

## Index

- Abel, Richard, 249  
 Ackerman, Bruce, 325, 377  
 Adams, Henry, 22  
 Adams, Herbert Baxter, 22  
 Adams, John  
   on canon and feudal law, 324  
 Adams, Samuel, 345  
 adjudication  
   merits of, v. legislation, 195  
 administrative procedure  
   struggle over, 121  
 affirmative action, 344, 397, 401  
 agency  
   need to recognize in legal history, 276  
 Amar, Akhil, 302  
 Ames, James Barr, 23, 24, 38  
 ancient constitution, 193, 322  
 Andrews, Charles M., 25  
 antidiscrimination  
   as antisubordination, 347, 398  
   as colorblindness, 347  
   as integration, 348  
   as proportional representation, 348, 406  
 antitrust  
   Fiss on, 167  
 Arnold, Thurman, 43, 109, 132  
 Atiyah, Patrick, 208  
 Austin, John, 145, 192  
  
 Bachman, Michele, 372  
 Baldwin, Simeon, 30  
 Balkin, Jack, 378  
 Bardaglio, Peter, 170  
 Barton, David, 371  
 Beale, Joseph, 128  
  
 Beard, Charles A., 25, 97, 103, 104,  
   110, 248  
 Beck, Glenn, 371  
 Beisel, Nicola, 166  
 Benezet, Anthony, 345  
 Bennett, William, 179  
 Bentham, Jeremy, 145, 190  
 Berghahn, Volker, 393  
 Berle, A. A. & Gardiner C. Means, 132  
 Bickel, Alexander, 196  
 Bigelow, Melville A., 23  
 Black, Charles, 410  
 Blackstone, William, 145, 190, 194,  
   198, 323  
 Blumenthal, Susanna, 221  
 Boorstin, Daniel, 33, 34  
 Bork, Robert, 180, 288, 299,  
   337, 373  
   as selective originalist, 339  
 Brandeis, Louis D., 332  
   on property rights, 332  
 Bratton, William, 118  
 Braverman, Harry  
   on organization of work, 246  
 Brennan, William, 334  
 Brenner, Robert, 265  
 Brest, Paul, 186  
 Brewer, David J.  
   on threats to order, 170  
*Brown v. Board of Education* (U.S. 1954),  
   140  
 Brown, Janice Rogers, 373  
 Brunner, Heinrich, 25  
 Burawoy, Michael, 280  
 Burgess, John W., 22

## Index

417

- Burke, Edmund, 195  
 Burrow, John, 17
- capitalism  
 legal constitution of, 305  
 relation to traditional morals, 358  
 varieties of, 306
- Carter, James Coolidge, 27, 125, 174, 291
- cases  
*American Express Co. v. Italian Colors* (U.S. 2013), 350  
*ATT Mobility v. Concepcion* (U.S. 2011), 350  
*Bell v. Maryland* (U.S. 1964), 298  
*Brown v. Board of Education* (U.S. 1954), 294, 344  
*Carter v. Carter Coal Co.* (U.S. 1936), 121  
*Chinese Exclusion Cases* (U.S. 1889), 161  
*Citizens United v. FEC* (U.S. 2010), 370  
*Civil Rights Cases* (U.S. 1883), 162, 370  
*Commonwealth v. Cleary* (Mass. 1898), 61  
*Dist. of Columbia v. Heller* (U.S. 2008), 369  
*Dred Scott v. Sanford* (U.S. 1857), 344  
*Farwell, v. Boston & Worcester RR.* (Mass. 1842), 104  
*Fox v. Washington* (U.S. 1915), 170  
*Hodges v. U.S.* (U.S. 1906), 161  
*Homes Insurance Co. v. Blaisdell* (U.S. 1934), 332  
*In re Debs* (U.S. 1895). 160, 162, 173  
*Insular Cases* (U.S. 1901–1922). 161  
*Jones v. A.H. Mayer* (U.S. 1968). 298  
*Lochner v. New York* (U.S. 1905). 69, 140, 159, 207, 291  
*Lucas v. So. Carolina Coastal Comm'n* (1992), 369  
*McDonald v. Chicago* (U.S. 2010), 367  
*Missouri v. Holland* (U.S. 1920), 368  
*Mugler v. Kansas* (U.S. 1887), 161  
*NFIB v. Sebelius* (U.S. 2012), 349  
*Parents Involved in Community Schools v. Seattle School Dist.* (U.S. 2007), 349  
*Patterson v. Colorado*, 161  
*Plessy v. Ferguson* (U.S. 1896), 140, 161, 162, 344  
*Reynolds v. U.S.* [U.S. 1879], 173  
*Roe v. Wade* (U.S. 1973), 339  
*Ryan v. N.Y. Central RR* (N.Y. 1866), 112  
*Santa Clara v. Southern Pac. R.R.* (U.S. 1886), 117  
*Schechter Poultry Co. v. U.S.* (U.S. 1935), 121  
*Shelby County v. Holder* (U.S. 2013), 349  
*Shelley v. Kraemer* (U.S. 1948), 120  
*Somerset v. Stewart* (Eng. 1772). 326  
*Truax v. Corrigan* (U.S. 1921). 333  
*Turner v. Williams* (U.S. 1904), 161  
*U.S. v. Cruikshank* (U.S. 1875), 370
- Chandler, Alfred, 216  
 comparative insights of, 245  
 on organizational imperatives, 245
- civic-republican revival, 301, 350
- civil rights  
 conservative histories of, 403  
 histories of  
 conservative, 397  
 leftist histories of, 405  
 liberal histories of, 403  
 in Reagan Administration, 396
- Civil Rights Act (1964), 344
- civil rights, histories of, 395
- Clark, Charles E.. 132, 215
- Clark, Robert C., 216, 232
- Classical legal thought, 57, 107, 110, 192, 204, 291, 341  
 as anti-redistributive doctrine, 123  
 authoritarian elements in, 359  
 critiques of, 205  
 as defense of “natural” rights, 125  
 as defense of *laissez-faire*, 124  
 defined, 122  
 Fiss on, 158  
 as “formalist”, 126  
 as general and neutral, 123  
 neoclassical revival of, 341  
 not apologia for business, 330  
 Progressive critique of, 113, 127  
 revisionist views of, 304
- classical liberalism  
 characters required by, 164  
 immigrants as threat to, 171  
 late-nineteenth-century crisis of, 178  
 legal foundations of, 163  
 link between effort and reward, 401  
 market as threat to stability of, 167  
 repression and discipline required by, 165, 172  
 subordination required by, 165
- classical-republican thought, 187
- Clifford, William, 53
- codification  
 as overbroad category, 47
- Cohen, G. A., 264  
 Collins response to, 264
- Cohen, Morris R., 109
- Coke, Edward, 142

- Collini, Stefan, 157  
 colorblindness  
   as historical norm, 395  
 common law  
   economic efficiency of, 196, 232, 297, 342  
   as object of nostalgic longing, 376  
   as organic custom, 168  
   rival narratives of, 321  
   rival views of, 324  
   as spontaneous order, 196  
   Roman v. Teutonic origins of, 22, 63  
   varieties of, 353  
 commonwealth histories, 102, 333  
 commonwealth histories, 292  
 comparative method, 286  
 conservative legal history  
   of civil rights, 397  
 conservative legal thought, 156, 336  
   attachment to late-nineteenth-century, 341  
   on civil rights, 343  
   economic v. social conservatives, 157  
   nostalgic visions of, 364  
   on social regulation, 340  
*Constitution in the Year 2000*, 363  
 Constitution of aspiration, 302  
 Cooley, Thomas M., 291  
   on history of regulation, 328  
   on legal history as story of liberty, 327  
 corporation  
   contractualist theory of, 117  
   as natural entity or “group-person”, 118  
   Progressive theories of, 119  
 Corwin, Edward S., 26  
 Critical Legal Studies (CLS), 104, 108, 118,  
   144, 220, 305  
   distinctive contributions of, 261  
   distinguished from classical Marxism, 237  
   intellectual ancestors of, 261  
 Damaska, Mirjan, 216  
 Danzig, Richard, 216  
 Dawson, John P., 115, 216  
 Debs, Eugene, 161  
 Dewey, John, 78  
 Dicey, A. V., 145  
 Douglass, Frederick, 345  
*Dred Scott v. Sanford*, 7  
 Dunning School, 4, 343  
 Durkheim, Emile, 165  
 Edwards, Laura, 170, 221  
 Ely, John Hart, 186  
 Epstein, Richard, 209, 249, 300, 347  
 Ernst, Daniel  
   on Hurst, 90  
 Eskridge, William, 378  
 evolutionary functionalism, 287  
   as creating false necessity, 233  
   as a device for obscuring political conflict,  
     231  
   as dominant theory of social-legal  
     change, 223  
   defined, 223  
   and modernization theory, 234  
 evolutionary histories, 200  
 Farmer, James, 399  
 Farnsworth, E. Allan  
   history of contract law, 30  
 Federalist-Whig legal thought, 202  
 fellow-servant rule, 239  
 Ferejohn, John, 378  
 Field, Stephen J., 328  
 Finley, M. I., 262  
 Fiscus, Ronald, 400  
 Fiss, Owen  
   on liberty of contract, 159  
   *Troubled Beginning of the Modern  
     State*, 156  
 Frankfurter, Felix, 34, 132  
 free expression  
   law of, 169  
 Freeman, Alan, 413  
 Freeman, Edward A., 22  
 Fried, Charles, 210, 249, 337  
 Friedman, Lawrence M., 9, 47, 96, 116, 198,  
   207, 238, 250  
   on law as product of interests, 235  
 Fryer, Tony Allan, 98  
 Genovese, Eugene, 302  
 German history  
   alternative narratives of, 394  
 Goebel, Julius, 28, 32, 40  
 Goldwater, Barry, 344  
 Golove, David, 379  
 Goodrich, Carter, 102  
 Gordon, Sarah Barringer, 165  
 Graber, Mark, 169  
 Gray, John Chipman, 41  
 Greene, Nathan, 132  
 Grey, Thomas C., 50, 64  
 Grossi, Paolo, 289  
 Hager, Mark, 119  
 Hale, Matthew, 61, 142

## Index

419

- Hale, Robert Lee, 107, 114, 133, 174  
 Hall, Jerome, 35  
 Hamilton, Alexander, 237, 333  
 Hamilton, Walton H., 35, 332  
 Hand, Learned, 116  
 Handlin, Oscar and Mary, 102, 206  
 Harlan, John Marshall (elder), 344  
 Hart & Sacks Legal Process School, 115  
 Hart, H. L. A., 146  
 Hartog, Hendrik, 221, 302  
 Hartz, Louis, 102, 206  
 Haselden, Kyle, 408  
 Haskell, Thomas, 329  
 Haskins, George, 9  
 Haskins, George L., 32, 33  
 Hay, Douglas, 213, 217, 250  
 Hayek, Friedrich v., 163  
 Hayek, Friedrich von, 358  
 Herndon, Angelo, 345  
 Himmelfarb, Gertrude, 179  
 historical injustice  
   responses to  
     reparations, 387  
 historical injustice  
   responses  
     broad agency, 398  
     structural, 385  
   responses to, 383  
     amnesties, 386  
     broad agency, 384  
     denazification, 390, 392  
     in Eastern Europe, 410  
     narrow agency, 384  
     oblivion, 395  
     structural, 407, 413  
 historicism, 4, 303  
   as threat to legal rationalization, 183  
   responses to threat  
     adaptation theory, 193  
     Cartesianism, 191  
     denial, 190  
     resignation, 201  
   of consciousness, 258  
   defined, 183  
   illustrated, 258  
 Historikerstreit (historians' controversy),  
   414  
 history  
   "consensus" school of, 296  
   internal, limits of, 47  
   lawyers' v. historians', 2–7  
   Marxist interpretations of, 150  
   originalist. *See* originalism  
   Progressive, 26  
   as subversive of current law, 5  
 Hobhouse, Leonard, 174  
 Holmes, Oliver Wendell Jr., 227, 287, 354  
   as living Constitutionalist, 368  
   on negative uses of history, 331  
 Holmes, Oliver Wendell Jr., 22, 34, 41  
   on antitrust doctrine, 167  
   on Classical legal science, 57  
   conception of legal rights, 54  
   on contracts, 71  
   on external standards, 57, 69  
   as formalist and anti-formalist, 128  
   on historical contingency of law, 59  
   as historicist critic, 60  
   on history as "dragon", 4  
   and Metaphysical Club, 52  
   as pragmatist, 52  
   on privileged infliction of injury, 66  
   as scientific positivist, 54  
   social theory of sovereignty, 64  
   on survivals, 61  
   The Common Law, 50–75  
   on "The Gas-Stokers' Strike", 68  
   on torts, 55  
 Holt, Wythe, 97  
 Home Building & Loan Ass'n, v. Blaisdell  
   (U.S. 1934), 142  
 Horwitz, Morton J., 47, 202, 207  
   on administrative state, ambivalence of,  
     129  
   on ahistorical English jurisprudence, 144  
   Atiyah concurrence with, 100  
   on conservative legal histories,  
     101, 136  
   on constitutional fundamentalism, 302  
   on corporate personality, 117  
   Fein critique of, 106  
   on H. L. A. Hart, 146  
   Holt review of, 106  
   on law as subsidy to capitalists, 99  
   on the legal-commercial alliance, 98  
   on legal thought as ideology, 107  
   Oldham reinforcement of, 100  
   on Progressive legal historiography, 138  
   on Progressive legal thought, ambivalence of,  
     131  
   Reid critique of, 105  
   on the rule of law, 104  
   Simpson critique of, 100  
   Transformation I, 97  
   Transformation II, 106, 110  
   on uses of history, 135

- Horwitz, Morton J. (*cont.*)  
 Williams critique of, 105  
 works  
   Transformation I, 112, 137, 256
- Hovenkamp, Herbert, 177
- Howard, Philip, 376
- Howe, Mark DeWolfe, 32, 33, 96  
 on Holmes's Common Law, 51
- Hughes, Charles Evans, 332
- Hulsebosch, Daniel, 379
- Hurst, James Willard, 2, 9, 77–95, 96, 102, 206, 227, 269  
 on “bastard pragmatism”, 79, 89  
 as critic of laissez-faire, 93  
 on “drift” and “inertia”, 79  
 expansive concept of law, 83  
 on humdrum uses of law, 85  
 on law as instrument of planning, 79  
 on the legal profession, 94  
 as mentor and guide, 87  
 subjects ignored by, 87  
 and Wisconsin Idea, 81  
 works  
   *Law and Economic Growth*, 82  
   *Law and the Conditions of Freedom*, 87  
   *The Growth of American Law*, 77
- interests  
 as legally constituted, 264
- Jaffe, Louis, 115, 133
- Jhering, Rudolf v., 227
- Jim Crow laws, 347
- Johnson, Lyndon  
 Great Society programs, 349
- Jones, Alan, 138
- Jones, Edith, 373
- Kalman, Laura, 97, 351
- Karsten, Peter, 102
- Katz, Stanley N., 97
- Keener, William A., 26
- Kennedy, Duncan, 107, 208  
 school of critical historiography, 272, 305
- Kessler, Friedrich, 132, 332
- King, Martin Luther Jr., 345
- Klare, Karl, 302  
 on Wagner Act, 270
- Kolko, Gabriel, 235
- Kramer, Larry, 144
- Kuhn, Thomas, 107, 111, 136
- Kuhn, Thomas S., 52
- labor combinations  
 classical courts on, 168
- labor contract  
 as freedom, 329  
 as servitude, 330
- labor law  
 complex accounts of, 247  
 determinist histories of, 246  
 efficiency or power as explaining, 247
- laissez-faire  
 myth of, 353, 375
- Landauer, Carl, 88
- Langdell, Christopher Columbus, 128
- law  
 antiquity of, 36  
 as arena of class struggle, 254  
 autonomy of, 9, 17–50, 224, 229, 260  
   disengaged from society, 249  
   Watson on, 249  
 and capitalist development, 238, 240  
 complexity of, 241  
 varieties of pathways toward, 243  
 as constitutive of consciousness, 267  
 as constitutive of economy, 281  
 and economic change, 44  
 in everyday consciousness, 266  
 evolutionary theories of, 22–23  
 indeterminacy of, 271  
 instrumental theories of, 234  
 as legitimating ideology, 189, 217, 248, 253, 295, 303  
   Hyde on, 252  
   Womack on, 252  
 Marxist theories of, 237, 254  
 as plural, contested, constructed, 302  
 as product of dominant class, 237  
 as product of economic necessity, 239  
 as product of social interests, 234  
 as resource for subordinated, 295  
 as responsive to social needs, 225, 228  
 as rhetoric, 218  
 as ruling class strategy, 253  
 as structured by contradictions, 272  
 as symbols and rituals, 255  
 as trivial if autonomous, 252
- law-and-economics, 235
- law-box, 19, 39
- law-in-action scholarship  
 achievements of, 232  
 limits of, 233
- law-society relations, 112  
 conventional views of, 224

## Index

421

- as discontinuous, 188
- empirical studies of, 214
- law as constitutive of society, 262
- law determined by society, 187
- and legal pluralism, 188
- as seen by legal formalists, 229
- as seen by legal realists, 229
- lawyers
  - as Tocqueville's aristocracy, 297
- Leff, Arthur, 217
- legal evolution, 225
  - as affected by politics and culture, 245
  - contrasting narratives of, 256
- legal formalism
  - Protean nature of, 126
- Legal Formalism, 229
- legal history, 333
  - antiquarian, 284
  - as apologetic, 288
  - Burkean views of, 297
  - in Classical legal thought, 327
  - conservative
    - of civil rights, 343
  - conservative uses of, 283
  - critical, 260, 320
    - critique of as overemphasizing doctrine, 274
  - as destabilizing, 288
  - dynamic, 285
    - of Hale, Burke, Savigny, 285
  - embedded narratives in, 321
  - from the bottom-up, 294, 351
  - as history of liberty, 322, 352
  - internal v. external, 49, 230
  - judge-centeredness of, 42, 48
  - Marxist, 294
  - narratives of progress in, 290
  - as movement from status to contract, 326
  - as pointer to alternative tracks, 307
  - populist, 301, 325
  - pragmatic, 38
  - Progressive, 331, 333
    - as professional task, 27
    - as progress from feudalism to liberalism, 290
  - Progressive views of, 307
  - radical, 293, 336
  - radical narratives of, 326
  - of Reagan era, 336
  - as repository of immemorial principles, 329
  - stakes of arguments over, 354
  - static, 285
  - subversive tendencies of, 318
  - as source of authority, 319
  - as source of inspiring ideals, 380
  - as source of mythic traditions, 218
  - as source of traditional authority, 297
    - critiques of, 303
  - as thwarted progress and broken promises, 297
    - Whig narratives of, 326
- Legal Realism, 104, 107, 113, 131, 221, 229, 251
  - and social science, 132
- Legal Realists
  - as legal historians, 34
- legal scholarship
  - aims of, 184
  - anti-instrumentalist types of, 219
  - apologetic nature of, 185
- legal thought
  - contradictory structures of, 305
  - defined, 112
  - as legitimating ideology, 117
  - relation to social life, 116, 121
- legal-social relations
  - histories of, 287
  - indeterminacy of, 242
  - law as disengaged from society, 249
  - law as responsive to social needs, 199
  - regularity in, 237
- legislation
  - merits of, v. adjudication, 195
- Lilburne, John, 345
- Lincoln, Abraham, 344
  - on immanent liberty and equality, 335
- Lindsay, Matthew, 170
- Litwack, Leon, 211, 279
- living Constitutionalism, 378
- Living Constitutionalism, 366
- Llewellyn, Karl, 26, 35, 41, 46, 206, 227
- lumber-lien law, 268
- lustration laws (Czechoslovakia), 384
- Macaulay, Stewart, 250
- Macneil, Ian, 216
- Maine, Henry Sumner, 25, 64, 192, 194, 223, 326
- Maitland, Frederick William, 24, 25, 34, 288, 354
- mandarin law, 112
  - critique of focus on, 277
  - defense of focus on, 277
  - relation to everyday law, 278

- Mansfield, Lord, 204  
 Marshall, Thurgood, 355, 368  
 Marx, Karl, 174, 227  
 May, James, 330  
 McCarthy, Charles, 81  
 McClellan, James, 137  
 McConnell, Michael, 338  
 McCurdy, Charles, 138, 208  
 McIlwain, Charles H., 26  
 Mead, Lawrence, 179  
 Meese, Edwin  
   as originalist, 366  
 Meese, Edwin H., 299  
 Menand, Louis, 50  
 Mensch, Elizabeth, 272  
 Meyler, Bernadette, 378  
 Michelman, Frank, 301  
 Mill, John Stuart, 165  
 Milsom, S.F.C., 354  
 Momigliano, Arnaldo, 17  
 Monaghan, Henry, 378  
 Montesquieu, Charles-Louis Secondat, Baron de, 227  
 Moore, Underhill, 39  
 moral order  
   state as enforcer of, 170  
 morals legislation, 166  
 Morgan, Edmund, 346  
 Mormon Church  
   federal campaign against, 166  
 Morris, Richard, 9  
 Morris, Richard B., 32  
 Müller, Ingo, 386  
 Murray, Charles, 179
- Nazi jurists, 386  
 Nelles, Walter, 35  
 Nelson, William E., 47, 96  
 Neumann, Franz, 227  
 New Deal, 121  
 Nietzsche, Friedrich Wilhelm  
   on monumental history, 381  
   on uses of history, 320  
 Nonet, Philippe, 232  
*Northern Securities Case* (U.S. 1904), 167  
 Novak, William, 87  
   on Hurst, 90  
 Novick, Peter, 107  
 Nuremberg trials, 384
- objective causation  
   Progressive critique of, 114  
 Occupational Safety and Health Act (1970), 294
- originalism, 142, 191, 298  
   alternatives to, 377  
   Bork view of, 339  
   claims for determinacy of, 299  
   difficulties of implementing, 339  
   as forensic tool, 369  
   as nostalgic traditionalism, 361, 364  
   as a political project, 362  
   as populist project, 362, 371  
   in Reagan Administration, 337, 363  
   as source of principles, 300  
   as zombie idea, 361  
   not applied to First Amendment, 370  
   not applied to Reconstruction Amendments, 370  
   Scalia view of, 340  
   shifting versions of, 363  
 Orren, Karen, 330  
 Osgood, H. L., 25
- Paine, Thomas, 190  
 Parker, Kunal, 17  
 Parsons, Talcott, 227  
 Patterson, Orlando, 262  
 Peckham, Rufus, 167  
*Planned Parenthood v. Casey* (U.S. 1992), 139  
 Pocock, J. G. A., 350  
 Polanyi, Karl, 103  
 police power  
   scope of, 173  
   Tiedeman on, 175  
 Pomeroy, John Norton, 291  
 Posner, Richard A., 208, 337  
 Pound, Roscoe, 25, 30, 34, 39, 41, 44, 127, 206, 227, 250, 332  
 private sphere  
   law as constituting, 163  
 Progressive legal thought, 110, 199, 206, 291  
   critiques of, 292  
   tamed and coopted, 115  
 property  
   changing meanings of, 367  
   histories of, 287, 289  
 property rights  
   as natural or conventional, 125  
 Proudhon, Pierre-Joseph, 174  
 public choice theory, 342  
 public-private distinction, 267  
   Progressive critique of, 114
- Rabban, David, 17, 50  
 Reagan, Ronald, 344, 377, 411  
   nostalgic fantasies of, 119

## Index

423

- reconstruction  
 of Germany, 388  
 Progressive program for, 389  
 successes and failures, 391  
 Reconstruction (of South)  
 failures of, 391  
 as structural reform, 387  
 Rehnquist, William H., 299, 337  
 Reid, John Phillip, 6, 101  
 Reinsch, Paul S., 29  
 representation  
 histories of, 213  
 Reynolds, William Bradford, 402  
 Riesman, David, 39  
 rights revolution, 299  
 legal history of, 334  
 Rustin, Bayard, 345
- Savigny, Friedrich Karl von, 22, 288  
 Scalia, Antonin, 299, 337  
 hermeneutics of, 338  
 as selective originalist, 369, 371  
 as selective originalist, 366  
 Scheiber, Harry N., 96, 102  
 Schlegel, John Henry, 214  
 Schwartz, Gary, 99  
 Scottish Enlightenment, 225, 322  
 jurists of, 145  
*Select Essays in Anglo-American Legal History*  
 (1907), 29  
 Selznick, Philip, 232  
 Sewall, William, 280  
 Shugerman, Jed, 144  
 Siegel, Reva, 5, 169, 370  
 Siegel, Stephen, 17, 327  
 Singer, Joseph William, 276  
 Skocpol, Theda, 408  
 Skousen, W. Cleon, 371  
 slavery  
 and capitalist development, 242  
 law as constituting, 266  
 as legal relationship, 262  
 Smith, Adam, 194, 227  
 Smith, Joseph H., 32  
 Smith, Rogers, 345  
 social order  
 and individual character, 164  
 naturalized, 163  
 Sowell, Thomas, 401  
 Spencer, Herbert, 54, 69, 164, 176  
 Statutes of Laborers and Apprentices, 330  
 Stevens, Thaddeus, 388  
 Story, Joseph, 137  
 Strauss, David, 378  
 Sugarman, David, 244  
 Sullivan, Kathleen, 399  
 Sunstein, Cass, 301
- Taft-Hartley Act (1947), 294  
 Taney, Roger B., 344  
 textualism, 367  
 as interpretive method, 284  
 Thatcher, Margaret, 157  
 Thayer, James Bradley, 23  
 Thompson, E.P., 103, 149, 274  
 as critic of political economy, 154  
 craftsmanship of, 150  
 on law as “imbricated” in practice, 279  
 on law as customary right, 151  
 on rule of law, 151  
 on the rule of law, 104, 147  
 respect for particulars of, 152  
 works  
 “Moral Economy of English Crowd”, 154  
*The Making of the English Working  
 Class*, 150  
*Whigs and Hunters*, 151, 295  
 Tiedeman, Christopher, 175  
 Tomlins, Christopher, 221  
 tort law  
 histories of, 377  
 Truth Commissions, 385  
 Tushnet, Mark, 47
- Unger, Roberto Mangabeira, 306  
 uses of history  
 antiquarian, 320  
 apologetic, 4  
 as authority, 4  
 as nostalgic traditionalism, 356  
 conservative, 10, 190, 336  
 critical, 4, 34, 36  
 Holmes’s view of, 331  
 dynamic, 319  
 forensic, 6, 339  
 Hobbes on, 357  
 Morton Horwitz on, 135  
 Progressive, 331  
 radical, 336  
 reactionary, 10  
 static, 319  
 taxonomy of, 318
- VanderVelde, Lea, 302  
 Victorian values, 157  
 current revival of, 179



- Vinogradoff, Paul, 25, 194  
Voting Rights Act (1965), 344
- Warren Court, 298  
Watson, Alan  
    on autonomy of law, 249  
Wayland, Francis, 177  
Weber, Max, 194, 216, 227, 332  
    on formal-legal rationality, 127  
    on law and capitalist development, 241  
Webster, Daniel, 325  
Wechsler, Herbert, 108  
White, Edward Douglass  
    on antitrust, 168
- White, G. Edward, 50, 96  
Whitman, James Q., 288  
Wilkes, John, 345  
Williamson, Oliver, 216, 232  
    on organization of work, 246  
Williston, Samuel, 30  
Wills, Garry, 119  
Wilson, William Julius, 408  
women  
    legal histories of, 335  
Woodard, Calvin, 34
- Yntema, Hessel, 35  
Yoo, John, 367