

INDEX

- Adams, Brooks, 96–100
- Action Publiciana*, 130, 131
- *quasi-Serviana*, 135
- *Serviana*, 135
- Activist idealism, 11
- Administration, 81–82
- of justice, 153–155
- Agency, 110
- Ahrens, 22, 32, 33, 144
- Ames, James Barr, 17, 42, 120
- Analogies, 151–152
- Analytical jurisprudence, 46, 128–130, 155
- school, 18, 33, 84, 96
- Anglo-American public law, romance of, 43
- Anglo-Indian codes, 68, 81
- Anglo-Saxon Law, 76
- Animals, liability for, 36
- Application of law, individualized, 153–155
- Aristotle, 30, 31, 89
- Assumption of risk, 109–111
- Austin, John, 26, 46, 98, 99, 130, 155
- Austrian code, 14, 80
- Authority, 3
- Bacon, 128
- Baden, code of, 80
- Baldwin, Simeon E., 37
- Bartolus, 52
- Baty, Thomas, 138
- Bekker, Ernst Immanuel, 25
- Bentham, 98, 99, 112
- Bergson, 11, 154, 155
- Berolzheimer, Fritz, 72, 73
- Bethell, Sir Richard, 129
- Beudant, 48
- Bigelow, Melville M., 17
- Bills of rights, 51
- Biological interpretations, 74–75, 85–90, 117
- — achievements of, 91
- — defects of, 90–91
- — economic, 88–90
- — ethnological, 88
- — idealistic, 85–86
- Blackstone, 17, 41, 98, 101, 102
- Blasting, injuries by, 122
- Bohlen, Francis H., 100, 105–109
- Boistel, 22, 69
- Brandeis, Mr Justice, 137
- Brazilian civil code, 26, 80
- Brown, W. Jethro, 67
- Bryce, Viscount, 22, 33
- Buckland, W. W., 26, 131
- Building, analogy of, 21, 40
- Burdick, F. M., 110
- Burke, Edmund, 13–14
- Burlamaqui, 17
- Business, American law and, 111–112
- Campbell, Lord, 124–125
- Capitis deminutio*, 16
- Carle, 78
- Carter, James C., 34–35, 47
- Chancery, court of, 100, 102–104
- Change in law, 1, 2, 4
- Charmont, 72, 150
- Cicero, 31
- Civil death, 16
- Civilization interpretation, 143–150
- — critique of, 150–151
- Civilization, jural postulates of, 148–150
- Clark, E. C., 18, 25
- Class conflict, 88–90, 95–105, 109
- Codification, 80–81
- Coke, 3, 8, 9, 41, 52, 82, 99, 101, 128, 132, 139–140, 161
- Collectivism, 109
- Command-theory of law, 3
- Common law, continuity of, 39
- — fundamental idea in, 57–63
- Comparative law, 49
- Conceptions, jurisprudence of, 119–124
- Conring, Hermann, 8
- Consideration, 66
- Conquered peoples, epos of the, 79
- Constitutional law (American), 16, 123
- Constructive trust, 135–136
- Continuity of content, fallacy of, 37, 39–41
- Convenience, Coke on, 161
- Corporations, 37–38, 111
- Court of High Commission, 132
- Creative activity, 117–118, 126–128, 130–138
- — law-making, 130

- Croce, Benedetto, 12, 20, 38, 43, 51, 53, 66, 72, 79, 88, 94, 95
- Cujas, 8
- Gulpa*, 55
- Cuoco, 14, 19, 118
- Dahn, Felix, 77
- Darling, Mr Justice, 114
- Darwin, 72, 74
- Declaration of the Rights of Man, 19
- Demogue, 150
- Dicey, 109, 118–119
- Discretion, 154–155
- Divorce, natural law and, 42
- Doe, Chief Justice, 108, 139
- Duguit, 86–88
- Du Moulin (*Molinaeus*), 138
- Durkheim, 85
- Duty, idea of legal, 56
- Economic determinism, 97
- Economic interpretation, 94–115
 - — achievements of, 114–115
 - — elements of, 93–94
 - — origin of, 92–93
 - — truth in the, 113–114
 - — types of, 94–96
- Economic realism, 92
- Edit, praetor's, 135–136
- Edward I, legislation of, 132
- Ehrlich, Eugen, 153
- Employer's liability, 110–111
- Engels, 94
- Engineering interpretation, 152–165
- Equity, 24, 132, 133
 - — restrictions on free contract in, 64
- Erle, Sir William, 44
- Ethical interpretation, 22–23, 25–49, 97, 116
 - — defects of, 37–43
 - — effects of, 32–37
 - — origin of, 25–30
 - — theory of, 22
 - — truth in the, 43–44
 - — types of, 23
- Ethnological interpretations, 74, 78, 85, 95
 - — achievements of, 91
 - — defects of, 90–91
 - — idealistic, 75–78
 - — positivist, 82–85
 - — psychological, 78–82
 - — truth in, 79
- Evolution, 73
- Executive justice, 155
- Favor testamenti*, 42, 49
- Fellow-servant rule, 109–111
- Fichte, 32
- Fictions, 4, 130–134
- Folk psychology, 73
- Fortescue, Sir John, 9
- Fouillée, 78
- Frederick the Great, code of, 14, 16
- Freedom, 46–49, 54
 - of contract, 61–65, 123, 146
- French civil code, 14–16, 80
- French Revolution, 13, 39, 69, 93
- Fright, recovery for, 120–121, 122
- Gaius, 7
- Gans, 49
- General security, 1, 5, 160, 164
- Geny, 153
- German civil code, 26–27, 80
- Germanic law, 26, 43, 50, 51, 53
- Gibson, Chief Justice, 139
- Gierke, 73
- Gift, conception of, 89
- Glanvill, 101
- Gortyn, Twelve Tables of, 164
- Gray, John C., 22, 44, 131
- Great-lawyer interpretation, 124–140
- Greek political philosophy, 30
- Grotius, 17, 32, 45
- Hale, Sir Matthew, 9
- Hammurabi, 3
- Hegel, 18, 46, 47, 54, 72, 74, 75, 88, 95, 96, 112, 125, 127, 150
- Henry II, 101, 139
- Hemmingsen, 45
- Historical authority, 9
 - fatalism, 66
 - materialism, 92
 - scepticism, 11
 - school, 10–11, 12–18, 22, 50, 56, 67, 68, 74, 96, 116, 142
 - school, achievements of, 68
- History, 6
- History-writing, Roman legal, 8
 - — English legal, 8–9
 - — individualist legal, 163–164
 - — nineteenth-century, 9
 - — social-utilitarian legal, 163–164
- Hobbes, 140
- Holland, T. E., 26
- Holland, code of, 80
- Holmes, Mr Justice, 10, 41, 51, 119, 120, 138
- Hugo, Gustav, 99
- Idea, unfolding of the, 40
- Imputed negligence, 123
- Industrial labourers and the law, 111, 114
- Interests, balance of, 157, 161, 162–163

INDEX

169

- Institutional history, 53
- Insurance, 62
- Interpretation, 65, 131–132
- Interpretations of legal history, bases of, 151–152
 - — — kinds of, 19
 - — — reasons for, 19
 - — — truth in the, 116–117
- James, William, 145, 157
- Japanese civil code, 26
- Jefferson, Thomas, 13, 103
- Jessel, Sir George, 61, 133
- Jhering, 75–77, 119, 120, 136
- Judicial empiricism, 134–136
- Julian, 138
- Jurisprudence, 153
 - of conceptions, 119–124
- Juristic pessimism, 66
 - science, 136–137
- Jus disponendi*, 62
- Jus strictum*, 84
- Justice, the administration of, 153–155
- Justinian, 8, 16, 30
- Kant, 22, 28–30, 34, 37, 46, 55, 83, 98, 99
- Kantorowicz, 50, 153
- Kent, James, 17, 139
- King's council, 132
- Knight-Bruce, Sir J. L., 129
- Kohler, Josef, 10, 49, 70, 141–150, 152
 - — on civilization, 143–144
 - — critique of, 150–151
 - — on the legal order, 144–147
 - — on relativity of law, 143
- Korkunov, 77
- Krause, 144
- Labeo, 138
- Labour, grievances as to American law, 111
- Langdell, C. C., 132
- Laplace, 72
- Lasson, 69
- Law and morals, 45
 - — — identification of, 25
- Law, end of, 30–32
 - nature of, 2, 153
- Law-givers, 125–126
- Law-making, nature of, 2
- Legal history, choice of periods in, 49, 52
 - incapacities, 63–65
 - order, the, 21, 152, 156–160
 - rights, 158–160
 - transaction, conception of, 55
- Legislation, creative, 137–138
- Legislation, economic interpretation of, 113–114
- Lex Aquilia*, 132
- Lex Falcidia*, 49
- Liability, categories of, 56
 - as corollary of fault, 35, 104–109
 - theories of, 60
- Liberty, 46–49, 54
- Lioy, 48
- Loria, 94
- Lorimer, James, 46, 70, 144
- Louis XIV, 16
- Lumley v. Wagner*, 162–163
- Lycurgus, 125
- Macchiavelli, 38
- McDougall, William, 78
- Mackeldey, 98, 99
- Magna Carta, 43, 57, 101, 132
- Maine, Sir Henry, 17, 25, 53–61, 100, 132
- Maitland, F. W., 132, 133
- Mansfield, Lord, 47, 66, 67, 103, 139, 140
- Manu, 3
- Markby, Sir William, 98, 100
- Marshall, John, 139
- Marx, Karl, 92–93
- Metaphysical school, 22–23, 33–34, 158
- Middle Ages, 30–31, 79, 102
 - myth of the, 51
- Miller, W. Galbraith, 22, 61, 70
- Montesquieu, 17
- Mosaic law, 3
- Moses, 125
- Muirhead, James, 75
- Nationalism, 19
- Natural law, 5–6, 12, 25, 41, 51, 133–134, 149
- Natural rights, 158–160
- Neo-Ghibelline historians, 38
- Northington, Lord, 147
- Numa, 125
- Obligations, law of, 25
- Organism, analogy of, 40
- Paine, Thomas, 48
- Pandectists, 26
- Papinian, 138
- Partnership, 112
- Perpetual edict, 39
- Perspective, illusion of, 19
- Philosophical school, 18, 69
- Philosophy, 4, 49
- Physical environment, relation to law, 119

170

INDEX

- Plato, 31, 145
 Pledge, theory of, 135
 Political interpretation, 45–68, 85,
 97, 116
 — — achievements of the, 68
 — — defects of the, 65–68
 — — elements of the, 46–50
 — — Maine's, 50–65
 — — origin of the, 46
 Politics, 45–46
 Pollock, Sir Frederick, 23, 36, 44
 Pomponius, 7
 Portugal, code of, 80
 Positivism, 71–74, 92
 Positivist interpretations, 78–81,
 117
 Post, A. H., 78, 83–85
 Pothier, 138
 Pragmatism, 11
 Primitive law, 125
 Privacy, right of, 137
 Privileges-and-immunities clause
 (American), 37
 Programme of recent jurists, 153
 Protestant jurist-theologians, 19, 45
 Prussian code, 14, 16, 80
 Psychology, 21, 73
 Public-opinion interpretation, 118–
 119
 Public policy, 160–161
 — utilities, law of, 58–61
 Puchta, 17, 47, 48
 Pufendorf, 17, 32
 Puritanism, 24, 44, 103–104
 Race, as a factor in legal development, 70
 Race-psychology, 74–76
 Reason, law and, 6, 47–48
 Relations, 57–63
 Religious interpretation, 23–25
 Representation, doctrine of, 110
 Revolution, American, 136
 Riccobono, 24
 Richard, G., 85
 Rights, 158–160
 — of Englishmen, 41
 — of man, 41
 Roman law, 24, 26–27, 76–77, 80,
 117, 131
 — — continuity of, 39
 — — fundamental idea in, 58–60
 Roman legal history-writing, 7
 Romantic history-writing, 43
 Romulus, 125
 Roumania, code of, 80
 Ruffin, Thomas, 139
Rylands v. Fletcher, doctrine of, 35–
 36, 105–109, 138, 149
 St Leonards, Lord, 163
 Sale, Romanized law of, 59
 Saleilles, Raymond, 67
 Salvioli, 25, 115
 Savigny, 14–19, 25, 28, 32, 42, 51,
 55, 98, 120
 Seisin, 50, 89
 Selborne, Lord, 129
 Shadwell, Vice-Chancellor, 129
 Shaw, Chief Justice, 139
 Smith, Jeremiah, 137, 138
 Social engineering, 152–165
 — interests, 162–164
 — legislation, 61, 63–65
 — order, idealizing of the, 5
 — utilitarian interpretation, 163–164
 Sociology, 21, 71–74, 84–85
 — descriptive, 85
 Soto, 32
 Spencer, 32, 72, 147
 Stability, 1, 2
 — and change, reconciliings of, 2
 Stahl, 23
 Stammller, 10
 Standards, legal, 155
 Star Chamber, 132
 State of nature, 51
 States' rights, doctrine of, 42
 Status, evolution to contract from,
 54–61
 Stoicks, 24, 56
 Story, 17, 136, 139
 Suarez, 32
 Subpoena, writ of, 102
 Sugden, Sir Edward, 129
 — — — *landesgemeinde*, 43
 Tacit hypothecation, 135–136
 Tanon, 73
 Tarde, 73
 Tenterden, Lord, 50
 Thayer, Ezra Ripley, 36
 — James Bradley, 17
 Theodosian code, 39
 Theology and jurisprudence, 45
 Thomas Aquinas, 31
 Tourtoulon, 73
 Town meeting, 43
 Tribonian, 138
 Truce or peace, Germanic, 164
 Truck acts, 62, 123
 Twelve Tables, the, 7, 39
 Unborn child, injury to, 121
 Unification of social sciences, 45, 68,
 74
 Universal history, 27
 — legal history, 49

INDEX

171

- Utrecht*, Aryan, 27, 49
Usury laws, 63
Usus modernus, 52
Vattel, 17
Victoria, Franciscus de, 32
Vico, 82
Vinogradoff, Sir Paul, 19
Ward, Lester F., 73–74
Westminster II, Statute of, 100–102
Wigmore, John H., 115, 124, 153
Wilson, Woodrow, 100
Winterbottom v. Wright, doctrine of,
122–123
Wolff, 17
Workmen's compensation, 138
Wyman, Bruce, 100
Year Books, 28, 51, 52
— — cult of the, 50