on parliamentary authority, 104
 on parliamentary sovereignty. *See* parliamentary sovereignty
Parties to Actions, 81–83, 130, 342–343
 physical challenges for, 12–13, 30–31
 Pollock as influence on, 153, 156, 338
The Privy Council, 97
 academic influence of, 49–50
 professional career of, 11–12
 on Protection of Person and Property Act, 98
 on Prussian constitutionalism, 385–388
 as public moralist, 53–58
 on electoral reform, 57–58
as public moralist, *Eyre* case and, 54–57
 on Referendum Act, 379–385
 Reform Act and, 24–26
 rejection of organized religion, 30
 on religious discrimination, 29–30
 on rule of law. *See* rule of law
 on scientific approach to law, 58–64
 Sidgwick, H., and, 364–365
 Stephen, C. E., and, 18–19
 Stephen, L., and, 18–19
 as student-at-law, 52
 as tax lawyer, 72–74
 as textbook author, 81–84
A Treatise on the Rules for the Selection of the Parties to an Action, 64, 81–83, 130, 342–343
 in United States, 67–70
 university education for. *See* Oxford University
 on U. S. slavery, 378
 Dicey, Anne Mary, 17–18, 23–24

- Dicey, Edward James Stephen, 17
 Dicey, Elinor Mary, 111–112, 370, 376.
 See also Bonham Carter, Elinor Mary
 Dicey, Henry Thomas Stephen, 17
 Dicey, Thomas Edward, 16–18
 Digby, Kenelm, 87
Digest of the Criminal Law (Stephen, J. F.), 115
A Digest of The Law of England with reference to The Conflict of Laws (Dicey, A. V.), 154–155, 333–334, 342–343
 Austin and, legal positivism of, 334–339
 private international law in, 335–336
 disciplinary perspectives, on law, 85–92
 discursive legalism
 Anson on, 330
 conflict of laws in, 330–334
 constitutions in, 339–354. *See also* comparative constitutionalism
 legal codes in, 339–354
 Stephen, James, F., on, 330–331
 style of, 355–357
 union of law and letters in, 355–357
Doctor and Student (St German), 192
 Doderidge, John, 367–368
Dr. Bonham's Case (Coke), 190–192, 195–197
 Dreyfus, Alfred, 29
 Dreyfus affair, 29
droit administratif
 administrative law and, 299, 301, 314–316, 319–329
 public law and, 325–326
 subordination of, 321
 rule of law and, 243, 245–247
 in common law tradition, 242
 in nationalist critique, 231–233
 parliamentary sovereignty and, 215–216
 dualism, of parliamentary sovereignty, 215–216
 applications of, 181
 rejection of, 216
 Dudley, Robert, 193–194
 due process, 101–102
 Dugut, Léon, 319–320
 Dwight, Theodore, 83
 Dworkin, Ronald, 93, 230, 297, 369
 Dyzenhaus, David, 280, 294
Earl of Leicester's Case, 193–202
 electoral reform, 57–58
 labour class and, 58
Elements of Jurisprudence (Holland), 88–89
Elements of Politics (Sidgwick, H.), 181, 365
 Elgar, Edward, 397–398
 Eliot, Charles William, 67–69, 401, 403
 Elliott, Arthur, 13, 401
 Emden, Cecil, 313
 Emerson, Ralph Waldo, 67–68
 enforcement mechanisms, in law, 150, 161
England's Case Against Home Rule (Dicey, A. V.), 176–177
English Administrative Law (Gneist), 121, 304
English Constitution (Bagehot), 106
 'English Constitution,' 3–10
 'English law,' 90–91
 doctrine of, 199
The English Utilitarians (Stephen, L.), 41–42
Entick v. Carrington, 243–245
 equality, under rule of law, 229
 equity, common law and, 93–94
 Esmein, Adhémar, 49–50
 European law, rule of law in contrast with, 231–232
 Evangelicalism, 53–54
 Whig, 26–30, 35
 executive decrees, through legislative sovereignty, 294
 executive power, rule of law and, 249
 executive sovereignty, 286
 dimensions of, 214–215
 expounding, of constitutional law, 159
 Eyre, Edward, 54–57
Eyre case, 54–57

- Finch, Henry, 198
First Book of Jurisprudence (Pollock), 153
 flexible constitutions, 223–225
 parliamentary sovereignty and, 224–225
Florence Mining Co. v. Cobalt Lake Mining Co., 260, 290–291
A Fool's Paradise (Dicey, A. V.), 394–395, 400–401
 formal sovereignty, 182
 formalist critique, of rule of law, 234–235
 parliamentary sovereignty and, 234–235
 Forster, William Edward, 98
 Fortescue, John, 170–171
 Fraenkel, Ernst, 287
Fragment on Government (Bentham), 213–214
 France
 administrative law in, 319–329. *See also droit administratif*
 as judicial regime, evolution into, 322
 public law and, 323
 constitutionalism in, 345–347
 constitutional laws in, 1
 rule of law in
 failure of, 30
 nationalist critique of, 231–233
 Frankfurter, Felix, 300, 315–316
 Freeman, Edward, 105–107, 114, 135, 139–140, 169–170
 Dicey, A. V., and, 242, 331, 341
 on parliamentary legislation, 212
Freeman v. Fairlie, 15–16
 Fuller, Lon, 92–93, 230, 235
 Fyneaux, John, 171

 general rule of law, 233
 George, Lloyd, 29
 Gladstone, William, 35
 on Irish home rule, 125–126
 Glorious Revolution, 25–27
 Gneist, Rudolf, 120–122, 304
 on administrative law, 304–306
Godden v. Hales, 201–202

 Godkin, Edwin, 113–114. *See also The Nation*
 Goebel, Julius, 141–142
 Goodhart, Arthur, 271
 Goodnow, Frank J., 306
The Government of England (Hearn), 120, 242–243
 Government of Ireland Act, U. K. (1886), 176–178, 388, 392
 Green, Thomas Hill, 37, 40, 52, 181–182, 273–274
 idealist theory of morality, 364
 at Oxford University, 45–46
 Grey, Jane, 193–194
Growth of the English Constitution (Freeman), 106, 139–140

habeas corpus, 251–252, 255
 applications of, 261
 as prerogative writ, 302–303, 317–318
 suspension of, 98
Habeas Corpus Act, Britain (1679), 251–252, 255
 Hale, Matthew, 165–166
 Hallam, Henry, 95
 Harrington, James, 227
 Harrison, Frederic, 124–125, 134, 161
 Hart, H. L. A., 39–40, 88
 on law, definition of, 149
 on parliamentary sovereignty, 175
 Harvard Law School, Dicey, A. V., influenced by, 116–117
 Hatton, Christopher, 193
 Hauriou, Maurice, 232, 321–322, 360
 Hayek, Friedrich, 304–305
 Hearn, William Edward, 120, 164, 242–243
 Henry VIII (King), 218–219
 Heuston, R. F. V., 389–390
The High Court of Parliament (McIlwain), 217–218
 historical constitutions, 348–349
History of the English Constitution (Gneist), 121
 history of law, philosophy of, 62
 Hobart, Henry, 196
 Hobbes, Thomas, 173–174

- Holker, John, 70, 72
 Holland, Thomas Erskine, 34, 37, 43, 52, 77, 88–89
 jurisprudential view of constitution, 107–108
 as law professor, 110
 on sovereignty of state or ‘Commonwealth,’ 170
 Holmes, Oliver Wendell, Jr, 13, 21, 67–68, 83–84, 401
 The Common Law, 86–87, 89–90
 Dicey, A. V., and, 86–88, 90–91, 111, 330
 Holmes, Oliver Wendell, Sr, 67–68
 Holt, John, 196–197
 home rule. *See* Irish home rule
 Huxley, Thomas, 54
- idealist theory, of morality, 364
 ideological critique, of rule of law, 233–234
 administrative state and, 234
 laissez faire individualism and, 234
 as private law, 233
 Ilbert, Courtenay, 70, 330–331
 Incorporated Law Society, 76–77
 incorporation, of parliament, 171–173
 individualism. *See laissez faire* individualism
 Inns of Court, in London, 76
Institutes of the Lawes of England (Cowell), 238–239
 integrity, legality through, 295–298
 ‘intellectual aristocracy.’ *See* Victorian ‘intellectual aristocracy’
 international law, private, 81–83
 Intuitionism, 39–40, 362–363, 367
 Ireland
 abolishment of Irish Parliament, 175–176
 Acts of Union with Scotland and Ireland, 167–168, 208, 383, 390–391
 Dicey, A. V., on, 99–102
 Gladstone and, 125–126
 Government of Ireland Act, abolishment of Irish parliament under, 176–178, 388, 392
 home rule in. *See* Irish home rule
 Land Act, 98–102
 National Land League in, 97–98, 102
 parliamentary sovereignty in, 388–396
 Protection of Person and Property Act (Coercion Act), 98–102
 rule of law in, 397–404
 Irish home rule, 125–126, 393
 parliamentary binding of successors through, 209–210
 sovereignty and, 185–186
- Jackson, Andrew, 150
 Jacobites, 201
 Jamaica Committee, 54–55
 James, Henry, 308
 James, William, 12–13
 Jenkyns, Henry, 213–214
 Jennings, Ivor, 33, 74, 181–182
 Jhering, Rudolph von, 101
 Jowett, Benjamin, 36–37, 110–111
 ‘Jowett’s Walk’, Oxford University, 36–40
 judge-made law, 152–153, 158–159
 legislation through, 155–156
 judges
 role in legal sovereignty, 189
 role in parliamentary sovereignty, 163–165
 jurisprudence
 Austin and, 61–62, 131–132, 160–161
 analytical approach, 141
 circular, 361–367
 constitution and, 107–108
 historical, 141, 151–152
 law and, 85–92
 Utilitarian theory in, 86
 jurisprudential perspectives, on law, 85–92
 Utilitarian theory in, 86
- Keith, A. Berriedale, 335
 Kenyon, John Robert, 78
 as law professor, 110
 Kipling, Rudyard, 397–398

- Laferrière, Édouard, 320
laissez faire individualism, 40
 in common law tradition, 362
 in ideological critique of rule of law, 234
- Land Act, Ireland (1881), 98–102
- Langdell, Christopher Columbus, 67–68, 111
- Laski, Harold, 21, 131, 170, 299, 320, 360, 376
 Dicey, A. V. and, 388
- law. *See also* civil law traditions;
 common law traditions;
 constitution as law;
 constitutional law; *specific topics*
 for Austin, 160–161
 comparative public, 169–170
 conflict of, *Domicil of Law*, 81–84
 content-based theory of, 156–157
 Dicey, A. V., on, 149–151
 courts and, 158–159
 definitions of, 149–151, 158–159
 enforcement mechanisms, 150, 161
 legal principles for, 154–155
 as remedy-based, 151
 rules as element of, 150
 science of law, 81
 disciplinary perspectives on, 85–92
 due process of, 101–102
 ‘English law,’ 90–91
 doctrine of, 199
 Hart on, 150
 judge-made, 152–153, 158–159
 legislation through, 155–156
 jurisprudential perspectives on, 85–92
 Utilitarian theory in, 86
- natural
 Dicey, A. V., and, 59–61
 political morality and, 39
 Pollock on, 156–157
- pervasiveness of, 371
 principles of, 154–155
 as ‘rule of recognition,’ 175
 Salmond and, 149
 science of, 58–64
 Dicey, A. V., on, 81
- ‘supremacy of law,’ in Britain, 96–97, 101
 ubiquity of, 371
 unity of, 371
- Law and Custom of the Constitution* (Anson), 132
- Law and Public Opinion* (Dicey, A. V.), 14, 19, 42–43, 155, 342–343
- The Law of Domicil* (Dicey, A. V.), 78, 130, 331–332
 codification of common law in, 81–83
 conflict of laws in, 81–84
 legal legacy of, 84
 private international law in, 81–83
- The Law of Legislative Power in Canada* (Lefroy), 353–354
- Law of the Constitution* (Dicey, A. V.), 1–4, 92. *See also* constitution as law; rule of law; *specific topics*
 Anson and, 132–133
 Bryce and, 264–266
 Chapter 13, importance of, 285–295
 Florence Mining Co. v. Cobalt Lake Mining Co., 290–291
 Smith v. City of London, 290–291
 Zadig case in, 287–290
 coding of formal legal rules in, 133
 components and structure of, 127
 revisions in, 128
 criticism of, 124–125
 discourse in, 33
 ‘English Constitution,’ 3–10
 Gladstone support of, 125–126
 later editions of, 127–129
 structural revisions in, 128
 law of constitution as subject matter of, 131–134
 analytical approach to, 131
 legal purpose and function of, as textbook, 129–131
 parliamentary sovereignty in, 104–105, 127, 206–208
 as personal work, 33
 Pollock as influence on, 153
 principles of constitutional law in, 133–134
 rule of law in, 104–105, 127

- ‘supremacy of law’ in, 96–97
- twelve decisive paragraphs in, 264–266
- writing of, 122–124
- Law Quarterly Review*, 116
- Lawson, F. H., 129
- Lawson, George, 184–185
- A Leap in the Dark* (Dicey, A. V.), 185–186
- Lefroy, A. H. F., 156, 353–354
- legal constitutionalists, 140
- legal formalism, of lawyers, 139
- legalism. *See* discursive legalism
- legality. *See also* law
 - constitutionalism and, 369–370
 - culture of, 295–298
 - Dicey, A. V., on, 101, 103
 - through integrity, 295–298
 - interpretation process in, 283
 - political structures and, 101
 - rule of law and
 - in common law tradition, 236–247
 - old morality of, 256–257
 - social structures and, 101
 - sovereignty and, as equal principles, 262–264
 - for Whigs, as ideal, 28
- legal literature. *See also specific works*
 - Dicey, A. V., on, 58–64
 - natural law and, 59–61
 - positivist school of, 61–63
- legal method
 - constitution as law and, 139
 - constitutional law and, 159–161
- legal perspectives, on constitution as law, 144
- legal positivism, 60–61
 - Dicey, A. V., on, 6, 61–63, 115, 137
 - in legal literature, 61–63
 - moral law and, 204–206
 - parliamentary sovereignty and, 175
 - state and, 204–206
 - Stephen, L., on, 204–206
- legal sovereignty, 179–193
 - Austin on, 179–180
 - civil as distinct from, 187
 - as conditioned sovereignty, 187–193
 - judicial role in, 189
 - parliamentary sovereignty as, 178–193
 - Blackstone on, 214–215
 - manifestations of, 212–213
 - scope of, 212
 - political sovereignty as distinct from, 179–187
 - Sidgwick, H., on, 180–182
 - voided statutes and, 192–202
- The Legal Sufferings of the Jews in Russia* (Dicey, A. V.), 29–30
- legal theory, parliamentary sovereignty in, 217–219
- legal tradition
 - contestation of, 3
 - political structures and, 101
 - social structures and, 101
- legal turn of mind, 5
- legal writing and discourse. *See* discursive legalism
- legislation
 - through judge-made law, 155–156
 - through parliament, 186
 - Freeman on, 212
 - Tocqueville on, 222–223
 - rule of law and
 - formality of legislative acts, 267–268, 272–273, 281
 - substance of legislative acts, 268–270, 272–273, 281
- legislative sovereignty, 286
 - executive decrees through, 294
- Lester, Anthony, 389
- Lewis, George Cornwall, 270–284, 286–287
- Lex Parliamentaria*, 200–202
- Liberal alliance, 35
- liberalism. *See* academic liberalism
- Liberty, Equality, Fraternity* (Stephen, J. F.), 41–42
- liberty, under rule of law, 228–229
- liberty ideals, of Whigs, 28
- The Limits of Jurisprudence Determined* (Austin), 59–60
- Lindsay, A. D., 179
- Longfellow, Henry Wadsworth, 67–68
- Loughlin, Martin, 137, 186, 240–241
- Lucas, C. P., 376

- MacCormick, Neil, 297
- Maine, Henry Sumner, 59–63, 77, 89–90, 339, 380–381
 on English case law, 151–152
 on historical jurisprudence, 141, 151–152
 as law professor, 110
 on parliamentary sovereignty, 188
 philosophy of history of law, 62
- Maitland, Frederic, 13–14, 19, 49–50, 133, 141
 on administrative law, 306–307
 on corporation, Parliament as, 172
 on Roman law, in Britain, 237
- mandamus* cases, in administrative law, 306–314
- mandamus* writs, 302–303, 317–319
- Marbury v. Madison*, 350–351
- Marshall, Geoffrey, 140, 161
- Marshall, John, 150, 350–351
- martial law, 277–279
- McIlwain, Charles Howard, 49–50, 182, 217–218
- McLean, Iain, 389–390
- The Methods of Ethics* (Sidgwick, H.), 362–364
- Mill, John Stuart, 41, 53–54, 61, 272–273
 on administrative law, 301–302
 on Austinian jurisprudence, 131–132, 160–161
 critique of Intuitionism, 367
 Dicey, A. V., influenced by, 40–44, 86, 362
 Jamaica Committee and, 54
 on Utilitarianism, 41
- Milner, Alfred, 397–398
- monarchy, parliamentary sovereignty through, 212–215
- monism, parliamentary sovereignty and, 216–217
- moral law
 legal positivism and, 204–206
 theory of, 368–369
- moralism
 political, in Britain, 39–40
 public
 electoral reform and, 57–58
- Eyre* case and, 54–57
- morality
 constitution as law and, 135–136
 of constitutions, 174
 idealist theory of, 364
 old, rule of law as, 256–258
 of legality, 256–257
 of sentiment, 256
 political, in Britain, 39–40
- Morant Bay Uprising, 54–57
- The Nation*, 80, 92, 113–114
- national chauvinism, 231, 245–246
- nationalism, common law tradition influenced by, 238
- nationalist critique, of rule of law, 231–233
droit administratif and, 231–233
 in France, 231–233
 national chauvinism as foundation of, 231, 245–246
- National Land League, 97–98, 102
- natural law
 Dicey, A. V., and, 59–61
 political morality and, 39
 Pollock on, 156–157
- natural rights, political morality and, 39
- necessity, doctrine of, 278
- Newman, William Lambert, 36
- New Zealand, Treaty of Waitangi and, 20
- Nichol, John, 37, 113
- Nightingale, Florence, 71
- non-historical constitutions, 348–349
- normative justification, of
 parliamentary sovereignty, 221–225
 conventions of constitution, 221–222
 parliamentary democracy and, 222
 representative democracy and, 222
- ‘Old Mortality Society,’ 37–38
- On Liberty* (Mill), 41
- ordinary law, supremacy of
 in Britain, 2
 parliamentary sovereignty and, 226–227
 rule of law as. *See* rule of law

- ordinary legal perspective, 1, 5,
 101–102, 159–161, 175, 178
- organized religion, Dicey, A. V., and,
 rejection of, 30
- Oxford Union, 38–39
- Oxford University
 aristocracy at, as finishing school for,
 34
- Dicey, A. V., at
 at Balliol College, 34–37
 delayed matriculation to, 34
 on doctrine of *laissez faire*
 individualism, 40
 Green and, 45–46
 as law professor, 110–122. *See also*
 Dicey, Albert Venn
 Liberal alliance and, support for,
 35
 literary works of, on English
 constitution, 46–50
 Mill's essays as influence on,
 40–44
 in Oxford Union, 38–39
 'The Privy Council', 47–50
 Radicalism and, embrace of, 35
 Whig Evangelicalism and, 35
- Jowett at, 36–37
 'Jowett's Walk', 36–40
 law students at, 44
 'Old Mortality Society' at, 37–38
 Reform Act and, 35
 theological debate at, 34–35
 over Church of England, 35
- Paine, Thomas, on constitution as law,
 136–137
- Paley, William, 93
 on constitution as law, 136–137
- Palmer, Roundell, 76
- Parke, James, 283
- Parker, Edmund, 324–325
- parliament
 abolishment of, in Ireland, 175–176
 Government of Ireland Act and,
 176–178, 388, 392
 under Acts of Union with Scotland
 and Ireland, 167–168
 binding of successors by
 under common law, 211–212
 on constitutional law, 208–212
 through Irish home rule, 209–210
 body politic and, 171–175
 under common law, 168–169,
 172–173, 175
 binding of successors, 211–212
 in comparative public law, 169–170
 under constitutional law, 168
 in constitutional theory, 178
 definition of
 for Blackstone, 166–167
 for Dicey, A. V., 162, 165–166
 legal, 165
 incorporation of, 171–173
 as legal concept, 165–178
 in legal theory, 169
 as legislative body, 186
 Freeman on, 212
 Tocqueville on, 222–223
 United Kingdom and, creation of
 new state, 174
- Parliament Act, Britain (1911),
 165–166, 388
- parliamentary democracy, 222
- parliamentary sovereignty, 104. *See also*
 sovereignty
 acts of indemnity and, 276, 279–280,
 293
- Acts of Union with Scotland and
 Ireland and, 208
- Austin on, 162, 179–180
- authority as distinct from, 185
- Bentham on, 162
- Blackstone on, 189–190
- in common law tradition, 162–163,
 199–201
- constitutionalism and, 372–373
 common law and, 373
- constitutional law and, 226–227
- Dentists Act and, 208
- dualist elements of, 215–216
 applications of, 181
 rejection of, 216
- flexible constitutions and, 224–225
- in *Godden v. Hales*, 201–202
- Hart on, 175
- judges' role in, 163–165

- parliamentary sovereignty (cont.)
 through King or Queen, 212–215
 in *Law of the Constitution*, 104–105, 127, 206–208
 as legal concept, 212–221
 legal positivism and, 175
 legal power of, 165
 as legal sovereignty, 178–193
 Blackstone on, 214–215
 manifestations of, 212–213
 scope of, 212
 in legal theory, 217–219
 legislative elements of, 165
 in *Lex Parliamentaria*, 200–202
 limitations on
 external, 202–208
 internal, 202–208
 lack of, 165
 Maine on, 188
 monism and, 216–217
 negative aspects of, 163
 normative justification of, 221–225
 conventions of constitution, 221–222
 parliamentary democracy and, 222
 representative democracy and, 222
 under Parliament Act, 165–166
 as political sovereignty, 178–193
 positive aspects of, 163
 rigid constitutions and, 224–225
 rule of law and, 213, 262–264
 as complementary legal principles, 296
 droit administratif and, 215–216
 as exercise of parliamentary sovereignty, 275–285
 favouring of, 266–275
 in formalist critique, 234–235
 through formality of legislative acts, 267–268, 272–273, 281
 through substance of legislative acts, 268–270, 272–273, 281
 Simpson on, 163
 Wade on, 163, 175
 Parnell, Charles, 97
Parties to Actions (Dicey, A. V.), 81–83, 130, 342–343
 Pattison, Mark, 78
 pervasiveness of law, 371
 Petition of Right, Britain (1628), 241–242, 349
 pleading, codification of, in common law, 64
 Plowden, Edmund, 171–172
 political morality, in Britain, 39–40
 Intuitionism and, 39–40
 natural law and, 39
 natural rights and, 39
 Utilitarianism and, 39–40
 political perspectives, on constitution as law, 144
 political sovereignty, parliamentary sovereignty as, 178–193
 political structures, legality and, 101
 political theory, constitution as law in, 135–136, 142–144
Politica Sacra & Civilis (Lawson, G.), 184–185
 Pollock, Frederick, 11, 13, 30, 111, 290, 333–334
 on common law, 156–158
 on content-based theory of law, 156–157
 Dicey, A. V., and, 153, 156, 338
 on natural law, 156–157
 on sovereignty, 182
 positive law. *See* legal positivism
 positivism. *See* legal positivism
 Pound, Roscoe, 342–343
 practical sovereignty, 182
 prerogative writs, 301–304
 certiorari, 303–304, 317
 habeas corpus, 302–303, 317–318
 mandamus, 302–303, 317–319
 prohibition, 302–303, 317
 public law and, as legal remedy, 316–317
 quo warranto, 302–303, 317
 private international law, 81–83, 335–336
 private law, rule of law and, 250–251
 ideological critique of, 233
 Privy Council, 146–148
 formation of, 146–147
 function and purpose of, 146–147, 147–148, 147–148

- The Privy Council* (Dicey, A. V.),
 47–48, 97
 academic influence of, 49–50
 prohibition writs, 302–303, 317
 Protection of Person and Property Act
 (Coercion Act), Ireland (1881),
 98–102
 Prussian constitutionalism, 385–388
 public law
 administrative law and, 305–306
 droit administratif and, 325–326
 in France, 323
 prerogative writs and, as legal
 remedies, 316–317
 comparative, 169–170
 rule of law and
 in common law tradition, 239–241
 regulatory challenges for, 249
 for Whigs, 249
 public moralism, Dicey, A. V., and,
 53–58
 on electoral reform, 57–58
 Eyre case and, 54–57
- quo warranto* writ, 302–303, 317
- Radicalism, 35
 Rait, Robert S., 69–70, 377
 rational approach, to constitution as
 law, 139, 148
 Rawls, John, 363–364
 Raz, Joseph, 92–93, 230, 297
 Referendum Act, U. K. (1890), 379–385
 Reform Act, Britain (1832), 24–26, 35,
 57
 Reform Act, Britain (1867), 57
 religious discrimination, 29–30
 remedy-based law, 151
 representative democracy, 222
Representative Government (Mill), 272–273
Rex v. Cockerton, 328
 Riddell, W. R., 260
 rigid constitutions, 223–224
 parliamentary sovereignty and,
 224–225
 Robson, William, 315
 Roman law, in Britain, 237
 royal absolutism. *See* absolutism
 rule of law, 48, 97, 103–104
 administrative law under, 321
 in Britain, 2, 233
 in civil law tradition, 236–247
 as academic subject, 239
 Coke on, 144
 in common law tradition, 235–258
 Bacon and, 240, 246–247
 under Bill of Rights, 241–242
 Coke on, 238, 246–247
 droit administratif and, 242
 English constitutionalism and, 236
 legality in, 236–247
 nationalism as influence on, 238
 under Petition of Right, 241–242
 public law and, 239–241
 comparative constitutionalism and,
 345
 constitution as law and, 144
 constitutionalism and, 92–94, 373
 English, in common law tradition,
 236
 constitutional principles under, 229
 critiques of, 231–235
 formalist, 234–235
 ideological, 233–234
 nationalist, 231–233, 245–246
 denial of, 261
droit administratif and, 243, 245–247
 in common law tradition, 242
 in nationalist critique, 231–233
 parliamentary sovereignty and,
 215–216
 equality under, right to, 229
 European law in contrast with,
 231–232
 formalist critique of, 234–235
 parliamentary sovereignty and,
 234–235
 in France, 233
 failure of, 30
 nationalist critique of, 231–233
 general, 233
habeas corpus and, 251–252, 255
 ideological critique of, 233–234
 administrative state and, 234
 laissez faire individualism and, 234
 as private law, 233

- rule of law (cont.)
 in Ireland, 397–404
 in *Law of the Constitution*, 104–105, 127
 in legal and political literature, 227
 legality and
 in common law tradition, 236–247
 old morality of, 256–257
 legislation and
 formality of, 267–268, 272–273, 281
 substance of, 268–270, 272–273, 281
 Lewis on, 286–287
 liberty under, right to, 228–229
 nationalist critique of, 231–233
droit administratif and, 231–233
 in France, 231–233
 national chauvinism as foundation of, 231, 245–246
 as old morality, 256–258
 of legality, 256–257
 of sentiment, 256
 parliamentary sovereignty and, 213, 262–264
 as complementary legal principles, 296
droit administratif and, 215–216
 favouring of rule of law by, 266–275
 in formalist critique, 234–235
 through formality of legislative acts, 267–268, 272–273, 281
 rule of law as exercise of, 275–285
 through substance of legislative acts, 268–270, 272–273, 281
 private law model of, 250–251
 in ideological critique, 233
 public law and
 in common law tradition, 239–241
 regulatory challenges for, 249
 for Whigs, 249
 for Stephen, J., 2
 suspension of rights and, 253
 theoretical approach to, 228–231
 in welfare states, 247–248
 for Whigs, 247–255
 executive power issues for, 249
 public law discourse and, 249
 rules, of law, 150
 in common law
 codification of, 149
 formal legal rules, 133
 Dicey, A. V., on, 150
 as ‘rule of recognition,’ 175
- Salmond, John W., 149
 Sargent, John Singer, 17
 Schmitt, Carl, 276, 280
The Science of Ethics (Stephen, L.), 202–206
 scientific approach to law, 58–64
 scientific of law, 58–64
 Dicey, A. V., on, 81
 Scotland, Acts of Union with Scotland and Ireland, 167–168, 208, 383, 390–391
 Septennial Act, Britain (1716), 210
 Sidgwick, Henry, 32, 52, 181, 362–365
 Dicey, A. V., and, 364–365
 on legal sovereignty, 180–182
 Sidgwick, Nora, 32
 Sieyès, Emmanuel Joseph, 176–184
 Simpson, A. W. B., 163
 Skinner, Quentin, 173–174
 Slave Abolition Act, Britain (1833), 16
 Slave Trade Act, Britain (1807), 15–16
 Smith, Ellen, 36–37
 Smith, Goldwin, 44, 54, 57, 67–68, 259–260
 Smith, Henry, 36–37
Smith v. City of London, 260, 290–291
 social structures, legality and, 101
 ‘social tissue,’ 204
 sovereignty. *See also* legal sovereignty; parliamentary sovereignty
 Anson on, 215
 Austin on, 86
 civil, 187
 classical theory of, 186–187
 conditioned, 187–193
 through constituent power, 184–185
 constitutionalism and, 369–370
de facto, 180, 182
de jure, 180–182
 executive, 286

- dimensions of, 214–215
 - executive dimensions of, 214–215
 - formal, 182
 - Irish home rule and, 185–186
 - legal. *See* legal sovereignty
 - as legal concept, 178–212
 - legality and, as equal principles, 262–264
 - legislative, 286
 - executive decrees through, 294
 - political, 178–193
 - legal sovereignty as distinct from, 179–187
 - Sidgwick, H., on, 180–182
 - Pollock on, 182
 - practical, 182
 - Sieyès on, 176–184
 - of state or ‘Commonwealth,’ 170
 - voided statutes
 - common law conception of, 193–202
 - Earl of Leicester’s Case*, 193–202
 - under legal sovereignty, 192–202
- state
 - authority of, positive law and, 204–206
 - Stephen, L., on, 204–206
 - modern concept of, 173–174
 - Statute Law* (Wilberforce, E.), 282
 - statutes. *See* voided statutes
 - Stephen, Caroline Emilia, 17–19
 - Stephen, Henry John, 44, 52, 64
 - Stephen, James, 14–18, 56
 - as abolitionist, 15
 - as constitutional lawyer, 20
 - rule of law for, 2
 - Slave Abolition Act and, 16
 - Slave Trade Act and, 15–16
 - Treaty of Waitangi and, 20
 - Stephen, James Fitzjames, 41–42, 54, 56, 60–61, 65, 115
 - on Austinian jurisprudence, 131–132
 - on legal writing, 330–331
 - Stephen, Leslie, 30, 41–42, 54, 57, 113, 402–403
 - The Science of Ethics*, 202–206
 - on ‘social tissue,’ 204
 - on state authority, legal positivism and, 204–206
 - Woolf, V., and, 17–19, 22–23
- St German, Christopher, 192
- Strachey, John St Loe, 287–288, 402
- Stuart, Charles, 141–142
- Stubbs, William, 95, 237
- Sugarman, David, 130
- ‘supremacy of law,’ in Britain, 96–97, 101. *See also* ordinary law
- Supreme Court of Canada, 144
- suspension of rights, under rule of law, 253
- Swinburne, Algernon, 37
- tax law, 72–74
- theory of truth, 374–375
- Thompson, Frederic, 77
- Tierney, Stephen, 186
- Tocqueville, Alexis de, 222–223
- Tories, 24–26
 - in reform movements, 35
- Traill, Henry, 304
- A Treatise on the Rules for the Selection of the Parties to an Action* (Dicey, A. V.), 64, 81–83, 130, 342–343
- Treaty of Waitangi, New Zealand (1840), 20
- Triennial Act, Britain (1694), 210
- truth. *See* theory of truth
- ubiquity of law, 371
- U. K. *See* United Kingdom
- United Kingdom (U. K.). *See also* Britain; Ireland; parliament; parliamentary sovereignty; Scotland
 - Acts of Union with Scotland and Ireland, 167–168, 208, 383, 390–391
 - constitution as law in, 1, 3–10
 - as history, 135–136
 - as law of Britain, 10
 - constitutional laws in, 1, 3–10
 - as law of Britain, 10
 - creation of, as act of Parliament, 174
 - Dentists Act, 208

- United Kingdom (U. K.). (cont.)
 Government of Ireland Act,
 176–178, 388, 392
 through parliament, as creation of
 new state, 174
 Referendum Act, 379–385
- United States (U. S.)
 Bryce in, 67–70
 constitutionalism in, 349–351
 Dicey, A. V., in, 67–70
 unity of law, 371
 U. S. *See* United States
- Utilitarianism, 35, 39–40, 53–54
 Intuitionism and, 362–363
 in jurisprudential perspectives on
 law, 86
 Mill on, 41
- Venn, John, 15, 30, 43, 401
- Victorian ‘intellectual aristocracy,’
 14–19, 359–360
- Viner, Charles, 198
- voided statutes
 common law conception of, 193–202
Earl of Leicester’s Case, 193–202
 legal sovereignty and, 192–202
- Wade, Emlyn C. S., 129, 134, 137, 396
- on parliamentary sovereignty, 163,
 175
- Weill, Rivka, 389–390
- welfare states, rule of law in, 247–248
- Whewell, William, 39–40, 367. *See also*
 Intuitionism
- Whigs, 24–26
 character elements of, 26–27
 constitutionalism for, 373
 Evangelical, 26–30
 at Oxford University, 35
 interpretation of constitution, as
 concept, 105–106
 legality ideals of, 28
 liberty ideals of, 28
 in reform movements, 35
 rule of law for, 247–255
 executive power issues for, 249
 public law discourse and, 249
- Wilberforce, Edward, 282
- Wilberforce, Sarah, 16
- Wilberforce, William, 15
- Wood, Thomas, 198
- Woolf, Leonard, 19
- Woolf, Virginia, 17–19, 22–23
- Zadig, Arthur, 261
- Zadig* case, 287–290