

Index

- Alexy, Robert, 57
- Bayly, C. A., 102, 120
- Bentham, Jeremy, 12, 19, 96, 136
 affect on international law theory, 152–55
- Berlin, Isaiah, 15, 16, 24
- Berman, Harold, 14, 17, 32, 39, 105
- Berman, Paul, 176
- Bigelow, Melville, 12
- Bix, Brian, 1, 14, 36, 68, 71, 73
- Blackstone, William, 136, 152, 154
- Brierly, J. L., 152
- Bryce, James, 13
- Cardozo, Benjamin, 25
- Carter, James, 39
- Cassese, Sabino, 175
- chiefdoms, 86–89
- Claessen, Henri, 94
- Cohen, Felix, 40
- Cohen, Morris, 25, 30, 97, 129, 141
- Coleman, Jules, 37, 57, 61
- concept of law
 a posteriori, 63–64
 a priori, 62–63
 Bentham theory of, 154
 central case of, 71–73
 conventionalist identification of, 73–77, 194
 Ehrlich version of, 40
 force an element of, 64–65
 form and function combination, 40–41
 functionalist analysis inadequate, 48
 Hart version of, 44–45
 Hoebel version of, 89
 intuition based, 42–43
 Malinowski version of, 41, 44
 overinclusiveness of, 43–46
 Raz version of, 105
 refutation of, 77–80
 Shapiro version of, 45
 state based, 40–41, 42, 72, 91–92, 105
 three categories of, 39–42, 194
 underinclusiveness of, 46–47
 Weber version of, 41
- conventionalist identification of law, 73–77, 194
 four stages involving, 73–74
 inevitability of, 76
 translations of, 74–75
- Cotterrell, Roger, 29
- courts
 as case processing organizations, 142–46
 developmental view of, 8
 diffusion of cases to private arbitration, 144–45
 financial barrier to access, 145
 vanishing trials, 143–46
- Dewey, John, 2, 32, 34, 96
- Diamond, Stanley, 89
- Dickinson, Edwin, 187
- Dickson, Julie, 57, 64, 80
- Durkheim, Emile, 15
- early states, legal coverage, 98–101
- Ehrlich, Eugen, 22–23, 40, 136
- Elliott, Donald, 21, 27
- enabling acts, 46, 122
- European Union, 172
 legal pluralism of, 107
 sovereignty questions about, 161–62
- evolution of society and law, 5–6, 18–19, 117, 194–95
- Federal Reserve Bank, 125–26
- Finnis, John, 1, 32, 71
- form contracts, ubiquity of, 139–41
- Fried, Morton, 89
- Friedman, Lawrence, 29, 33, 110, 116

- Fuller, Lon, 13, 28, 120, 124–25
 functional analysis
 cannot identify law, 47–48
 form and function combination, 40–41, 44–45
 functional categories, 47–48
 functional equivalents or alternatives, 43
 overinclusiveness of, 43–46
 repetition of functional arrangements, 43
 social artifacts, 59
 social order function of law, 40, 44
 underinclusiveness of, 46–47
- Galanter, Marc, 45, 50, 116, 143–45
 Galligan, Denis, 79
 Gardner, John, 45, 57, 68, 75, 77, 105
 Giudice, Michael, 63–64, 69
 Gluckman, Max, 89
 Gordon, Robert, 27, 137
 government uses of law, three versions of, 128–31,
 132–34
 Green, Leslie, 64, 65, 73, 77, 80, 100
 law and morality, 100, 104
 universalism of, 69–70
 Griffiths, John, 50
 Grotius, Hugo, 112, 155, 160
- Habermas, Jurgen, 91
 Halliday, Terrence, 178
 Hart, H. L. A., 38, 41, 91, 104, 136, 152, 154
 flexible view of law, 63, 92
 international law analysis, 180–83
 natural law minimum content of, 99
 other forms law not consider, 72
 primary and secondary rules, 45, 90, 121, 124
 separation thesis, 35
 social control function of law, 121
 social legal theory differences from, 149–50
 unified vision of state law, 181
 Hayek, Friedrich, 132, 134–38
 Himma, Kenneth, 62
 historical jurisprudence
 contemporary acceptance of, 27
 critique of natural law, 13–14
 fading of, 21–22
 Holmes compatibility with, 21
 Jhering contribution to, 20
 Maine contribution to, 18–19
 Montesquieu insight, 16–17
 prominence of, 12
 Savigny contribution to, 17–18
 sociological jurisprudence continuity with, 22,
 23–24
 Hoebel, Adamson, 88–89
 Holmes, Oliver Wendell, 9, 20–21, 23, 70, 138, 182
- Hume, David, 4, 15, 96
 hunter-gatherers, 84–86
- international law
 developing countries critique of, 159, 164–65
 dualist and monist theories of, 187–89
 European origins, 155–57
 global extension of, 158–59
 international jurists shape, 163–64, 182–83
 not unified and hierarchical, 183–87
 organizations role in, 172–74
 public–private divide, 153–54
 sovereignty, changes in concept of, 160–63
 spread through imperialism, 157–58
 state law intermingled with, 187–91
 three slants in, 163–67
 transnational law distinguished, 180, 191–93
 treaties as products, 185–86
 why is form of law, 180–83
- Jackson, John, 175
 James, William, 2, 81
 Jhering, Rudolph von, 19–21, 97, 138
 judicial modification of law, 22, 25, 26
- Kant, Immanuel, 91
 Kelley, Donald, 135
 Kelly, J. M., 13
 Kelsen, Hans, 30–31, 40, 188
 Kingsbury, Benedict, 175
 Krisch, Nico, 175
- law and domination, 6–7, 94–97, 100, 103–4,
 137–38, 164–66
 law and empire, 101–5
 law and inequality, 6–7, 93–98
 legal culture
 international jurists, 157, 163–64, 182–83, 197
 professional legal culture, 110–13, 197
 legal fabric of society, five factors of, 139–42
 legal formalism, 112–13
 legal instrumentalism
 contribution to legal fabric, 141
 of Jhering and Bentham, 19
 views of international law, 166–67
 World War 1 uses of, 133–34
 legal pluralism, 49–51
 conflation with rule systems, 50–51
 contemporary state of, 108–9
 global level, 176
 medieval period, 105–6
 multiple conventionally recognized law, 54–56
 of European Union, 107
 result of colonization, 103

- legal realism, 2, 24–26
 legal rules of social intercourse, 127–28, 132, 142
 legal system
 conflation with rule system, 48–51
 separation of law and legal system, 91–92
 Lips, Julius, 84
 Llewellyn, Karl, 23, 25, 88, 113, 141
 Luhmann, Niklas, 44
- MacCormick, Neil, 29, 55, 107
 Maine, Henry, 13, 18–19, 139
 Malinowski, Bronislaw, 41
 Marmor, Andrei, 12, 92
 Mead, George Herbert, 2, 9, 32, 33
 Montesquieu, Baron de, 4, 13, 14, 18, 24, 27, 29, 33
 connection to historical and sociological jurisprudence, 24
 holistic theory of law, 14–16
 Moore, Sally Falk, 84
- natural law
 contribution to international law, 155–56
 diversity of, 29
 dormancy of, 12–13
 historical jurisprudence critique of, 13–14
 Minos discussion of, 41–42
 sociological perspective of, 33–35
 universalism of, 70–71
 natural necessity and law, 64, 99, 132, 195–96
- Oakeshott, Michael, 24, 36
 Onuma, Yasuaki, 159
 Oppenheim, Lassa, 41, 153, 188
- organizations
 bureaucratic structure of, 119
 contribution to legal fabric, 139–41
 courts as case processing, 142–47
 international matters, 172–74
 modern rise of, 118–19
 private carry out legal functions, 147
 private incorporation of legal features, 147
 uses of law by, 120
- Petersmann, Ernst-Ulrich, 175
 politics, interaction between and across
 contemporary situation, 171–72
 early history of, 167–71
 Pollock, Frederick, 9, 13, 21, 112, 182
 Pound, Roscoe, 12, 23, 24, 35, 39, 156
 pragmatism, 1, 2–3, 81
 Priel, Danny, 71, 78
 primitive law, 85–86, 88–93
- property rights
 chiefdoms, 87–88
 early states, 99
 hunter-gatherers, 85–86
 legal pluralism of, 55–56
 variation across societies, 127
 public–private international law divide
 flaws of, 153
 origin of, 152–53
- Raustiala, Kal, 161, 174
 Raz, Joseph, 40, 42, 91, 106
 conflation of legal system and rule system, 49–51
 legal pluralism of, 48–50, 68
 necessary features of social artifacts, 58–62
 not *a priori*, 63–64
 paradox of, 67–68
 universalism of, 1, 57, 65–69
 realism, three meanings of, 2
 Roman law, spread of, 110–12
 Rubin, Edward, 118, 124
- Savigny, Friedrich von, 13, 17–18, 39
 Schauer, Frederick, 64–65, 73, 76
 Searle, John, 50–53, 60, 92
 constitutive and regulative rules, 51–53
 Shaffer, Gregory, 178
 Shapiro, Scott, 36, 42, 45, 57, 71, 74, 84, 91, 104, 106, 121
 Simpson, A. W. B., 9
 Slaughter, Anne-Marie, 154, 174, 187
 Smith, Adam, 4–9, 33, 96, 133, 139
 government preservation, 6–7
 impartial spectator, 4, 5, 9
 judicial evolution, 8
 law and inequality, 6, 7
 law favors husbands over wives, 7
 natural response, 5
 stages of society, 5–6
 Snyder, Francis, 176
 social artifacts, 58–61
 multifunctionalism of, 46–47
 social legal theory, 27, 30, 33
 branch of jurisprudence, 27–30
 contrast with analytical and natural law, 30–32
 evolutionary view of law, 117, 194–95
 excluded from jurisprudence, 36–37
 social view of theories, 32–35
 social life, requirements of, 82–84
 sociological jurisprudence, 21–24
 state law
 as abstract category, 178–79
 as systems of rules, 120–21
 consolidation not complete, 108–9

- state law (cont.)
 consolidation of, 107–8
 distinguished from rule systems, 51–54
 international law intermingled with, 187–91
 international law, not parallel category, 178–80
 law of nations part of, 154–55
 multifunctionalism of, 46–47, 128–31
 not involving rules or social ordering,
 122–24
 unified vision of, 105, 181
 United States growth of, 114–16
- Stein, Peter, 4, 16, 111
- Stewart, Richard, 175
- Stone, Julius, 29, 30, 183
- Teubner, Guenther, 176
- theories of law
 distinguished from background beliefs, 27–29
 social consequences of, 33–35
 social influences on, 32–33
 three branches of, 12, 30–32, 36–37
- Thomasson, Amie, 59–60, 70
- trade, history of, 167–70
- transnational law and regulation, 174–78
 category as social space, 180, 191–193
 global administrative law, 175
 global legal pluralism, 176
 historical precursors of, 168–71
 international economic law, 175–76
 international law distinguished, 191–93
 organizations role in, 172–74
 private actors involvement in, 177–78
 transgovernmental networks, 174–75
- treaties
 constitutive versus products, 185–86
 contrary to unified system, 185–87
 cumbersome and limited, 192
- Treaty of Westphalia, 108, 156
- Trigger, Bruce, 94
- Twining, William, 29, 48, 68
- Unger, Roberto Mangabera, 26
- Vattel, Emerich de, 160
- Vinogradoff, Paul, 21, 23
- Wacks, Ramond, 36
- Waldron, Jeremy, 72, 79, 126, 181
- Walker, Neil, 107, 178, 193
- Watson, Alan, 110
- Webber, Gregoire, 71–72, 74
- Weber, Max, 33, 51, 97, 105, 112, 119