Index

adjudication
  in Athenian law 52–53, 54
  in Castile 159, 162, 163
  in Catholic Church 60, 137–138
  in Deir el-Medina (Egypt) 47–48
  as hallmark of Western European legal structures 151–153
  in Hispanic colonial administration 182, 189, 190–191
  in Japan 40, 55–56, 99–100, 110, 120–127
  in medieval Europe 129–130, 139, 141–142, 143, 149–150
  as mode of law making and enforcement 33–34, 55
  of private and public law rules 18
Adrian VI (pope) 179
Adrien, Kenneth 196–197
Africans in Hispanic America 192–194, 196
agriculture
  crops grown by Muslims in Iberia 148, 157
  cultivator status groups in Japan 110
  dry-field vs. wet-paddy cultivation 42, 56–58
  millet 42, 62–64
  sedentary communities defined by 38, 40, 42–43, 62–63, 98, 101, 130, 136, 144, 165
  see also rice
Alamanic Laws (Lex Alamannorum) 142
Alaric (Visigoth leader) 135
Alaric II (Visigoth leader) 140
Alfonso X (king of Castile) 158–161, 163
Alfonso XI (king of Castile) 161–163
Alford, William 94
Alfred the Great (king of Wessex) 145–146
Allam, S. 47
Americas see Hispanic America
Amerindians
  recognition of natural rights 181, 182–183, 186–192
  separate system of governance and 178, 185
Anglo-Saxon kings
  territorial division of England 145
Aquinas, Thomas
  Summa Theologica 154–155
Aragon 31, 128, 130, 133, 148, 155, 156–157, 163, 174, 197
  see also Valencia
arbitration, binding private (Athenian law) 53
Asakura, Kan’ichi 110
Ashikaga period 114, 123, 161
Asia, East
  authority in sedentary communities 38, 56–58
  China’s contributions to neighboring states 61
  influence of Tang and Ming Codes 85
  regional influence of Japan’s legal regime 200
  variations in rice cultures 57–58
  see also individual countries
Asia, Southeast
  maritime polities subjected to Chinese tributary status 89
assizes, as alternative to manorial courts 147
Asturias 148
Athens
  ostrakophoria (exile) 26
  private law regime 48–55
Law's political foundations

taxes 14, 28–29, 51
Attila’s Hunnic domination 134–135
*audiencias* 163, 176–178, 182–184, 194–195
Augustinians 179
authority
of Church 137–138, 139
distance from custom and political
31–32
extension of law’s domain and 43, 59, 139
Henry II’s augmentation of sheriff’s
147
legal rules require recognition by
political 9
to legislate 115
in pre-Hispanic America 168–169, 185
royal vs. ecclesiastical 180
in sedentary communities 38, 56–58
sources and boundaries defined by
law 131
*see also* legitimacy; power
Aztec Empire 166–169
Babylonia 41
*bafuku* see Kamakura *bafuku* (tent
government)
Barcelona/Catalonia 148, 156
Barker, Rodney 9
Barnes, Gina 103
Bauer, Brian 170
Bavarian laws (*Lex Baiuvaiorum*) 142
Becket, Thomas 147
Bellah, Robert 124–125
Bellomo, Manlio 153
Bendezú, Don Miguel de 188, 189
Berman, Harold 131
Black Death, devastation of Barcelona
and Valencia 163
Blakeley, Barry B. 81
Bloch, Marc 130
Borah, Woodrow 186–187, 189–190, 191
Braithwaite, John 24
Bray, Francisco 78
bronze *see* copper and bronze
Bronze Age 65–66
Brook, Timothy 88
Buddhism 75, 103, 104, 107, 111, 118,
124
bureaucracy *see* centralization and
bureaucracy; officials
Burg, David 42
burghal system 145
Burgos, Laws of 181–182
Burkholder, Mark 176–177, 195
Burns, Robert 156
*bushi* see warrior elites
canon law 131, 138, 152, 154, 158, 163,
176, 179, 186
Canute *see* Cnut (king of Denmark,
Norway, and England)
capital cities
of China 77
of Japan 105
capital punishment, upon emperor’s
approval 92–93
Carneiro, Robert 35
Carolingian Empire 142, 144–145, 148,
156
Castile
adjudication in 159, 162, 163
as institutionally advanced country
80, 128, 157–163
*reconquista* (recovery) 147–148,
155–156, 174
*see also* Hispanic America; Spain
Catalonia *see* Barcelona/Catalonia
Catholicism *see* Roman Catholic
Church
centralization and bureaucracy
Castile 157–163
China 61, 63, 66–67, 70–77, 84–86
Japan 102–109, 111, 113–114,
116–120, 121–124, 126
law as means of unification 145–146
Spanish Crown reforms 189–192
Visigoth unification 147
Chaffee, John 76
Chance, John 192, 194
Charlemagne 142, 144
Charles I (king of Spain, Charles V,
Holy Roman Emperor)
convened Valladolid assembly 181
creation of viceroyalties 177–178
New Laws 182–184
union of Spanish kingdoms 163
Charles III (king of Spain) 197
China
age of gunpowder 56, 70
capital cities usually in north 77
coercive power in revenue collection 18
continuity of Chinese rule after
Mongol invasion 83–89
customary commercial order 25
dominance of private ordering 200
hydraulic society as basis for
authoritarianism 64
law and the Legalist tradition 70–71,
72, 89–97, 169
law of empire 71–77
local control and ordering 81–83
political/legal influence on Japan
99–100, 103–106, 108–109,
114, 120–121, 125–126
as public law regime viii, 15, 39, 199,
201
rivers 62–65, 66, 69, 74, 85–86, 88,
133
self-governing structures intact 157
separation of law and morality 5,
90–91
trade with Europe 7–8, 149, 175, 184,
198–199
warfare under Shang and Zhou
Dynasties 65–69
wet-paddy rice impact on political
development 56–57, 77–81
see also individual dynasties;
individual rivers
Chu polity of China 69, 81
Cioffi-Revilla, Claudio 67
civil officials see officials
clergy, regular vs. secular 179–180
Clovis 135, 141
Cnut (king of Denmark, Norway, and
England) 143, 145
Codex Euricianus 140
coercion
Chinese and Roman revenue
collection 18
compelling compliance by use of
force 11–12, 33–34
element missing from Kenmu
formulary 124
Incan capacity for 172, 173
see also power; warfare
colonization and transplantation of
Western law 128–129, 173–174
commerce
adjudication as means of ordering 99
in Castile set back by reconquista 156
commercial private ordering 7–8,
24–25, 29–32, 81–82, 96, 120
elite control in Hispanic America 196
European city-states and merchant
oligarchies 143–144
foreign trade limits in Japan 117
Mediterranean trade expanded in
Aragon 156
Ming surplus grain sales 88
as mobile means of wealth creation
42
Ottoman control over 163
practices as judicially enforceable 40
Spain’s House of Trade 175
trade throughout Islamic world
148–149
see also gold; silver
Common Law see England; ius
commune (common law)
comparative law 2–4, 20, 37–40
compliance see enforcement
confession, in Chinese law 92, 93
Confucian/Neo-Confucian ideology 10,
60, 70–71, 72, 80, 90, 94, 95, 117,
124
consensus
capacity of legal rules to create 11
community acceptance of legitimacy
12, 32
development of representative
assemblies and 136
in Japanese judicial law making 58,
124, 126–127
supported by legalization 13
constitutions as frameworks for
political orders 22
contracts 20, 30, 40, 95
Law's political foundations

control see authority; power
Cook, Sherburne 180–181
copper and bronze 65–66, 69
Corpus Juris Civilis 128–131, 153–154, 162
Cortés, Don Juan 187–188
Council of the Indies (Real y Supremo Consejo de las Indias) 175–176
Covey, Alan 170
Creel, Herrlee Glessner 67
criminal law
dependence on complaints/accusations 142, 151
enforcement of 48, 121
legislation required to apply 71
offenses vary with social values 23, 30
penal command-and-control system in pre-Hispanic America 169, 172–173
in Siete Partidas 160–161
see also Ten Abominations
customary ordering
in Athens 52
within China’s public law system 82–83
in earliest societies 37–38
in international law 20–21
in law’s development 23–30, 96–97, 139, 143–144
see also private ordering
daimyo see warrior elites
Damaška, Mirjan 1
Danube River 131, 132, 134
Davies, Nigel 171
debt-peonage 195–196
Decretum (Gratian) 154
Deemings (Book of Dooms) 145
Defenders of the Poor (Defensores de los Pobres) 193
Deir el-Medina (Egypt) 45–48, 169
derivative legitimacy 10, 12, 13, 131
Des Forges, Roger 90, 92
dikai actions (Athenian law) 52–54
Dominicans 154, 179, 181, 191
dōri (reason) 122, 123, 125
due process vs. natural justice 2
duties see private law regimes; rights
Ebro River 133–134
Egypt
Inca empire’s resemblance to 170, 171
Pharaonic regime 43–48
as public law regime 41, 43–48, 169
Eisenstadt, S.N. 125
Elts, David 192–193
encomienda system 174, 175, 180–186, 188
enforcement
by community disapproval or shaming 24
distinction between authority and power 10–13
of law required by Zhou 68
in Legalist tradition 89
modes of 32–34, 55
of norms and sanctions 6–10, 19, 26–28, 30
public vs. private law regimes ix, 13–21
of Spanish law in colonies 182–184
status of local officials responsible for 80
see also adjudication; coercion
England
Common Law 129, 154
legal and administrative development 145–147
rivers 42, 133
Enrique II (king of Castile) 163
Espéculo 158–159
Espinal, Alonso de 181
Ethelbert (king of Kent) 141
Euric (Visigoth king) 140
Fairbank, John 77
Fang, Qiang 90, 92
Feldman, Eric 31
Ferdinand II (king of Aragon, king of Spain) 155, 163, 174, 181–182
Fernando III (king of Castile) 158
feudalism 143–144
fiscal systems see revenue; taxation
Index

Five Dynasties and Ten Kingdoms, period of 76, 80
Flynn, Dennis 184
France
    Abbey of Cluny canon law reforms 151
    ascent of Bourbon kings to Hispanic thrones 197–198
    Frankish duchies unified by Louis XIV 144–145
    rivers 42, 133
Franciscans 179
Franks, Kingdom of the 135, 141, 144–145
Fuero Juzgo (Liber Judiciorum) 129, 140–141, 150
Fuero Real 158–159
General Indian Court of New Spain (Juzgado General de Indios) 190–191
government
    ancient Greece 49–50
    Japan 100–101
    protection for Inca 171
    see also rivers
German legal science 14, 200
Gesetz, use of term 3
Giraldez, Arturo 184
Glanvill, Ronulf 147
Glick, Thomas 156
Go-Daigo, Kenmu Restoration 114
gold
    deposits in Japan 117
    measurement of tribute 183
    trade between China and Europe 149, 175, 184, 198–199
Goldman, Merle 77
Góngora, Mario 183
Goths 134–135, 140–141
    see also Ostrogoths; Visigoths
governance
    appropriation of Roman models 140
    legal institutions as product of systems of ix
    local participation in 81, 162
    patterns in China 61, 63, 94, 95–96
    of politically advanced societies 38
    privatization and militarization 112
    separate system envisioned for Amerindians 178, 185–186
    see also adjudication; centralization and bureaucracy; Confucian/Neo-Confucian ideology; officials
    Grand Canal of China 62, 74, 79, 88
    graphai actions (Athenian law) 52–53, 54
    Gratian, customary rules as law 154–155
    Great Ming Code 85
    Great Wall of China 72, 74
    Greece 49–50, 51, 52
    see also Athens
    Gregory I (pope) 139
    Gregory VII (pope) 151
    guilds 88–89, 96, 120, 162, 175
gunpowder age, in China 56, 70
habitual legitimacy 9
Hall, John Whitney 110–111
Hamilton, Gary 58
Han Dynasty 73–74, 77
Han Wudi 73
Hansen, Valerie 75
Hart, H.L.A., rules of recognition 2–3, 8
Hawai‘i, penalty for shirking 26, 27, 28
Hegel, Robert 93
Heijdra, Martin 64
Henry II of Anjou (king of England) 146–147, 159
hereditary succession see kinship
Hicks, Frederic 167
Hideyoshi, Toyotomi 116–117, 118
Hildebrand see Gregory VII (pope)
Himiko (Kofun queen) 102
Hispanic America
    convergence of empires (China and Spain) 198–199
    the Inca 167, 170–173, 189
    Mesoamerica 165–169
    transplantation of Western law 128, 164, 173–174, 186
Hispanic colonial administration
    encomienda system 174, 175, 180–186, 188
judicial and administrative organs 175–178, 182–184, 194–195
largest fully structured colonial empire in history 173–174
private rights of Amerindians 186–192
race and class 185, 192–197
religion 174–175, 178–180
reorganization of institutions on
French patterns 197–198
rights in regulatory colonial regime 164
Hoebel, Adamson 27
Holy Roman Empire 142, 144–145
Hongwu 84–89
House of Trade (Casa de Contratación) 175
hōitsu, use of term 3
Hsu, Cho-Yun 67
Hsün Tzu see Xun Zi (Hsün Tzu)
Huai River 62
Huang, Philip 95
Hulsewé, A.L.P. 72
Huns 134–135
hunting and gathering societies 25–26
Hymes, Robert 81–82
Iberian Peninsula see Muslims; Portugal, Spain; Visigoths
Inca 167, 170–173, 189
Indus-Ganges river valleys, no lasting polities 41
institutional ordering, private and public (legal) 30–36
international law 2, 20–21, 59–60
iron weapons and tools 69, 102
Isabella (queen of Castile) 155, 163, 181
Italy
commerce 82, 130
control of medieval 135, 140, 143, 144
surviving settlements 157–158
universities 152–153
see also Rome/Roman Empire
ius civlis (Roman private law) 15
ius commune (common law) 30–31, 129, 138, 153, 186, 188
James I (king of Aragon) 156–157
Japan
adjudication 120–127
community ordering 58, 119–120
comparisom with Western Europe 129–131
development of private law system viii, 109
geography 100–101
influences from Asian mainland 103–109
land use and proprietorship 105–112
money suits 40
murahachibu (ostracism) 26
post Paleolithic periods 101–103
private law and private ordering 29, 98–100
rise of warrior ruler houses 111–116
ritesyō period 103–109, 111, 113, 121
sato (village) 108
self-governing structures left intact 157
shōen (tax-exempt estates) system 107, 108, 109–111, 113, 114
shiki (entitlements of office) 39, 107, 108–111
Siete Partidas remarkably similar to formularies of 159–160
sō (agricultural communities) 108, 115, 119
transplantation of Western law viii, 200
Tuna Court for Tokyo fish market 31
unification under Tokugawa shogunate 116–120
wet-paddy rice impact on political development 56–57
Jōei formulary (Goseibai Shikimoku) 123, 161
Jin Dynasty 79
justice
as legal and moral norms 60
righteousness vs. 5, 90–91
universal and morally binding applicability 131
Index

kabu nakama, counterpart of guilds 120
Kamakura bafuku (tent government) 113–114, 121–124, 161
Kellogg, Susan 186
Kenmu formulary (Kenmu Shikimoku) 123, 161
Kenmu Restoration 114
Khitans, Song Dynasty and 76
kinship
  familial and clan influences under Song Dynasty 81–83
  family hierarchy as source of legitimacy 104
political orders based on 12, 35–36, 38
sedentary communities defined by 101–102
Shang Dynasty 65–66
warriors’ local ties 112
Kiyomihara Code 103
Kleisthenes 51
knbt (municipal council in Deir el-Medina) 46–48
Kofun Period (Japan) 101–103
Kohler, Josef 167–168, 169
Korea
  Hideyoshi’s invasion of 116
  influence of Chinese models of governance 61
  rice culture 57–58
  South Korean criminal offense based on Imperial Chinese law 23
Kumon Shumpei 107, 112

labor
  China 66, 72, 74, 86
corvée 18, 42, 145
  Hispanic America 174, 180–186, 191
  Japan 106–107, 108
  see also encomienda system; slaves; tribute
Lai, David 67
land
  landholders in Egypt 44
  lineage property 68
  ownership in Athens 50, 51
  regional and local variations in productivity 86–87
rents based on control of 39, 141–142, 146–147
  Tang equal-field system 75
tenure in Japan 105–112
tenure in northern vs. southern China 77–79
language, law as 1–6
Las Casas, Bartolomé de 181
Latin
  maxims on criminal penalties 71
  origins of legal language in Roman law 2–4, 137, 149
law
  adjudication see adjudication aims 22–23, 90
  canon law see canon law
  criminal law see criminal law development of x, 23–36
  elements of 6–10
  enforcement of see enforcement function of 4–6
  making of 19–20
  as matter of words 1–6
  private law regimes see private law regimes
  private ordering see private ordering public law regimes see public law regimes
  Tang, Ming, and Qing codes and European codes 93–94
  see also individual countries; individual laws and codes
lawsuits, Amerindian 186–192
Legalist tradition
  Aztec system as legalistic 169
  Castilian echoes of Chinese Legalists 160
  Chinese law and 70–71, 72, 89–97, 169
legality, principles of 71
legitimacy
  of Amerindian leaders eroded by litigation 187
  consent of governed as basis for legal 60
derivative 10, 12, 13, 131
  as essential for authority to rule 29, 33, 59
Law's political foundations

of legal norms 9–10
Mandate of Heaven 67, 68, 91
religion as source of 51, 59, 60, 138, 139, 149–150
Léon 148
letrados (university graduates) 80, 163, 176–177, 186
Levy, Ernst 140
lex mercatoria (merchant law) 7–8
Lex Romana Visigothorum (Brevarium Alarici) 140
Li Feng 67, 68
Li Yuan (Gaozu), promulgation of Tang Code 75
Linduff, Katheryn M. 67
Liu Pang 74
loans 51, 106, 107, 114, 125–126
Lowie, Robert 26
Lynch, John 176
MacCormack, Geoffrey 90
Magellan, Ferdinand 198
Mahayana Buddhism see Buddhism
Mair, Victor 63
Malinowski, Bronislaw 25–26
Mandate of Heaven 67, 68, 91
Maya 165, 166
McDowell, Andrea, on Deir el-Medina 46
McKnight, Brian 80
mediation
in early Japan 105
as mode of law making and enforcement 27, 32–33
Mediterranean Sea, as natural highway 132–133
mendicant orders 179–180, 185–186
Mendoza, Don Antonio de 174, 184
merchants see commerce
Mesoamerica, succession of polities 165–169
Mesopotamia, no lasting polities 41
Mexico/Tenochtitlán, dominance in Central Mexico 166, 168
Mexico see Hispanic America
military see warfare; warrior elites
millet 42, 62–64
mines and mining
China 60, 65
Greece 51, 52
Hispanic America 181, 184, 189, 193, 198
see also copper and bronze; gold; silver
Ming Dynasty 82, 84–85, 126
Mixteca 168
money suits 40
Mongols see Yuan Dynasty (Mongols)
Montesinos, Antonio de 181
Moore, Sally Falk 172
morality
joining of law and 10, 29, 59–60
separation from law in China 5, 90–91
see also Confucian/Neo-Confucian ideology
Morga, Antonio de 198–199
Mote, Frederick 76
Murakami Yasusuke 107, 112
Muromachi period see Ashikaga period
Muslims
expulsion from Spain 157
reconquista (recovery from) 147–148, 155–156
rising threat 144
rule of Iberia 147–149
self-governance in Valencia 57
natural justice vs. due process 2
natural law
Chinese notions of law and nature vs. 90
theory of natural rights 131, 138, 154, 162, 186
Navarre 148
Needham, Joseph 91
New Laws issued by Charles V 182–184
Nile River see Egypt
Nobunaga, Oda 116
Norman kings 145–146
norms
changing 28
as core element of law 6–10
enforcement of 6–10, 19, 26–28, 30
no Japanese notion of universally
applicable 124
see also Confucian/Neo-Confucian
ideology
North, Douglass 96–97
North and South dynasties 77–78
Nueva Recopilación de Castilla 173
Nuñez Vela, Potasco 183–184
Obayashi, Taryo 112
O’Callaghan, Joseph 159
O’Connor, Richard 56
officials
elites under Tang Dynasty 75
examinations vs. appointments
72–73, 76, 80
in Hispanic colonial administration
175–178, 179–180, 184,
189–191, 194–195, 196
in Japan 39, 106, 107, 108–111,
113–114
merit-based bureaucracy 61, 79–80,
85, 96, 177, 194
in pre-Hispanic America 167–169,
171
see also letrados (university
graduates); shiki (entitlements of
office)
Offner, Jerome A. 169
Olmec 165
Ömi Code 103
Omnimoda 179
Önin wars 114
Ordenanza del Patronazgo 180
Osborne, R.G. 53
ostracism/out-casting 26
Ostrogoths 134–135, 140
Ottoman Empire 129, 163
Pactus Legis Salicae 141
Padden, Robert 180
path dependency, in development of
legal systems x
Paul III (pope), Sublimis Deus 182
Peisistratos 51
Peru
beheading of Crown’s delegate
183–184
case of Don Miguel de Bendezú 188
establishment of viceroyalty 177
labor services replaced by individual
payment system 183
silver mines 184, 189, 198
subordination of Amerindians 195
see also Inca
Philip II (king of Spain) 180, 190,
194–195, 197
Philip V (king of France) 197
Philippines
addition to Spain’s colonies 173,
198–199
audiencia established in Manila 176
Ifugao monkalun (mediator) 27
Manila and Chinese-Spanish trade
7–8, 175, 184
Piggott, Joan 104, 106
political development
as factor in formation of legal
traditions 1
legal institutions rest on political
institutions 37–40
legal systems and maintenance of
political order 22–23
role of rivers in 40–43, 45
see also individual countries
poor in Hispanic America 193
see also debt-peonage
population
determination of tribute via census
183, 188
diversity in Western Europe 134
growth in southern China 79
Hispanic colonial empire’s
depopulation 173, 180–181,
185–186, 188–189, 192
hundreds and tithings 85, 145
Portugal
introduction of musket 116
under Léon and Castile rule 148
rivers 42, 133
power
authority see authority
capacity to enforce compliance
10–13, 36, 136
Church and law as source of authority and coercion see coercion
Confucianism and Legalist emphasis on prosperity and constraints on native rulers enforcement of see enforcement independent bases of local opposition to New Laws see coercion 182–184
need for resources and control see control ix, x, 1, 18, 23, 33–35, 41–42, 57, 63–64 political regimes require authority and 22, 27, 32–36, 39
warfare see warfare see also individual countries
private law regimes
adjudication see adjudication
Chinese lack of rules regarding private relationships convergence with public law system see also China; Egypt
Deir el-Medina (Egypt) 46–48, 169 Enforcement of see enforcement extension of law’s domain within parallels between Valencia, southern China, and village Japan primacy and global reach primacy as essential to ius commune public law regimes vs. 13–21
rights and see rights
rights and duties requirement rights applicable to public law regimes 4, 94, 164 Roman private law in twelfth century Europe 151–155 see also Athens; Japan; Western Europe
private ordering
China now dominated by institutional ordering 30–36 Japan 98–103, 105–112, 119–120, 126–127 local control and 81–83 for matters not of state concern 94–95 substitute for both public and private law regimes ix–x see also customary ordering; social ordering
Protestantism’s self-governing congregations public (legal) ordering and private ordering 30–36 public law regimes convergence with private law system see also China; Egypt
Qin Dynasty 71, 72–73, 77 Qing Dynasty 88, 93 quipu (counting system) 171–172 race and class see Hispanic colonial administration; social ordering Ramírez, Susan reconciliation for violation of norms 27 reconquista (recovery) 147–148, 155–156, 174 Recopilación de Leyes de las Indias 173–174 regulation as mode of law making and enforcement replacement of civil law by regulatory state regulatory regimes see public law regimes religion local deities subordinated by Aztec and Inca morality see morality no deistic claims for Chinese law 90, 92
Index

no deistic claims to legitimacy in Athens 51, 54
political/legal development and 59–60
priestly governing elite in Egypt 43–44
Protestantism 60
tax exemptions for Japan’s temples and shrines 106
see also Buddhism; Confucian/Neo-Confucian ideology; Mandate of Heaven; Roman Catholic Church
revenue
accommodation of Muslims to preserve Valencia’s production of 157
appropriation of wealth from producers 18–19
based on proprietary lands in early Europe 141–142, 145, 146–147
Ming system as ineffective 86–88
need for access to wealth 22–23, 136
principal sources of wealth for Athens 51
regulatory rules foremost for all regimes 38–39
shiki (entitlements of office) 108–109
Zhou sources of 68
see also taxation; wealth
Rhine River 132, 134
Rhône River 131, 132
rice
as basis of private ordering in China 78–79, 81–83, 96–97
as basis of private ordering in Japan 98–103, 105–112, 119
legal legacy of 201
wet-paddy cultivation 38, 42, 56–58, 77–81, 98, 108
rifles see warfare; warrior elites
righteousness vs. justice 5, 90–91
rights of Amerindians 181, 182–183, 186–192
as basic feature of private law regimes 4, 14–15, 17, 129, 131, 164, 174
evangelization and Western European understanding of law 154–155
see also natural law
ritsuryō period see Japan rivers
Japan’s lack of sizable 98
role in political development 40–43, 45
Western Europe 42, 131–135
see also individual countries; individual rivers
roads, Inca system of 172
Roman Catholic Church
canon law reforms 151–152
competition with state 138
evangelization as overriding aim of Hispanic colonial enterprise 174–175
God’s law as supreme 154–155
hierarchical structures in colonies 178–180
monastic orders as self-contained communities 143
role in European political and legal development 60, 137–138, 139
Rome/Roman Empire
coercive power in revenue collection 18
Latin as origin of legal language 2–4, 137, 149
law as basis for claims by rulers 143
rediscovery of classical Roman private law 152–153
rivers as northern boundaries 132–133
withdrawal from the northwest 134–135
Rule of Law vs. Rule by Law 90, 92, 96
sacrifice, human 166, 172
Saline, Martin 64
Sánchez León, Pablo 162
sanctions
Athenian law 53–54
by community disapproval 26–28, 30, 95
as core element of law 6–10
non-compensatory 151
punishment should fit crime 71, 89–90
ruler-imposed 33
see also enforcement
Sandoval, Francisco Tello de 184
sato (village) 108
Satō Seisaburō 107, 112
Savigny, Friedrich Carl von 14
Schwaller, John 178–179
scutage (monetary payment in lieu of military service) 147
Sepúlveda, Juan Ginés de 181
Service, Elman 32, 34, 64
shaming 24
Shang Dynasty 65–66
Shang Yang 71
shōen (tax-exempt estates) system see Japan
Shi Huangdi 71–73
shiki (entitlements of office) see Japan
shire administration and courts 145–146
shirking, as unacceptable 26–27, 28
Shotoku (Japanese prince) 104
Siete Partidas 128–129, 151, 158–162, 192–194
silk 88, 105, 184
silver
Chinese goods exchanged for Spanish 7, 149, 184, 198–199
decline of shipments and new tax levies 196
mines of Laurion (Greece) 51, 52
Peruvian mines 184, 189, 198
surplus grain sold for 88
tax payable in 87
tribute payments in gold or 175
Silverblatt, Irene 172
Simpson, Lesley 183–184
Single Whip Reform 87
slaves
Aztec forced labor and 167
citizens of Athens vs. subordinates and 49, 52, 55
in Hispanic America 181–184, 192–194
in Korea 57
not major source of labor in Japan 105
Smith, Julia 139–140
sō (agricultural communities) see Japan
social ordering 23–26, 35, 61, 71, 95, 99, 110, 119
see also private ordering
social status and castes, in Tokugawa Japan 118
Solon, and Athenian reforms 50–51
Song/Southern Song Dynasties 76, 79–84, 85, 92–93
Spain
advanced legal order in Castile and Aragon 128–129
control of Ebro and Tagus headwaters 133
independent kingdoms beyond Muslim control 148
political consolidation and law (1200–1492 CE) 155–163
political restructuring under Bourbon rule 197–198
trade with China 7–8, 149, 175, 184, 198–199
union of Ferdinand of Aragon and Isabella of Castile 163
see also Barcelona/Catalonia; Castile; Hispanic America; Valencia
Steenstrup, Carl 102
Stern, Steve 186, 188
stratification 33–34, 119, 127
Sublimis Deus 182
succession, problem assuring orderly 35–36, 136
Sui Dynasty 74–75
Sumer 41
Summa Theologica 154–155
surveys
China 87
Japan 105, 115, 116, 119
suzerain system 67
taboo see sanctions
Tagus River 133
Taihō ritsuryō 104
Taika reforms 103, 115
Index

Taira, defeat by Yoritomo 113
Taiwan
investors in China 96–97
reciprocity based on shared ties 58
Tang Code (Tang-lü shu’ yi) 75, 85, 104
Tang Dynasty 75–76, 79
taxation
alcahala sales tax as centralized surplus extraction 162
Athens 14, 28–29, 51
colonial obstruction of Crown’s levies 196–197
corvée labor as earliest form of 42
law not needed to justify 18–19
may be customary 28–29
non-resident citizen income 20–21
under Qin Dynasty 72
taxes paid in commodities 81, 86, 105
see also revenue
technology
capacity of rulers to control new development through warfare 55–56, 116
Ten Abominations 18, 22, 23, 94
tent government see Kamakura bafuku (tent government)
Tepaneca 166
Tetsuji Okazaki 120
Theodoric (Ostrogoth) 135, 140
Thomas, Lillian 168, 187
three son approach, in Song Dynasty 82–83
Todd, S.C. 53
Tokitaka, Tanegashima 116
Tokugawa leyasu/Tokugawa regime 100, 116–120, 125–127
Toledo, Francisco de 189
Toltec 165–166
tribute
Castilian desire for gold or silver 175
census to determine what native rulers were paid 183
diverted to personal use 187–188
as form of labor (mit’a) 172, 184, 188–189
see also revenue; taxation
trust
as basis for commercial ordering 24–25
as basis of private ordering in China 96
Twitchett, Denis 74
uji (clan-based chiefdoms) 101–102
Unger, Roberto 29
unification see centralization and bureaucracy
United States
as constitutional model for Latin America 200
replacement of civil law by regulatory state 201
taxation of non-resident citizen income 20–21
universal human rights 59
universities
in Hispanic America 195
on Iberian peninsula 161–162
law as primary discipline taught 152–154, 158
law library rules at public vs. private 7
Valencia
absorbed by Castile 197
Black Death 163
Ebro’s wetland delta 133
as prosperous port city 156–157
rice cultivation 42, 57
Tribunal of Water of Valencia 31
see also Spain
Vandals 135
Vélasco, Luis de 189–191
viability 12–13, 19–20, 24
viceroyalties 177–178
Vietnam
city of Annam recaptured by Ming China 89
influence of Chinese models of governance 61
new rice strains introduced to China 79
Vinogradoff, Paul 27, 31
violence, Weber on legitimate use of 34–35
Law's political foundations

Visigoths conquered by Islamic Berbers 143
control of southern Gaul and Iberia 135
first lawmakers of Western Europe 129, 140–141, 150
written laws as means of national unification 147

Waley, Daniel 157–158

warfare
age of gunpowder 56, 70
bronze weapons 65–66
capacity to enforce rules and maintain organized armies 33
civil war in England 146
governments’ capacity to rule and 201
Greek phalanx a formidable advantage 50
Inca conquests 170–171
invasions on all sides of Europe 142–144
iron weapons 69
matchlock rifle and Japanese victory 116
pivotal in defining politics 55–56
political development of China and 65–73, 76, 84–85, 89
political development of Western Europe and 128, 136
as prime mover in process of change 35
rivers enabled military conquest 40–42, 55
scutage (monetary payment in lieu of military service) 147
tribal conquests in Mesoamerica 165–168
see also warrior elites

Wari polity of South America 170
wartor elites
dominance of Chinese governance under Han Dynasty 73–74
of Japan 19, 98–100, 107, 111–118, 121–124, 126, 129–130
Tang emperors as pawns of 76

warrior retainers in Western Europe 19
wealth
concentration in Hispanic America 193–197
of Nile Valley, Egypt 45
in return for loyal service 113
sources and uses determine political institutions 37–43, 129–130
stratification and diffusion in Tokugawa Japan 119, 127

see also revenue; rice

wepons see warfare
Weber, Max 34–35
Wei-Jin Dynasty 77–78
wergeld (restitution) 142, 146

Western Europe
commercial rules 30–31
law and the early kingdoms (c. 450-650 CE) 139–142
law’s eleventh century foundations and adjudication 149–150, 151–155
political consolidation, fragmentation, and reconsolidation (700-1200 CE) 142–149
primacy of private law in Western Europe 128–131
religion 137–138
rifles and warfare 128, 136, 142–144
rivers 42, 131–135
transplantation of Western law viii, 100, 128, 164, 174, 186, 199, 200
see also Spain; individual countries

wet-paddy cultivation see rice
Wigmore, John H. 126
Wittfogel, Karl 64
Wu polity of China 69

Xun Zi (Hsün Tzu) 89–90

Yamato kings 103
Yangzi River 62, 64, 69, 74, 85–86, 88
Yayoi Period (Japan) 101
Yellow River (Huáng Hé) 62, 65, 66, 69, 74
Index

yi settlements 67
Yoritomo Minamoto 113
Yōrō Code 104
Yuan Dynasty (Mongols) 83–84, 85
Yue polity of China 69
Zapotec 165, 168

Zeitlan, Judith 168, 186, 187
Zhao Dingzin 70
Zhao Kuangyin 76
Zhao Zheng see Shi Huangdi
Zhou Dynasty 66–68, 70–71, 81
Zhu Yuanzhang (Taizu) see Hongwu
Zorita, Alonso de 187, 188