

INDEX

- academic jurists
 alignment of law with other disciplines, 103
 Continental expulsions of religious orders affecting development of, 102
 Continental jurisprudence, lack of true legal philosophy in, 102, 103, 104–7
 in England, 9, 10, 24, 28, 127–34, 214
 English private codification efforts by, 204, 215–19, 224
 in France, 104–6, 119
 in Germany, 9, 10, 27, 110, 187
 harmonisation/Europeanization of private law and, 270–80
 United States, influence in, 28
 on welfare law, 94
 Alexy, R., 117
 Allbutt, Thomas, 237
 Allen, C. K., 132, 134
 America. *See* United States
 American Legal Realism, 23–4, 132, 145
 Amos, Sheldon, 216
 analytical jurisprudence
 Continental, 115–19
 English, 127–34, 139
Anns v. Merton London Borough Council, 29, 31, 144, 148
 Anson, W. R., 131
 Aquinas, Thomas, 99
 Aristotelian notions of corrective justice, 142
 Arlidge, Thomas, 236, 243
 Arndt, A., 115
 asbestos regulation
 in England, 226
 recognition as health hazard, 236–40
 regulations of 1931 240
 regulations of 1969 240–3
 in France, 245, 246, 262
 Association of European Competition Law Judges, 282
 Atiyah, Patrick S., 145, 146, 148, 155, 165
 Atkin, James Richard, Lord, 144, 153
 Attlee, Clement, 67, 77
 Aubry, Charles, 105, 107
 Austin, John, 65, 67, 127–8, 130, 139, 140, 141, 216
 Austria
 civil code
 delictual liability and, 167, 171, 175, 179
 German BGB compared, 190
 interpretative freedom in, 110
 judge-made law and, 176
 religious orders, expulsions of, 102
 Baines, Edward, 232
 Baker, Robert, 232
 Barker, Ernest, 57
 Barrière, Jean-Paul, 257, 259
 Bartrip, Peter, 13, 19
 Beccaria, Cesare, 169
 Becher, Tony, 103
 Belgium
 academic jurisprudence in, 105
 occupational health hazards in, 260, 261
 Bell, John, 34

- Bentham, Jeremy, 9, 80, 82, 127–8, 204–6, 223, 226, 233
- Benthamism, 228
- Bernstein, Eduard, 86
- Bertrand de Greuille, Joseph, 173
- Betti, Emilio, 113, 126
- Beveridge Report (1942) and Beveridge Plan, 18, 77, 92
- Beveridge, William, 67, 85, 90, 92, 137
- BGB (*Bürgerliches Gesetzbuch*). *See* German *Bürgerlichesgesetzbuch*
- Bingham, Thomas, Lord, 284
- Bismarck, Otto von, 8, 16, 17, 77, 78, 79
- Blackstone, William, 99
- Blackwell, J. Kenyon, 230
- blame culture/compensation culture, 145, 153
- Bloch, Ernst, 164
- Blundell, L. A., 221
- Bluntschli, Johann Kaspar, 178, 180
- Böckenförde, Ernst-Wolfgang, 40
- Bonser, Georgiana, 241
- Booth, Charles, 85
- Bosanquet, Bernard, 66–9
- Bourgeois, Louis, 48–50
- Bradley, F. H., 66, 68
- Braithwaite, W. J., 67
- Braun, Alexandra, 2, 9
- Bridge, J. C., 240
- Britain. *See* England
- British welfare state
 - academic study of, 94
 - decline and rise of consumer
 - challenges to social services, 57
 - development of, 17
 - diversity of early concepts of, 77
 - jurisprudence of, 136–8, 147, 148
 - law and, 95, 96
 - philosophical writing and, 80, 86
 - post-Second-World-War ideas
 - about, 89–93
 - selective means-tested benefits
 - versus universal social services, 96
- Brougham, Henry, Lord, 206–7, 208
- Brunetti, Giovanni, 180
- Bryan, Sir Andrew, 230, 231
- Bülow, Oskar, 168, 180
- Burn, W. L., 227
- Bussani, Mauro, 274
- Caird, Edward, 66
- Cambacères, Jean-Jacques-Régis de, 4, 170
- Campbell, Tom, 162
- Canaris, Claus-Wilhelm, 28, 126
- capitalism. *See also* socialism and socialist theories of law
 - Mill on, 64, 66–9
 - pessimistic German sociological theory and, 42–8
- Carbonnier, J., 106, 121
- Carozzi, Luigi, 253
- Catholicism
 - Rerum Novarum* and concept of social justice, 123
 - revival of natural law in, 123–4
- CFR (Common Frame of Reference) and DCFR (Draft Common Frame of Reference), EU, 266, 271, 275, 276, 279
- Chadwick, Edwin, 229
- Chalmers, Mackenzie, 209
- Chapman, Cecil, 94
- Citizen's Charter, Britain, 31
- class and law, socialist view of
 - relationship between, 155–7
- CLS (critical legal studies) movement, 24, 163
- Coase, Ronald, 145
- codification, 2–11, 269–70. *See also* English codification debate; French *Code civil*; German *Bürgerliches Gesetzbuch*; judge-made law
- Cole, G. D. H., 87
- Coleman, Jules, 143
- Coleridge, John Duke, Lord, 67
- collectivism. *See also* entries at responsibility; socialism and socialist theories of law; solidarism
 - England, views on shift between individualism and collectivism in, 57, 227

- collectivism (*cont.*)
 rise of, in later nineteenth century, 15
- Collingwood, R. G., 66
- Collis, Edgar, 236
- Commission on European Contract Law, 273
- commodity theory of law, 152, 157
- Common Frame of Reference (CFR) and Draft Common Frame of Reference (DCFR), EU, 266, 271, 275, 276, 279
- common law
 delictual liability in civil law systems versus, 167–8
 English codification debate and, 9–11, 214
 English jurisprudence and, 134
 rational, bureaucratic law, Weber's theories of, 120
- common law in Germany, 5
- communism. *See* socialism and socialist theories of law
- communitarianism, 98
- comparative law, 277–9, 284
- compensation culture/blame culture, 145, 153
- Comte, Auguste, 13, 37–8, 41, 48, 51, 52, 53, 56, 84–6, 90
- constitutionalism in Germany, 27, 198–201
- contract law
 Commission on European Contract Law, 273
 in England, 220
 in Germany, 192–3, 198
- Cooke, William, 238
- CoPECL (Joint Network on European Private Law), 275
- corrective justice, 142
- Cotterrell, Roger, 13, 100, 101, 102, 103, 119
- Cranworth, Lord (Robert M. Rolfe), 207–8
- criminal law
 English codification debate and, 206–8, 221
- French penal code, delictual liability in, 174
- Critical Legal Studies (CLS) movement, 24, 163
- Croce, Benedetto, 121
- culpa in contrahendo*, 28
- customary rules, English jurisprudence focusing on, 129
- Dabin, Jean, 124
- DCFR (Draft Common Frame of Reference) and CFR (Common Frame of Reference), EU, 266, 271, 275, 276, 279
- de la Beche, Sir Henry, 230
- Declaration of the Rights of Man, 2, 39, 48, 181
- Dejours, Christophe, 244
- Del Vecchio, G., 123
- Demolombe, C., 107
- den Otter, Sandra, 13, 15, 18
- Denning, Alfred, Lord, 144
- Déplaupe, Marc-Olivier, 251
- Dicey, Albert Venn, 57, 58, 67, 216, 217, 227, 228
- Dickens, Charles, 235
- digest versus code, 206, 224
- Doll, Richard, 241
- Domat, Jean, 3, 4, 171, 177
- Donoghue v. Stevenson*, 29, 136, 153, 163
- Draft Common Frame of Reference (DCFR) and Common Frame of Reference (CFR), EU, 266, 271, 275, 276, 279
- Duguit, Léon, 14, 35, 54–6, 94, 101, 106, 119, 124, 126
- Dürig, Günter, 27
- Durkheim, Émile, 14, 34, 35, 38, 43, 49, 50–6, 94, 103, 119, 125
- Dutch civil code, 114, 189
- Dutton v. Bognor Regis UDC*, 29n
- Dworkin, Ronald, 141
- ECJ (European Court of Justice), 276, 280
- economic interests
 German *BGB* and protection of, 191

- judge-made law and, 183
- egoism, Marxist view of law as vehicle of, 152
- Ehrlich, Eugen, 21, 45, 110–12, 119, 121, 135
- Engels, Friedrich, 151–7
- England. *See also* asbestos regulation; British welfare state; jurisprudence, English; occupational health hazards; responsibility, English ideas about
 - academic jurists in, 9, 10, 24, 28, 127–32, 214
 - common law, persistence of, 9–11
 - development of social theory in, 15
 - influence of social theory in, 24, 28
 - interpretative freedom of judges, concerns over, 185
 - new right/libertarianism, rise of, 158
 - Roman law, lack of influence of, 11
 - shift between individualism and collectivism in, views on, 57, 227
 - socialism in, 86, 157
- English codification debate, 204–25
 - Bentham and, 204–6, 223
 - Brougham's 1828 speech and Royal Commissions, 206–7
- commercial law, 209–10
- common law, 9–11, 214, 221
- Continental codification efforts and, 209, 212–13
- contract law, 220
- criminal law, 206–8, 221
- digest versus code, 206, 224
- family law, 222
- Indian codes, 211
- judges, role of, 206
- landlord and tenant law, 221
- Law Commission efforts, 219–23, 225
- legal profession and, 212–13, 223
- legislative consolidations, 204, 206, 208, 209–10, 223, 224
- private academic codification enterprises, 204, 215–19, 224
- real property law, 206–7
 - reasons for failure of, 212–15, 222–3
- English Poor Laws
 - abolition in 1948, 96
 - Bentham's influence on, 82
 - legal system, as aspect of, 94
 - Marxist analysis of, 156
 - reforms of 1834 78, 82
 - subsistence, right to, 81, 83
 - Webbs on, 72
- English statutory law
 - Coal Mines Inspection Act 1850, 230
 - codification requiring changes to style of Parliamentary Acts, 214
 - common law, viewed as correction or gap-filling of, 213
 - consolidating and codifying Acts, 204, 206, 208, 209–10, 223, 224
 - Contagious Diseases Acts, 62
 - Corn Laws, 156
 - Education Acts, 72
 - Explosives Act 1875, 231
 - Factory Acts, 72, 156, 235
 - Inspectorate Act 1833, 232
 - Law Commission Act 1965, 219
 - Railway Regulation Act 1840, 230
 - Road Traffic Act 1930, 137
 - White Lead Act 1883, 235
 - Workmen's Compensation Acts, 70, 137, 237
- environmental disease. *See* occupational health hazards
- Esping-Andersen, Gøsta, 76
- Esser, Josef, 113, 126
- Europe, intellectual context of tort law in. *See* intellectual context of tort law development in Europe
- European Convention on Human Rights, 186
- European Court of Human Rights, 95, 99
- European Court of Justice (ECJ), 276, 280
- European Group on Tort Law, 273
- European Judicial Training Network, 281

- European Union and private law. *See* harmonisation/
Europeanisation of private law
- exegetical school, 5, 20–1, 105, 110
- experts in occupational health hazards. *See also* asbestos regulation
- concept of occupational illness, development of, 19
- defined, 226
- in England, 226–36
- in France, 245–7, 251–3
- growth of role of, 2, 13, 226
- Fabian Society, 71–4, 135, 158
- factories and mines inspectorates in England, 229–35
- Fairchild v. Glenhaven Funeral Services Ltd and others*, 284
- Farr, William, 229
- Fauconnet, Paul, 53
- fault/negligence
- academic criticism of, 145
 - France, employer's inexcusable mistake regarding occupational health hazards in, 255
 - general duty of care in England and, 29
 - German doctrines of, 182, 184
 - information about risk, as means of gathering, 164
 - social insurance and necessity of, 137
 - strict liability versus, 12, 136, 138
- Feuerbach, Ludwig, 114
- Fouillée, Alfred, 48–50
- Fourier, Charles, 64
- France. *See also* occupational health hazards; responsibility, Continental ideas about; *entries at* French
- academic jurisprudence in, 104–6, 119
 - citation of academic or foreign sources in, 284
 - development of social theory in, 14
 - influence of social theory on private law in, 57
 - influence of social theory on tort law practice in, 57
 - interpretative freedom, jurisprudential consideration of, 107–10
 - jurisprudence in. *See* jurisprudence, Continental
 - natural law, Catholic revival of, 123–4
 - Ordinance of Civil Procedure of 1667 176
 - penal code, delictual liability in, 174
 - socialism, influence of, 86
 - sociology of law in, 121
- Frederick the Great (King of Prussia), 176
- free law movement/ 'free legal research' school, 21, 27, 46, 108
- French *Code civil*
- clausula generalis*, article 1382 171–4, 181
 - delictual liability and, 167, 169–76
 - development of, 2–5
 - English codification debate and, 212–13
 - German BGB compared, 204, 190
 - German and Italian codes, delictual liability in, 174–85
 - judge-made law and, 167, 169–76
- French Revolution
- Continental adoption of instrumental theory of law and, 102
 - Declaration of the Rights of Man, 2, 39, 48, 181
 - decline of natural law theory and, 123
 - French *Code civil* as final achievement of, 2
 - German legal legacy of, 5
 - judges, desire to curtail power of, 169
 - legislative supremacy, revolutionary notion of, 169–70
- French statutory law
- legislative supremacy, revolutionary notion of, 4, 169–70

- on occupational health hazards, 246, 249, 251, 257
- Press Law of 1881 and Universities Law of 1884, 104
- French welfare state
 - academic study of, 94
 - decline of, 31
 - development of, 17
 - diversity of early concepts of, 79
 - occupational health hazards and social insurance options, 258–9
 - philosophical writing and, 84, 86
- Friedmann, Wolfgang, 109–12, 135–6, 144
- Froude, James, 76
- Gadamer, H.-G., 113
- Gaskell, Peter, 232
- Gentile, Giovanni, 121
- Gény, François, 25, 26, 34, 100, 106, 108–12, 126, 135, 167, 180
- German *Bürgerliches Gesetzbuch* (BGB), 186–203
 - academic jurists and, 187
 - constitutionalisation of private law and, 198–201
 - delictual liability and judge-made law, 167, 174–85, 201–3
 - development of, 5–9, 189–98
 - effects of, 187–9
 - English codification debate and, 209, 212
 - Organisationspflichten*, 198n
 - private law and codification, 186–7
 - rights and scope of liability, 190–3
 - third-party liability, 198
 - Verkehrs(sicherungs)pflcht* and liability for omissions, 193–7
- German statutory law
 - Accident Insurance Law of 1884, 13, 16, 125
 - on social questions, 188
- German welfare state
 - decline of, 31
 - development of, 16
 - diversity of early concepts of, 77, 78
 - philosophical writing and, 82, 86
- Germany
 - academic jurisprudence in, 107
 - academic jurists in, 9, 10, 27, 187
 - analytical jurisprudence and legal reasoning in, 115–19
 - constitutionalism in, 27, 198–201
 - contract law in, 192–3, 198
 - delictual liability and codification in, 167, 174–85
 - development of social theory in, 14
 - four codes and common law regime prior to BGB, 5
 - historical jurisprudence in, 20, 186–7
 - influence of social theory in, 26–8, 150
 - interpretative freedom, jurisprudential consideration of, 21, 108, 110–15
 - jurisprudence in. *See* jurisprudence, Continental
 - under National Socialism, 26, 27, 201
 - responsibility, ideas about. *See* responsibility, Continental ideas about
 - socialism, influence of, 86
 - sociology of law in, 119, 121
- Ghent system, 72
- Gierke, Otto von, 8–9, 11, 14, 46–7, 53, 180
- glasnost era in Soviet Union, 157, 158
- Glass, David, 85
- Goodhart, A. L., 130
- Gorbachev, Mikhail, 157, 158
- Gordley, J., 107
- Gramsci, Antonio, 154
- Great Britain. *See* England
- Green, T. H., 15, 59, 66–71, 134
- Gros, André, 258
- Grotius, Hugo, 99
- Grundgesetz* (GG), 198–201
- Gurvitch, Georges, 50
- Habermas, Jürgen, 118
- Hägerström, Axel, 122
- Halpérin, Jean-Louis, 2
- Hand, Learned, 145
- Harling, Philip, 228, 229
- harmonisation/Europeanisation of private law, 32, 265–85

- harmonisation/Europeisation of private law (*cont.*)
 academic jurists and, 270–80
 asbestos regulation in France and, 245
 CFR (Common Frame of Reference) and DCFR (Draft Common Frame of Reference), 266, 271, 275, 276, 279
 comparative law and, 277–9, 284
 judiciary and, 280–4
 public/private law distinction and, 267–8
 state, role of, 268–70
 welfare state, procedural issues regarding, 99
- Harris, Jose, 13, 15, 34, 57
 Hart, H. L. A., 139, 146, 150
 Haswell Colliery disaster (1844), 229
- Hauriou, Maurice, 55, 106
 Hausser, Guy, 255, 256
 Hayek, F. A., 75, 91–2, 98
 Heck, Philipp, 22, 112
 Hedemann, W., 116
 Hegel, G. W. F., 15, 39, 40, 82
 Henry VIII (King of England), 205
 historical jurisprudence
 in England, 130–1
 in France, 246–7
 in Germany, 20, 186–7
 Hobhouse, L. T., 57, 69
 Hobson, J. A., 69, 71, 85, 87, 91
 Hoffmann, Leonard, Lord, 148
 Holdsworth, W. S., 130
 Holland, Sir Thomas Erskine, 67, 216
 Holmes, Oliver Wendell, 9, 11, 35, 132, 136
 Honoré, Tony, 141, 146
 Hooker, Richard, 99
 Horner, Leonard, 229, 232, 232
 Horwitz, Morton, 23
 Huber, Eugen, 179
 Hugo, Gustav, 6
 human rights law and socialism, 164
 ‘humanistic’ Marxism, 97
 Hume, David, 150, 160, 163
 Humphrey, James, 207
- Huvelin, Paul, 35, 53
- idealism, British, 15, 66–71
 ideas and tort law. *See* intellectual context of tort law development in Europe
 ideology, Marxist view of law as form of, 153–5
 Ilbert, Sir Courtney, 217
 ILO (International Labour Organization), 248, 252, 253, 260
- income, redistribution of
 liberal theories regarding, 87–9
 post-Second-World-War ideas about, 91–3
- India
 codification in, 211
 Green on colonial government of, 68
- individualism. *See also* entries at responsibility
 critiqued in later nineteenth century, 1, 8, 11–12
 decline of welfare state and resurgence of, 29–32
 Durkheim’s moral individualism, 52
 English, views on shift between individualism and collectivism in, 57, 227
 of Mill, 59–66
 of Pandectists, 8
 pessimistic sociological theories accepting inevitability of, 42–8
- industrialism and urbanism, social theories responding to, 11–13
- inspectorate, mines and factories, in England, 229–35
- Institute of Economic Affairs, 100
- instrumental theories of law
 in Continental jurisprudence, 102, 122–3
 in United States, 23–4, 144–5
- intellectual context of tort law
 development in Europe, 1–33
 codification. *See* codification in England. *See* England in France. *See* France

- in Germany. *See* Germany
- harmonisation or Europeanisation.
See harmonisation/
 Europeanisation of private law
- internal and external doctrinal
 developments affecting, 1
- in jurisprudence. *See* *entries at*
 jurisprudence
- occupational health hazards.
See *entries at* occupational
 health hazards
- responsibility. *See* *entries at*
 responsibility
- social theory. *See* social theory;
 sociology
- socialism. *See* socialism and socialist
 theories of law
- welfare state. *See* welfare state
- International Labour Organization
 (ILO), 248, 252, 253, 260
- interpretative freedom of judges.
See also judge-made law
- Continental jurisprudence on,
 107–15, 126
- English concerns over, 185
- in French *Code civil*, 171
- French suspicion of, 169, 176
- German acceptance of, 179–80
- German suspicion of, 175
- reality of judge-made law in civil
 systems, 167–8
- Italy and Italian states
- academic jurisprudence in, 106
- delictual liability in codifications of,
 176, 177
- English codification debate
 and, 212
- interpretative freedom in
 jurisprudence of, 112
- religious orders, expulsions of, 102
- Jand'heur* case, 25
- Jansen, Nils, 2, 27
- Jellinek, George, 34, 124
- Jevons, William Stanley, 71, 87
- Jhering, Rudolf von, 8, 14, 21–2, 28,
 34, 46, 109, 114, 119, 122, 126,
 182
- John Munroe (Acrylics) v. London Fire
 and Civil Defence Authority*,
 153
- Joint Network on European Private
 Law (CoPECL), 275
- Jones, Sir William, 11
- Joseph, Keith, 127
- Josserand, Louis, 25, 125
- judge-made law, 167–85.
See also interpretative freedom
 of judges
- actors involved in, 168
- Austrian civil code and, 167, 171,
 175, 179
- difference between delictual liability
 in civil law and common law
 systems, 167–8
- economic interests and, 183
- French *Code civil* and, 167, 169–76
- in French penal code, 174
- German codifications and, 167,
 174–85, 201–3
- in Italian codifications, 176, 177
- Roman law of delict reformulated as
 fault by natural law, 3
- Swiss civil code and, 178–80
- judiciary. *See also* interpretative
 freedom of judges; judge-made
 law
- as consensus builders, 117–18
- English codification debate, role of
 judges in, 206
- harmonisation/Europeanisation of
 private law and, 280–4
- social judge, concept of, 116
- jurisprudence, Continental, 100–26
- academic jurists, 102, 103, 104–7
- analytical jurisprudence and legal
 reasoning, 115–19
- definition of law and, 100–2
- instrumental theories of law in, 102,
 122–3
- on interpretative freedom, 107–15,
 126
- natural law, Catholic revival of,
 123–4
- paucity of wider legal philosophy in,
 100, 102, 104–7, 126

- jurisprudence, Continental (*cont.*)
 sociology, use of, 119–21
 solidarism, 124–5
- jurisprudence, English, 127–49
 analytical jurisprudence, 127–34,
 139
 common lawyers on, 134
 customary rules, focus on, 129
 foundations in Austin and Bentham,
 127–8
 historical approach of, 130–1
 instrumentalist approach of US law
 not adopted by, 144–5
 moral theory in, 142, 149
 philosophical approaches to tort law
 and corrective justice, 142
 policy-based approach to tort in
 later twentieth century, 144
 policy-free theory of legal
 development in nineteenth
 century, 129–34
 realism and, 132, 133, 140–1, 145
 sociology in, 136, 139
 state, role of, 134–8
 theoretical basis for tort law,
 problem of, 145
 welfare state and, 136–8, 147, 148
- ‘jurisprudence of interests’ school,
 22, 46
- Kahn-Freund, Otto, 136
 Kalder, Nicholas, 92
 Kantorowicz, Hermann, 21, 110, 135
 Kelsen, Hans, 102, 121, 124
 Kennedy, Duncan, 155
 Keynes, John Maynard, 88, 89, 91
 Kidd, A., 73
 Kleist, Heinrich von, 114
 Kohler, Josef, 110
- Labbé, Joseph Émile, 104, 108
 labour unions, 73, 86, 132, 247, 255, 263
 Lafférière, E., 105
 laissez-faire
 critiqued in later nineteenth
 century, 1, 35
 in mid-Victorian English state, 59,
 227
- Langdell, C. C., 130, 140
 Laroque, Pierre, 85, 90
 Laski, Harold, 55, 87, 135
 Lasser, M. de S.-O.-l’E., 26, 118
 Laurent, F., 107
 law and economics movement, 24,
 28, 32, 153. *See also specific
 theorists, e.g.* Coase, Posner
- Lawson, F. H., 5
 Le Chapelier, Isaac René Guy, 169
 lead, as occupational hazard, 235, 246,
 253, 257
- Leake, Stephen Martin, 208
 Legge, Thomas, 234, 236, 237, 240, 243
 Leibniz, Gottfried, 6
 Lenin, Vladimir Ilyich, 156
 Lévy, Emmanuel, 14, 35
lex Aquilia, 175, 176, 181
 liberalism
 new liberals, 71–4
 welfare state and, 87–9
- libertarianism, rise of, 158
 Limbach, J., 117
 Lisbon, Treaty of, 265
 Lisbon Network, 282
 Llewellyn, Karl, 23
 Lobban, Michael, 218
Lochner v. New York, 35
 Locke, John, 99
 Louis XIV (King of France), 176
 Lubbock, Sir John, 58
 Luhmann, Niklas, 121
 Lundstedt, Vilhelm, 122, 123
Lüth case, 27
 Luxembourg, occupational health
 hazards in, 260
 Lyell, Charles, 229
- Maastricht Treaty, 265
 MacDonagh, Oliver, 227
 MacLeod, Roy, 227
 Magnin, Jean, 252
 Maine, Sir Henry Sumner, 14, 58, 65,
 67–8, 128, 130, 204, 211, 216,
 224
 Major, John, 31
 Mangoldt, Hermann von, 199
 Marcuse, Herbert, 158

- marginal value, Jevons' theory of, 71, 87
- Markowitz, Gerald, 260
- Marshall, Alfred, 87
- Marshall, T. H., 93, 164
- Marx, Karl, 22, 35, 40, 51, 84, 84–7, 121, 152, 154, 156, 162, 164
- Marxism. *See* socialism and socialist theories of law
- Mataja, Victor, 184
- matches, occupational hazard from phosphorous in manufacturing of, 253, 256
- Mattei, Ugo, 274
- McGregor, Harvey, 220
- McLennan, J. F., 58
- Meiklejohn, Andrew, 241
- Menger, Anton, 184
- Mercier* case, 25
- Merewether, Edward, 239
- Merewether–Price Report on asbestos, 240
- mesothelioma, 242. *See also* asbestos
- migrant workers and occupational health hazards in France, 250–1
- Miliband, Ralph, 157
- Mill, John Stuart, 15, 59–66, 68, 74, 130, 134, 233
- Miller, Lucinda, 32
- Millerand, Alexandre, 251
- mines and factories inspectorates in England, 229–35
- Monckton Committee, 137
- Money, Leo Chiozza, 85, 87
- Montesquieu, Charles de Secondat, Baron de, 4, 169, 269
- More, Sir Thomas, 99
- Mullender, Richard, 163
- Myrdal, Gunnar and Alva, 90
- Napoleonic Code. *See* French *Code civil*
- National Socialism in Germany, 26, 27, 201
- natural law
- Catholic revival of, 123–4
 - exegetical school influenced by, 5
 - French *Code civil* influenced by, 171
 - German interest in, after Second World War, 27
 - German rejection of, in nineteenth century, 6, 112
 - positivism and, 126
 - Roman law of delict and, 3
 - Weber on, 45, 54
- negligence. *See* fault/negligence
- Netherlands
- Dutch civil code, 114, 189
 - occupational health hazards in, 260
- new liberals, 15, 18, 71–4, 85
- new right libertarianism, rise of, 158
- New Zealand, no-fault accident compensation system in, 146
- Nipperdey, Carl Friedrich, 27, 199
- no-fault accident compensation systems, 146
- occupational health hazards.
- See also* asbestos regulation; experts in occupational health hazards
 - in England, 226–43. *See also under* asbestos regulation
 - Benthamism, influence of, 228
 - experts, role of, 226–36
 - inspectorate, 229–35
 - white lead, 235
 - in France, 244–64
 - asbestos regulation, 245, 246, 262
 - commissions, role of, 245
 - compared to Belgium and United States, 259–62
 - court cases involving, 244–5, 262
 - experts, role of, 245–7, 251–3
 - historical perspective, importance of, 246–7
 - migrant workers and, 250–1
 - 'occupational suicides', 262
 - official recognition and public awareness of, 253–9
 - public interest in, 244, 247, 262
 - recognition of, 247–53
 - social insurance options and, 258–9
 - 'suffering at work', concept of, 244

- occupational health hazards (*cont.*)
 unions and, 247, 255, 263
 social legislation and, 18–19
- Olivecrona, Karl, 122, 123
- Oliver, Thomas, 236, 237
- Oram, Richard Edward Sprague, 233
- Organisationspflichten*, 198
- Orwell, George, 90
- Ost, François, 105
- Owen, Robert, 64
- Oxford idealists, 66–71
- Pandectists, 7, 10, 11, 167, 182
- 'Panopticon', Jeremy Bentham's
 writings on, 82
- Pareto, Vilfredo, 88, 97
- Parker of Waddington, Huber Lister,
 Lord, 146
- Parris, Henry, 228, 231
- Pashukanis, Evgeny, 22, 152, 154, 157,
 160, 161
- Pattison, Mark, 58
- Pearson Commission and Report
 (1978), 30, 146
- PECL (Principles of European
 Contract Law) and PETL
 (Principles of European Tort
 Law), 273
- Perelman, Chaïm, 105, 117
- Philips, John, 230
- phosphorous, as occupational hazard,
 253, 256
- Piedmont. *See* Italy and Italian
 states
- Pigou, Arthur Cecil, 87
- Planck, Gottlieb, 189, 191
- Playfair, Lyon, 230
- pneumoconiosis, 259
- Pollock, Sir Frederick, 9, 10, 11, 35, 58,
 129, 131–3, 134, 137, 149, 209,
 211–12, 216, 219, 224
- the poor, as specific class of people, 83
- Poor Laws in England. *See* English
 Poor Laws
- Portalis, Jean-Étienne-Marie, 170–1,
 172
- positivism, in social sciences, 13, 37–8,
 41, 48, 51, 52, 53, 56, 84–6, 90
- positivism, legal
 instrumental theories of law and,
 122–3
 natural law and, 126
 restatement of, 140
 socialism, positivist concept of law
 in, 161–2
- Posner, Richard, 24, 145
- Pothier, Robert-Joseph, 3, 4, 171, 177
- Pound, Roscoe, 23, 113, 135
- Price, Charles, 239
- Principles of European Contract Law
 (PECL) and Principles
 of European Tort Law (PETL),
 273
- private law
 English lack of codification and, 10,
 212–23
 French view of autonomy of, 5
 German codification and, 186–7
 German constitutionalisation of,
 198–201
 German view of autonomy of, 5, 8
 harmonisation or Europeanisation.
See harmonisation/
 Europeanisation of private law
 social theory affecting concepts of,
 19–25
- Proudhon, Pierre-Joseph, 84
- Puchta, Georg Friedrich, 8, 167
- Pufendorf, Samuel von, 3
- Radbruch, Gustav, 27, 112
- Rau, Charles, 105, 107
- Rawls, John, 97, 150, 167
- Realism, 23, 122, 132, 133, 140–1, 145
- Rechtsgefühl*, concept of, 113
- Redgrave, Alexander, 233–5
- redistribution of income
 liberal theories regarding, 87–9
 post-Second-World-War ideas
 about, 91–3
- Redmayne, Richard, 231
- regulatory legislation
 development of, 12
 jurisprudential definition of law, not
 encompassed by, 101–2
- Renner, Karl, 23, 161

- Rerum Novarum* (papal encyclical, 1891), 123
- Resins of Bordeaux* case, 25
- responsibility, Continental ideas about, 34–56
- in early sociological theory, 37–41
 - influence of social theory on legal debates about, 34–6
 - optimistic French sociological theories of solidarity interdependence, 48–53
 - pessimistic German sociological theories involving inevitability of individualism, 42–8
 - state, differing views of role of, 53–6
- responsibility, English ideas about, 57–74
- Green's philosophical idealism, 66–71
 - Mill's Victorian individualism, 59–66
 - new liberals and Fabians, 71–4
 - philosophical ideas in Victorian Britain, diffusion and application of, 58
 - rhetoric of freedom versus mid-Victorian state interventionism, 59, 227
 - shift between individualism and collectivism, views of, 57, 227
- Rickards, Robert, 232
- rights and scope of liability in German BGB, 190–3
- Ripert, G., 109, 110, 124
- risk theory in France, expansion of, 25, 125
- Ritchie, D. G., 68
- Robens Committee on Health and Safety at Work, 146
- Roberts, David, 231, 233
- Robertson, J. M., 87
- Robespierre, Maximilien, 169
- Robinson, Joan, 92
- Roman Catholicism
- Rerum Novarum* and concept of social justice, 123
 - revival of natural law in, 123–4
- Roman law
- England, lack of influence in, 11
 - French academic jurisprudence and, 104
 - in Germany, 6, 8, 110, 181, 184, 187, 189
 - lex Aquilia*, 175, 176, 181
 - rational, bureaucratic law, Weber's theories of, 120
 - scholarly restatements of, efforts to find coherence in, 110
- Rose, Jonathan, 233
- Rosental, Paul-André, 13, 19
- Rosner, David, 260
- Rousseau, Jean-Jacques, 48, 53, 56
- rule of law principle, 161
- Rümelin, G., 114
- Ruskin, John, 76
- Russia. *See* Soviet Union/Russia
- Ryan, Alan, 60
- Saint-Simon, Claude Henri, 37
- Saleilles, Raymond, 20, 25, 119, 125
- Salmond, Sir John, 129, 132, 133, 140, 219
- Salvation Army, 89
- Samuel, Herbert, 237
- Sandel, Michael, 150
- Sardinia. *See* Italy and Italian states
- Savatier, R., 106
- Savigny, Friedrich Carl von, 6–7, 11, 21, 110, 114, 178, 181, 188
- Scandinavian Realism, 122
- Scarman, Sir Leslie, 220
- Schleiermacher, Friedrich, 114
- Secrétan, Charles, 48–50
- Selborne, Lord (Roundell Palmer), 209
- Serverin, E., 119
- Shuttleworth, James Kay, 229
- Sidgwick, Henry, 58
- silicosis, 246, 251, 252–5, 257, 259–62
- Simmel, Georg, 83
- Smith, Robert Angus, 231
- Smith, Thomas Southwood, 229
- Smith, Warrington, 230
- social class and law, socialist view of relationship between, 155–7

- social judge, concept of, 116
 'social justice', concept of, 97
 Social Justice Manifesto, 279
 social theory. *See also entries at*
 responsibility; welfare state
 defined, 34
 industrialism and urbanism, rise of,
 11–13
 occupational illness and, 18–19
 private law concepts affected by,
 19–25
 private law practice affected by,
 25–29
 rise of, in later nineteenth century, 2,
 8, 11–19
 socialism and socialist theories of
 law, 150–66. *See also specific*
 theorists
 CLS movement influenced by, 24
 concepts of law in Marxism, 151–7
 development of, 22
 egoism, law as vehicle of, 152
 human rights law and, 164
 'humanistic' forms of, 97
 ideology, law as form of, 153–5
 Miliband, Ralph, 157
 Mill on, 64, 66–9
 need for law, in Marxist tradition,
 150
 Pashukanis, Evgeny, 22, 152, 154,
 157, 160, 161
 positivist socialist concept of law,
 161–2
 social class and law, relationship
 between, 155–7
 Thompson, E. P., 159, 161
 tort law
 Marxist antipathy to, 151
 place in socialist law, 163–5
 suspicion of, in modern socialism,
 165
 value of Marxist critique of law,
 165–6
 Webbs' turn to, 73, 86
 welfare state and, 84–7, 97
 'withering away' of law in perfected
 society, re-evaluation of,
 157–61
- sociology
 coining of term, 37
 in Continental jurisprudence,
 119–21
 in English jurisprudence, 136, 139
 responsibility, theories of. *See*
 responsibility, Continental
 ideas about
 solidarism
 in Continental jurisprudence, 124–5
 Durkheim on, 50–6
 of Secrétan, Fouillée and Bourgeois,
 48–50
 welfare state, philosophical writings
 on, 85, 86
 Soviet Union/Russia
 class-based view of law in, 156–7
 glasnost era in, 157, 158
 rule of law principle, violations of,
 161
 socialist theory of law in, 22
 Webbs' turn to Soviet communism,
 73, 86
 'withering away' of law in perfected
 society, re-evaluation of,
 158–61
 Spain
 academic jurisprudence in, 106
 religious orders, expulsions of, 102
 Spencer, Herbert, 35, 57, 233
 Stalinist view of law, 157
 Stephen, Sir James Fitzjames, 58, 208,
 209, 211, 213, 215, 216, 217
 strict liability
 fault versus, 12, 136, 138
 in Germany, 16, 20, 133, 188, 204
 social justice and, 8
 in Switzerland, 186
 Study Group on a European Civil
 Code, 274
 Swiss civil code, 108, 110, 178–80, 184
 Sypnowich, Christine, 22
- Tawney, Richard, 67
 taxation, redistribution of income via.
 See redistribution of income
 Taylor, A. J. P., 227
 Taylor, W. Cooke, 232

- Teffaine* case, 25
 Temple, William, 77
 Teubner, Gunther, 121
 Thackrah, Charles Turner, 232, 243
 thalidomide, 146
 Thane, Pat, 228
 Thatcher, Margaret, and Thatcher era, 150, 158
 Thibaut, Anton Friedrich Justus, 5
 third party liability in German BGB, 198
 Thomas Aquinas, 99
 Thompson, E. P., 159, 161
 Titmuss, Richard, 85, 90, 94, 94
 tobacco workers, occupational health hazards faced by, 257
 Tönnies, Ferdinand, 14, 42–3, 46, 47, 51, 54, 56, 119
 tort law. *See* intellectual context of tort law development in Europe
 Toullier, Charles-Bonaventure-Marie, 175
 trade unions, 73, 86, 132, 247, 255, 263
 Tremenheere, Hugh, 229
 Trento Common Core Project, 274
 Trollope, Anthony, 58
 Troplong, R. T., 107, 108
 Tunc, André, 106, 125
- Ulpian, 267
 United Kingdom, 221, 241.
 See also England
 United States
 academic jurists, influence of, 28
 civil rights movement and thinking about welfare state, 95
 instrumentalist theories of law in, 23–4, 144–5
 new right/libertarianism, rise of, 158
 normative foundations of tort law, exploration of, 142
 occupational health hazards in, 242, 254, 255, 260, 261
 Occupational Safety and Health Act of 1970, 243
 Realism in, 132, 145
 Restatements in, 212, 273
 sociology of law in, 121
 welfare, early concepts of, 76
 United States v. Carroll Towing Co., 145
 Universal Declaration of Human Rights, 30
 urbanism and industrialism, social theories responding to, 11–13
 Ure, Andrew, 232
 utilitarianism, 64, 102, 130, 228
- van de Kerchove, Michel, 105
*Verkehr(s)sicherungs)pfl*icht and liability for omissions in German BGB, 193–7
 vicarious liability doctrine in England, 29
 Villey, Michel, 124
 Viney, Geneviève, 106
 Vinogradoff, Sir Paul, 130
 Vogt, Emil, 180
 Von Stein, Lorenz, 38–41, 45, 56
 Vyshinsky, Andrey, 157
- Wagner, J. C., 242
 Wassermann, R., 118
 Webb, Beatrice and Sidney, 71–3, 85, 86, 243
 Weber, Max, 14, 34, 35, 42, 53–4, 56, 115, 119–21, 126, 214
 Weinrib, Ernest J., 142, 143
 Weir, Tony, 143–4, 155
 welfare state, 75–99. *See also* British welfare state; French welfare state; German welfare state
 academic study of, 94
 communitarianism and, 98
 decline of, 29–32
 development of, 16–18, 75–80
 diverse early concepts of, 75–80
 economics and, 89–93
 English jurisprudence and, 136–8, 147, 148
 law and social welfare policies, post-1960 concern with relationship between, 94–8
 liberalism and, 87–9
 post-Second-World-War ideas about, 89–93

Cambridge University Press

978-1-107-47560-1 - The Impact of Ideas on Legal Development: Volume 7

Edited by Michael Lobban and Julia Moses

Index

[More information](#)

300

INDEX

- welfare state (*cont.*)
 programmatic writing about, at end
 of twentieth century, 98–9
 in social and legal philosophy before
 Second World War, 80–9
 ‘social justice’, concept of, 97
 socialism and, 84–7, 97
 sociological theories of
 responsibility and, 56
 terminological usage and, 76–8
 Westbury, Lord (Richard Bethell),
 208
 white lead, as occupational hazard,
 235, 246, 253, 257
 Whitelegge, Benjamin Arthur, 234
 Whympers, Frederick, 233, 235
 Wiethölter, R., 115
 Wikeley, Nick, 240
 Williams, Glanville, 138
 Windscheid, Bernhard, 7, 8, 188
 Winfield, Percy, 133
 ‘withering away’ of law, Marxist
 concept of, 157–61
 Wolff, Christian, 6
 Wootton, Barbara, 90, 92
 workmen’s compensation, 19, 70, 77,
 100, 101, 137, 237
 workplace-related disease.
See occupational health
 hazards
 Wright, Lord (R. A.), 134
 Wright, Sir Robert Samuel, 67
 Zachariae, K. S., 105, 178
 Zeiller, F. von, 167, 171
 Zimmermann, Reinhard, 277
 Zimmern, Alfred, 77
 Zippelius, R., 114
 Zitelmann, Ernst, 110, 180
 Zweigert, K., 118