Index of Persons and Places

Africa, 280–81 n.43
Aldgate Ward (London), 40
Alfred, king of Wessex, 5, 80 n.42, 166, 181
Allinbridge, Samuel, 230 n.126
Almand, Alice, wife of James, 44–45
Almand, James, 44
Almon, John, 323–24, 326
American colonies, 361
Angulluskey, Geoffrey, 89 n.78
Anonymous (antiquarian writings cited in text and notes):
  Address to the Jurymen of London, 323, 337
  Agreement of the People (1647), 161 n.24, 162
  Agreement of the People (1648), 161 n.24, 162
  Agreement of the People (1649), 160–61, 161 n.24, 162
  Another Cry of the Innocent and Oppressed . . . or, A Second Relation of the unjust proceedings, 205 n.17, 206–7, 206 n.18
  Another Cry . . . or a Third Relation, 205 n.17
  Another Letter to Mr. Almon, 342–43 n.118, 343
  Articles of High-Treason, 190
  Brief Address to the People of England on the Criminal Law, 360 n.16
  Britton, 77–78 n.34, 80 n.44
  Case of Edward Bushel [et al.] . . . presented to . . . Commons, 236 n.150
  Complete Juryman, 272 n.8
  Considerations on the Legality of General Warrants, 325
  Cry of the Innocent and Oppressed, 203 n.9
  Declaration of the Present Suffering, 203 n.9
  Declarations and Humble Representations, 161 n.25
  Dialogue between a Country Farmer and a Juryman, 342–43 n.118
  Doctrine of Libels and the Duty of Jurors fairly Stated, 323, 346
  Enquiry into the Doctrine . . . concerning Libels (by “Father of Candor”), 325, 342 n.117
  Examination into the rights and duties of Jurors, 340 n.107, 341 n.109
  Fleta, 71 nn.16–17, 77–78 n.34, 82 n.50, 241
  Glanvill, 53
  Guide to Juries, 260, 324, 336
  Historical sketches of civil liberty, 331 n.66
  Humble Petition of divers well-affected, 193 n.139
  Humble Petition and Representation . . . of the Garison of Portsmouth, 161 n.25
  Inquiry into the Doctrine Lately Propagated, 347 n.130
  Jury-man charged, 203–5, 207
  Letter from Candor to the Public Advertiser (by “Candor”), 325
  Letter to be Read by all Jurymen, 335 n.82
  Letter to Robert Morris, 326 n.46
  Liberty of the Subject by Magna Charta, 203 n.9
  Lieut. Colonel John Lib. Tried and Cast, 195 n.151
  Livre des Assizes, 67 n.4, 83, 84
  London Jurors' Petition, 361 n.22
  Mercurius Elencticus, 171 n.59
  More Light to Mr. John Lilburnes Jury, 196–97
  Onely Right Rule, 189–90 n.121
  Oyes, Oyes, Oyes, 193 n.139
Petition of the Master Calico Printers, 361 n.21
Petition presented by . . . Newport-Paynell, 161 n.25
Placita Corone, 16 n.49, 48-49, 52, 369
Political Register, 326 nn.45–46, 327 n.47, 327 n.49, 327–28 n.50
Postscript to Considerations on the Legality of General Warrants, 325–26
Postscript to the Letter, on Libels, 326
Readings upon the Statute Law, 343–44 n.123
Reasons against the fine and commitment of the jurors, 246–48
Remonstrance of . . . the Levellers, 161 n.25
Representative of Divers well-affected persons in . . . London, 161 n.26
Second Postscript to a . . . Letter to Mr. Almon, 340 n.108
Several Draughts of Acts (Hale Commission), 188 n.117
Sketch of the British Constitution, 333 n.73
To His Excellency Thomas Lord Fairfax . . . The Humble Representation, 161 n.25
To the Parliament of the Commonwealth . . . The Humble Petition, 193 n.139
To the Supreme Authority, the Parliament, 189–90 n.121
Treatise on the Right of Juries, 286 n.60, 338, 339, 348
Twenty-four Sober Queries, 260 n.229
Word to the Jury . . . Lilburn, 195–96
Artoys, Robert, 41 n.43
Ashurst, William: Reasons against Agreement with . . . The Agreement of the People, 161 n.26
Assheby, William de, 39–40, 40 n.35
Astry, James: A General Charge to all Grand Juries, 332 n.67
Aylmer, G. E., 153 n.1, 170 n.56

Babington, Zachary: Advice to Grand Jurors in Cases of Blood, 258 n.225
Bailey, John, 236 n.150
Baker, John H., 115 n.29, 124 n.78, 128 n.88, 132 n.102, 138 n.138, 149 n. 178, 269 n.1
Baldwin, Sir Samuel, 237, 238, 244–45 n. 177
Becket, Thomas, 117
Bellamy, John, 128 n.89, 131 nn.97–98
Besse, Joseph: Collection of the Sufferings of . . . Quakers, 206 n.19, 231 n.130, 249 n.192
Birch, Sir Thomas, J.C.P., 283 n.51
Bishopsgate Ward (London), 41
Blackstone, Sir William, J.K.B., 291, 294–97, 295 n.90, 296 n.94, 297 n.96, 298, 299, 300, 301, 303, 303 n.121, 308, 314 n.156, 316, 333, 334, 335, 336, 340, 375; Commentaries, 294, 299, 336 n.91
Bousserman, Robert, 42–43
Bowles, John, 330, 354; Considerations on the Respective Rights of Judge and Jury, 330, 353 n.148
Bracton, Henry de, Just. Itin.: De Legibus, 53, 71 nn.16–17, 72 n.18, 80 n.41, 82 n.52, 85 n.61, 241, 369
Braithwaite, Alfred W., 210 n.35, 244–45 n.177
Braunston (Leics.), 41
Brewer, John, 314–15 n.156, 326 n.44
Bridgeman, Sir Orlando, C.B.E., 205, 209
Broke, John atte, 43
Brooke, Robert, C.J.C.P.: Graunde Abridgment, 83 n.56, 124 n.78, 234
Broome, Thomas, 238, 239
Brown, Peter, 9 n.22
Buckinghamshire, 43
Bull and Mouth, The (London), 215
Burnet, Sir Thomas, J.C.P., 282 n.48
Burtenshaw, Henry, 332; Letters to . . . Mansfield, 332
Burford, mutiny at, 156
Bushel, Edward, 202, 225, 226, 226 n.112,
Cook, John: Monarchy no Creature of Gods making, 190 n.123
Cooper, Anthony Ashley, 1st earl of Shaftesbury, 250, 250 n.197, 260 n.230, 261
Cordwainer Street Ward (London), 44
Cotterell, Mary, 157 n.12, 160 n.22, 187 n.109
Counte, John, 41
Cromwell, Oliver, 155, 156, 157, 157 n.12, 186, 192, 196, 198, 199 n.170
Cromwell, Richard, 157

Dagge, Henry, 291, 299–301, 302, 305, 333, 336; Considerations on Criminal Law, 299, 333, 336
Dalison, Sir William, J.Q.B.: Reports, 141 n.150
Daniel, Samuel, 165 n.36
David (king of Israel), 132 n.102
Dawes, Manasseh, 291, 300, 301–3, 302 n.118, 316, 329, 335; Essay on Crimes and Punishments, 301–3, 316; Essay on Intellectual Liberty, 302 n.118; England’s Alarm!, 329, 335; Philosophical Considerations, 302 n.118
Dean of St. Asaph. See Shipley, William
Derbyshire, 32 n.10, 34
Doughty, Adam, 81–82 n.49
Doughty, John, 42–43
Drayton (Salop), 283 n.51
Dudley, Edmund, 115, 115–16 n.33, 116 n.35, 196, 227 n.116
Dumont, M., 308 n.139
Duncombe, Giles, 260–61 n.231; Tryals Per Pais, 260–61
Dyer, Sir James, C.J.C.P.: Ascun Novel Cases, 130 n.95

East Sussex, 141 n.151, 148 n.175
Edwards, Jonathan: Careful and Strict Enquiry Into . . . Freedom of Will, 302 n.118
Elizabeth I, queen of England, 122 n.68, 150 n.179, 212
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ellis, Sir William, J.C.P., 237, 238, 246, 246 n.183, 247</td>
</tr>
<tr>
<td>Elton, G. R., 114 n.24, 131 n.99</td>
</tr>
<tr>
<td>Emlyn, Sollom, 293 n.79</td>
</tr>
<tr>
<td>Empson, Sir Richard, 115, 115–16 n.33, 116 n.35, 196, 227 n.116</td>
</tr>
<tr>
<td>Ernst, Daniel R., 12 n.36, 23, 46</td>
</tr>
<tr>
<td>Erskine, Thomas, 1st Lord Erskine, 328, 331 n.64</td>
</tr>
<tr>
<td>Euer, Samson. See Duncombe</td>
</tr>
<tr>
<td>Fielding, Henry, 277 n.32, 291–94, 292 nn.73 and 75, 300, 309, 311 n.150; <em>Enquiry into the Causes . . . of Robbers,</em> 277 n.32, 292; <em>Proposal for Making an Effectual Provision,</em> 293–94, 300</td>
</tr>
<tr>
<td>Fielding, Sir John, 292 n.73</td>
</tr>
<tr>
<td>Fitz-Harris, Edward, 250, 263</td>
</tr>
<tr>
<td>Fitzherbert, Sir Anthony, J.C.P.: <em>La Graunde Abridgment,</em> 83 nn. 53–54 and 56, 86–87 n.64, 234</td>
</tr>
<tr>
<td>Fleet Bridge, 176</td>
</tr>
<tr>
<td>Fletcher, George P., 87 n.68</td>
</tr>
<tr>
<td>Fortescue, Sir John, C.J.K.B.: <em>Difference between an absolute and limited monarchy,</em> 332 n.67</td>
</tr>
<tr>
<td>Foster, Sir Michael, J.K.B., 282 n.48, 299; <em>Discourse on Homicide,</em> 123 n.72</td>
</tr>
<tr>
<td>Fovyll, John, 56–57</td>
</tr>
<tr>
<td>Fox, Charles James, 331 n.64, 338 n.99</td>
</tr>
<tr>
<td>Francklin. See Franklin</td>
</tr>
<tr>
<td>Franklin, Richard, 322. See Rex v. Franklin</td>
</tr>
<tr>
<td>Frese, James: <em>Second Why Not,</em> 166 n.38</td>
</tr>
<tr>
<td>Given, James B., 22–23 n.79, 29 n.2</td>
</tr>
<tr>
<td>Gloucester, Thomas de, 67 n.5</td>
</tr>
<tr>
<td>Glynn, John, 324, 328, 334, 334 n.77</td>
</tr>
<tr>
<td>Godmanchester, Richard, 45</td>
</tr>
<tr>
<td>Gracechurch Street (London), 222, 225, 230 n.126, 234</td>
</tr>
<tr>
<td>Grant, Sir William, 360 nn.17 and 19</td>
</tr>
<tr>
<td>Green, R. B., 99</td>
</tr>
<tr>
<td>Groot, Roger D., 4 n.4, 8 n.20, 9 n.25, 10 n.26, 11 nn.30–31, 12 nn.35–36, 15 n.45, 51–52 n.88, 367</td>
</tr>
<tr>
<td>Grosley, M.: <em>Tour to London,</em> 272 n.9, 286 n.57</td>
</tr>
<tr>
<td>Guildhall (London), 170</td>
</tr>
<tr>
<td>Guilford. See North, Francis</td>
</tr>
<tr>
<td>Hale, Sir Matthew, C.J.K.B., 157, 210, 211, 241, 248, 299, 334; <em>History of the Pleas of the Crown,</em> 210, 248 n.188</td>
</tr>
<tr>
<td>Hamburger, Philip, 253 nn.208–9, 253–54 n.210, 263 n.236, 321 n.11</td>
</tr>
<tr>
<td>Hammond, John, 236 n.150</td>
</tr>
<tr>
<td>Hanawalt, Barbara A., 22–23 n.79, 24–25 n.89, 59 n.122, 60, 63 n.136, 69 n.9</td>
</tr>
<tr>
<td>Hanway, Jonas: <em>Distributive Justice and Mercy,</em> 301 n.112</td>
</tr>
<tr>
<td>Harding, Alan, 25 n.93, 112 n.19</td>
</tr>
<tr>
<td>Hardy, Thomas, 365</td>
</tr>
<tr>
<td>Harpourt, Hugh, 39</td>
</tr>
<tr>
<td>Harris, Benjamin, 252, 253 n.208, 320, 321 n.11</td>
</tr>
<tr>
<td>Haselrig, Sir Arthur, 192</td>
</tr>
<tr>
<td>Hatsell, John: <em>Precedents of Proceedings,</em> 213 n.52, 219 n.80</td>
</tr>
<tr>
<td>Hay, Douglas, 290 n.72, 310–11 n.148, 314 n.156, 350 n.141</td>
</tr>
<tr>
<td>Henry I, king of England, 6; 6 n.13</td>
</tr>
<tr>
<td>Henry II, king of England, 5, 6, 6 n.13, 7, 9, 11, 97, 117, 179</td>
</tr>
<tr>
<td>Henry III, king of England, 100 n.105</td>
</tr>
<tr>
<td>Henry IV, king of England, 34</td>
</tr>
<tr>
<td>Henry V, king of England, 34</td>
</tr>
<tr>
<td>Henry VI, king of England, 34, 121 n.60</td>
</tr>
<tr>
<td>Henry VII, king of England, 115</td>
</tr>
<tr>
<td>Henry VIII, king of England, 116, 246 n.183</td>
</tr>
<tr>
<td>Herrup, Cynthia B., 127 n.85, 133–34 n.111, 141 n.151, 148 n.175, 369, 376</td>
</tr>
<tr>
<td>Hertford, 204, 205, 215</td>
</tr>
<tr>
<td>Hext, Edward, 147–48 n.173</td>
</tr>
<tr>
<td>Higgins, Sir Thomas, 214–15 n.62</td>
</tr>
<tr>
<td>Highmore, Anthony, 335, 342, 348; <em>Reflections on the distinction usually adopted,</em> 335, 342, 348</td>
</tr>
<tr>
<td>Hill, Christopher, 162 n.29, 173 n.68, 186 n.108</td>
</tr>
<tr>
<td>Holdsworth, Sir William, 12 n.36, 318 n.1,</td>
</tr>
</tbody>
</table>
Holdy, Thomas, 45
Holdy, William, 45, 45 n.65
Holdynshed, Raphael: Chronicles, 165 n.36, 177 n.84
Holt, Sir John, C.J.K.B., 319, 319 n.2, 321, 321 n.11
Home circuit, 150–52 n.179
Hone, William, 365
Horn, Andrew: Mirror of Justices, 234 n.145
Howel, Sir John, 223, 225
Howetson, John, 57
Hudson, William: Treatise on the Court of Star Chamber, 143 n.157
Hurnard, Naomi D., 6 n.13, 9 n.24, 10 n.27, 13 n.39, 43 n.58, 46–48, 46 n.67, 49, 49 n.78, 50 n.82, 51 n.87, 53 n.95, 58 n.118, 81 n.48
Hyams, Paul R., 9 n.22
Hyde, Sir Robert, C.J.K.B., 207, 209, 209 n.31, 210, 234, 239, 248
Ikin, Newton, 282 n.49
Ingleby, Thomas de, 83
Jacob, Giles: Student's Companion, 343–44 n.123
James I, king of England, 122 n.68
James II, king of England, 250, 262, 320
Jeffreys, George, 1st Lord Jeffreys, C.J.K.B., 251, 325
Jerby, Anthony, 214–15 n.62
Jermin, Philip, J.K.B., 171
Johnson, Samuel, 292 n.76
Jones, John, 159, 172 n.63, 177–82, 178 n.86, 180 n.96, 182 n.102, 182–83 n.103, 183–84, 185, 186 n.107, 187, 189, 191, 198; Judges Judged, 176, 177–80, 180 n.96, 182, 182–83 n.103; Jurors Judges, 170 n.56, 177, 180–82, 182 n.102
Jones, Sir William: Dialogue between a Scholar and a Peasant, 328, 328 n.54
Kappauf, Catherine D., 7 n.17; 13 n.38
Kaye, J.M., 12 n.36, 33 n.15, 50 n.80, 55 n.104, 58 n.115, 73–74 n.24, 74 n.25
Keble, Richard, 170 n.56, 172, 173, 173 n.67, 174, 218–19 n.78
Kelyng, Sir John, C.J.K.B., 201, 207–22 (text and notes passim), 232, 235, 237, 237 n.151, 238–39, 238–39 n.156, 241, 243, 244, 246, 248, 261, 345, 372; Reports, 215, 217
King, P. J. R., 283–84 n.53
Kishlansky, Mark A., 155 n.8
Knivet, Sir John, C.J.K.B., 92 n.92
Lacombe, F.: Observations sur Londres, 286 n.59
Laghscale (Yorks.), 42
Lancashire, 81 n.49
Lane, John atte, 39
Langbein, John H., 109–10, 111 n.15, 139 n.141, 212 n.46, 269 n.1, 271 nn.5–6, 275 n.21, 278, 278–79 n.39, 279, 279 n.40, 285 n.56, 292 n.73, 373–74
Langetolft, John, 44–45
Lansdowne. See Petty, William
Leach, Thomas, 329, 334, 338, 344; Considerations on the Matter of Libel, 329, 334, 338, 344
Lee, Sir William, C.J.K.B., 322
Legge, Thomas, 283 n.51
Leicester, 58
Leicester Castle, 83
Leicestershire, 32 n.10, 34, 39
Lenthall, William, 169 n.54
Levy, Leonard, 350 n.138, 354 n.150
Lilburne, John, 153–207 (text and notes passim), 229, 256, 257, 326, 336, 372, 375, 381; A Salva Libertate, 171 n.59; Afflicted Mans Outcry, 197 n.167; Copy of a Letter, 162 n.29, 167 n.43; England's Birthright Justified, 166 n.39; England's New Chains, 170; Exceptions . . . To A Bill of Indictment, 193 n.139; Hue & Cry, 171 n.59, 197 n.163; Impeachment of High Treason, 167 n.43; Impeachment of High Treason Against Oliver Cromwell, 166 n.38, 171 n.59; Jury-man's Judgement, 193–94, 194 n.144, 257–58; Just Man's Justification, 160, 162; Lawes Funeral, 168 n.46, 169, 169 n.54; Legall Fundamental Liberties, 167 n.43, 169 n.54, 171 n.59, 172 n.63; Lieut. . . . Lilburn's Plea in Law, 193 n.139; Malice detected, 193 n.139; Outcry of Apprentices, 171 n.59; People's Preroga-
Northampton. See Assize of Northampton
Northamptonshire, 32 n.10, 34
Nottingham, 32 n.10, 34
Noy, William, 244-45 n.177
Nudigate. See Newdigate

Oates, Titus, 250
Old Bailey, 194, 206-7, 208, 213, 222, 226, 236, 279 n.40, 362
Oldham, James C., 132 n.104
Overton, Richard, 156, 158, 161 n.24, 165 n.36, 167 n.43, 169; Appeal, 166-67 n.41; Certain Articles, 160 n.22; Commons' Complaint, 166 n.39; Defiance against all Arbitrary Usurpations, 166 n.39; England's Miserie and Remedy, 167 n.43; Regall Tyrannie Discovered, 164 n.34, 165 n.36; Remonstrance of Many Thousand Citizens, 165 n.36; Vox Plebis, 165 n.37, 169 n.49
Ovyng, Edmund, 36, 38-39, 45
Owen, William, 322, 322 n.15, 323. See Rex v. Owen
Oxfordshire, 250

Paley, William, 291, 293, 303-5, 303 n.121, 306 n.129, 308, 333-34, 359; Principles of Moral and Political Philosophy, 303-5, 303 n.121, 333-34
Parker, 78 n.36
Parker, Henry, 176-77, 181, 182 n.102, 187-88; Letter of Due Censure, 176-77, 181; Reformation in Courts, and Cases Testamentary, 187-88
Parkin-Speer, Diane, 172 n.63, 191-92 n.132
Parsons, Robert: Jesuits Memorial, 136 n.132
Paryn, John, 42
Paryn, William, son of John Paryn, 42
Parys, Simon de, 42
Paunchard, Robert, 41
Penn, William, 201, 202, 208, 213 n.52, 221-39 (text and notes passim), 243, 249, 256, 257, 261, 336, 337, 375, 381; Appendix by Way of Defense, 226, 227-28, 230, 231, 232, 233; People's Antient and Just Liberties, 222 n.94; Second Part of the People's Antient and Just Liberties, 230 nn.125-26;

Truth Rescued, 229-30, 229 n.122, 234. See also Trial: of William Penn and William Mead
Penruddock, John: Directions for all my Fellow Prisoners, 199 n.170. See also Trial: of Penruddock
Pentyn, Clemencia, wife of John Pentyn, 40-41
Pentyn, John, 40-41, 41 n.41
Pepys, Samuel: Diary, 219-20 n.81
Perrott, George, B.E., 277 n.32, 282 n.49
Pettingal, John: Enquiry into the use and practice of Juries, 331 n.65
Petty, William, 1st Lord Lansdowne, 308 n.136, 331 n.64
Pickthorn, Kenneth, 115-16 n.33
Pitt, William (elder), 1st earl of Chatham, 324
Plowden, Edmund: Commentaries, 121 n.62
Polidori, John William: On the Punishment of Death, 360 n.15
Pollock, Frederick, 42 n.54, 50 n.80, 82 n.50
Popham, Sir John, C.J.K.B., 245
Post, John B., 7 n.16, 24 n.86
Powell, Edward M., 69 n.9
Powis, Thomas, 239
Pratt, Charles, earl of Camden, 322, 323, 324, 328, 331 n.64
Priestley, Joseph, 291
Prince, Thomas, 156, 158, 161 n.24
Priour, Henry, 42, 42 n.51
Prisot, Sir John, C.J.C.P., 35, 45
Pugh, Ralph B., 22-23 n.79, 26 n.94, 59 nn.120 and 122, 60 n.127
Pulton, Ferdinando: De Pace Regis et Regni, 136 n.131

Radzinowicz, Sir Leon, 291
Randolph, Thomas, 41-42
Rayker, Robert le, 40 n.37
Raymond, Sir Robert, C.J.K.B., 321, 322
Read, Richard, 223
Richardson, H. G., 7 n.17
Riggs, Charles H., Jr., 80 n.43
Roberts, Stephen, 192 n.133
Robinson, Henry, 188, 189; Certain Considerations, 188
Rocheffoucauld, Francois de la: Frenchman in England, 272 n.9
Romilly, Sir Samuel, 291, 308–10, 308 nn.136 and 139, 309 n.146, 310 n.147, 316, 359–60, 359 n.13; Fragment on the Constitutional Power, 310, 310 n.147; Memoirs, 308 nn.136 and 139, 359 n.13, 360 n.19; Observations on a Late Publication 308–9, 308 n.136, 309 n.146; Observations on the Criminal Law, 359–60, 359 nn.9 and 13

Rosen, Lawrence, 9 n.22

Rous, George, 326–27, 335–36, 341; Letter to the Jurors, 326–27, 327 n.47, 335, 336, 341


Ruskin, Richard, 39–40

Ruskin, William, son of Richard Ruskin, 39–40

Russell, William, Lord Russell, 251

Rutland, 34

St. John, (?) Oliver, 221 n.87

Samaha, Joel, 133–34 n.111

Sayles, G. O., 7 n.17

Schenk, W., 191–92 n.132

Scherr, Alexander, 209 n.32

Scotland, 348

Scroggs, Sir William, C.J.K.B., 239, 250, 250 n.195, 251–52, 251 nn.201–2, 273

Scrope, Sir Geoffrey, C.J.K.B., 72 n.20

Seaberg, Robert B., 153 n.1, 164 n.32, 165 n.36

Shaftesbury. See Cooper, Anthony Ashley

Shapiro, Barbara, J. 273 n.13

Shepherd, William, 43–44

Sherman, John 42

Shipley, William, 291, 328, 334. See also St. Asaph’s Case

Skippon, Philip, 176

Smellie, William, 348–49; Address to the People of Scotland, 348–49

Smith, Sir Thomas, 133, 137, 270; De Republica Anglorum, 111 n.10, 129 n.93, 133, 137, 139 nn.140–41, 141 n.151, 145 n.164

Smith, William: Innocency and Conscientiousness of the Quakers, 203 n.9; Second Relation from Hertford, 203 n.9; Some Clear Truths, 207, 207 n.29; True, Short, Impartial Relation, 205


Somerset, 214

Stanhope, Charles, 3rd Earl Stanhope, 331 n.64; Rights to Juries defended, 338 n.99

Stanhope, George: Duty of Juries, 347, 347 n.129


Staunford, Sir William, J.C.P.: Pleas of the Crown, 92 n.92, 123 n.74

Stenton, Doris M., 52 n.89

Stephen, Sir James F., 354 n.150

Stockdale, Eric, 212 n.45

Stonehale, William, 88 n.72

Strangways, James, 34

Street, Sir Thomas, 214–15 n.62

Styles, John, 314–15 n.156

Summerson, Henry, 15–16 n.47, 18 n.58, 68, 68 n.8

Surrey, 139, 271 nn.4–5, 272 nn.10–11, 275 n.20, 279, 287 n.64

Swayn, William, 88 n.72

Sydenfen, Richard de, 39–40

Sydney, Algernon, 251

Thames, 361

Thelwall, John, 365

Thompson, E. P., 352 n.144

Thorpe, Sir William de, C.J.K.B., 83, 84–85

Throckmorton, Sir Nicholas, 134, 143 n.157, 177 n.84

Thurlow, Edward, 1st Lord Thurlow, 324

Tooke, Horne, 365

Index

and Duty of Juries, 329, 336, 340 n.107, 341 n.109, 342, 347–48
Townshend, Sir Thomas, 352 n.147
Tweed, 326
Twisden, Sir Thomas, J.K.B., 209, 211, 239, 244
Tyrel, John, 68 n.7
Tyrrell, Sir Thomas, J.C.P., 221, 221 n.87
Uptone, John, son of Robert de Uptone, 44, 44 n.62
Upton, Robert de, 44
Veall, Donald, 178 n.86
Victoria, queen of England, 356
Wagstaffe, (? ) Thomas, 237, 238. See Wagstaffe’s Case
Wakefield, Edward, 361–62; Facts Relating to the Punishment of Death, 362
Wakeman, Sir George, 251
Waleis, Gregory le, 67 n.5
Walker, Clement (with John Lilburne):
Triall of Lilburne (1649), 170 n.56;
Second Part of the Triall of . . . Lilburn (1649), 177 n.84
Walshman, Reginald, 83–84
Walwyn, William, 156, 158, 161 n.24, 167, 167 n.43, 189; Bloody Project, 167 n.43; England’s Lamentable Slaverie, 167 n.43; Juries Justified, 189
Walynford, William de, 42
Warwick, earl of, 41 n.43
Warwickshire, 32 n.10, 34
Watkin, Thomas Glyn, 95 n.95
Wedderburn, Alexander, 1st Lord Loughborough, C.J.C.P., 331 n.64
Western circuit, 208, 212, 217
Westminster, 11 n.31, 161, 162, 162 n.28, 178, 179, 180, 182, 187, 217, 228, 236 n.150, 259
Westminster Hall, 217, 228 n.119, 229
Whaley, Peniston, 249 n.192
Whiting, 223
Wild, William, 213
Wildman, John, 158, 169; Lawes Subversion, 169 n.49
Wilkes, John, 323, 324, 327, 334
Willis, Sir Edward, J.K.B., 328 n.55, 338
William I, king of England, 163, 173, 189, 190 n.122
Winch, Sir Humphrey, J.C.P., 214–15 n.62
Windham, Sir Hugh, 212, 212 n.45, 214, 214 n.57, 218, 218–19 n.78, 219–20 n.81
Winstanley, Gerrard: More Light Shining in Buckinghamshire, 161 n.25
Woodfall, Henry, 322 n.15, 323–24, 326
Woods, Robert L. Jr., 111 n.15
Wright, Sir Martin, J.K.B., 283 n.51
Wycombe, Agnes de, 40, 40 n.37
Wykham, 40
Wynton, Andrew de, 40, 40 n.37
Zenger, John Peter, 322. See Zenger’s Case
Index of Subjects

Abjuration, 116 n.38
Accident. See Homicide: through accident; Infortunium; Pardon
Accusation, 7 n.17, 7–8 n.18, 8 n.19, 10, 12, 14, 16 n.49; false, 25 n.91, 25 n.93, 275, 313; unsubstantiated, 25. See also Appeal; Prosecutor, private
Acquittal rates. See Homicide; Theft
Adulterers, right to slay, 42 n.54
Ambush, 45, 55, 56, 60, 62, 70, 74, 95 n.98, 100
Amercement. See Fines
American colonies, 190–91, 323, 361
Anglo-Saxon, 50, 51, 53, 55, 80 n.42, 381; courts, 4, 5; criminal procedure, 9; law, 367; law of homicide, 31, 51 n.85; liberties, Leveller views of, 163–64, 164 nn.32–33, 170, 173–74, 180, 185–86; trial procedure, 10
Anti-Jesuit, 251
Anti-Papist, 250
Appeal (private accusation), 5, 9, 11–12, 11 n.30, 12 nn.35–36, 13, 16 n.49, 19, 25 n.91, 77–78 n.34, 86 n.62, 278–79 n.39. See also Appellee
Appellate review, 77, 233, 277, 286
Appellee, 9 n.25, 11, 12, 12 n.36
Application of law. See Criminal trial jury: application of law
Approver, 36, 36 n.25
Arbitration, 50, 69 n.9
Arrest, resistance to, 80–81, 81 n.48, 81–82 n.49
Arson, 79, 83, 118 n.49
Assault, 75, 174; false accusations of, 25 n.93; premeditated, 76 n.16. See also Trespass
Assize clerk, 109, 135
Assize of Clarendon, 6–9, 6 n.14, 7 nn.15 and 17, 7–8 n.18, 8 n.19, 11, 51 n.87
Assize of Northampton, 6 n.14
Assizes: criminal, Chapter 4 passim, 270–88 passim, 371; Hertford (Summer, 1664), 204, 205; Restoration, 209, 215
Bail, 12, 15, 22, 24, 47, 160
Bail statute. See Statutes
Banishment, 3–4; statute of, and Lilburne, 159, 192–93, 195
Barrister, 255
Battle. See Trial by battle
Bench. See Judge
Benefit of clergy, 61, 116, 117–18, 118 n.50, 120, 121–22, 121 nn.60–61, 146, 146 n.168, 148, 275, 276, 280, 311, 357, 380; in cases of theft, 127, 127 n.84, 127–28 n.86, 128; and development of law, 119 n.54; effect on jury behavior, 122–23
Bond, release on, 112
Bot, 50
Brigands, 69
Buggery, 118 n.49
Burglars, 82–86, 94
Burglary, 60, 70, 75, 79, 81–82 n.49, 82, 83, 107, 128 n.88
Bushel v. Howell, 236 n.150
Bushel v. Starling, 236 n.150

395
Canon law, 247
Capital punishment, 10; authorities’ disinclination to resort to, 286–87; community attitude toward, 63–64; foreign observers’ comments on inclination to avoid, 286; Leveller campaign against, 166; movement for abolition of, 166–67 n.41; opposition to, 190, 198, 289; resort to blanket rule of, in felony, 364; resort to, in eighteenth century, 279–80; setting examples, 303–4. See also Execution; Terror and criminal law

Case of Ship Money, 241

Catholics, 250, 253

Causes of crime, 148, 148 n.175; English prisons, 361–62; imprisonment, 296; selective enforcement of the law, 297–98, 302, 360; social conditions, 296, 300, 301, 316, 345, 378–79, 383

Certainty of law, 299, 353, 353 n.148, 355, 358, 366; contemporaries’ assumptions about impact of trial jury discretion on, 382

Certainty of punishment, 289, 294, 295, 299

Certiorari, 236 n.150

Challenges (to jurors), 15–16 n.47, 134, 134 n.113, 199 n.170, 230 n.126, 251

Chancellor, and pardon process, 72, 72 n.20

Chancery, 61 n.131, 123, 155; and pardon process, 101

Chancery, Court of, 157

Chapbooks, 144

Character, 281–82, 284, 287, 346. See also Criminal trial jury: mitigation of law, motives for

Character witnesses. See Witnesses

Charge (judicial). See Judge: charge to jury

Chastisement. See Homicide: in course of chastisement

Church, 207; of England, 207, 215; and state, conflict of, 117–18; and trial by ordeal, 3

Church courts, 121

Civil pleas, 161. See also Private law

Civil society: evolution of, and role of criminal trial jury, 333

Civil trial jury, 19, 158, 175, 187 n.109, 190 n.122, 372

Civil trials, 177, 233, 243, 244, 245

Civil War, English, 154, 155–57

Clarendon Code, 202

Class conflict, 382

Clergy. See Benefit of Clergy

Clerk (of court), 78, 87, 89 n.78, 90–91 n.87

Clerk of the peace, 109

Coercion of jurors, 137–38, 140, 141, 208–15, 210 n.35, 382; bill regarding legality of, 219–21; binding over by judge, 141 n.151, 206 n.19; fining by judge, 209 n.31, 210, 210 n.33, 211, 213, 213 n.52, 219, 219 n.80, 220, 225, 231–32; judicial browbeating, 327–28 n.50; legality of, 208–15, 210 n.33, 236–49; legality of, debated in the Commons, 219; Penn’s views on, 232; Rudyard’s views on, 232, 234–36; Starling’s views on, 233–34, 234 n.141; threatening by judge, 214, 249 n.192; views of “Reasons” on, 246–48. See also Bushel’s Case; Kelyng; Tyrrell

Coercion of jurors (grand): fining by judge, 218; threatening by judge, 214 n.57

Combat. See Trial by battle

Commission of 1380, 58 n.115, 74

Committal statute. See Statutes

Common law, 163, 175, 185, 186, 196, 223, 226, 229, 247, 335; Leveller understanding of, 164 n.32 (see also Levellers)

Common lawyers, 163

Common Pleas, Court of, 236, 236 n.150, 239, 241, 244

Commonwealth, 183

Commonwealth bench, 180

Community: and community-based system of law, 180; concept of murder, 53; concept of self-defense, Chapter 2 passim; and criminal defendants, 4; dependence of royal authority upon, 68–69; and judicial recommendations for mitigation of law, 283 n.51; Leveller view of, 185–86, 186 n.107; local, and Lilburne’s views regarding law, 192; perspective on the criminal trial, 374; perspective on role of criminal trial jury, 267–68, 370–71; sympathy
toward suspects, 48; view of the criminal law, 149 n.178
Community, attitude of, in Middle Ages, regarding: defense of kin, 43; liability, 351 n.142; liability in Anglo-Saxon period, 50; retaliation, 38; slayers, 58; slaying adulterer, 42; slaying in course of open fight, 38; slaying housebreakers, 41; thieves and theft, 61-64
Commotion of sentence, 5, 145. See also Pardon; Transportation
Compensation (to victim): and Leveller reform demand, 161 n.24. See also Composition
Composition, 5, 6, 9, 10, 50, 51, 58, 97
Compurgation, 5
Concord. See Settlement
Confession, 81, 131-32 n.100, 132 n.102, 137
Conquest. See Norman Conquest
Conscience: of jurors, 188, 231, 238, 244, 246, 246 n.182, 251 nn. 201-2, 251-52, 252 n.203, 255, 257, 261, 273, 298, 308, 327 n.49, 337 n.93, 348, 373, 381; Leveller appeals to, 193-94, 197; Leveller invocation of, 184-86; and Leveller view of law, 167, 185-86; Quaker appeals to, 204, 208
Conspiracy (false indictment), 25 n.93
Constable, 112, 222, 364
Constitution, English, 375; role of criminal trial in, 335; role of criminal trial jury in, 331-33, 336
Construction (of statutes). See Judge: interpretation of law
Contemporary observers. See Criminal trial: observers of
Continent, 368; criminal justice on the, 289
Continental reform theory, 297
Contract, 372
Conventicles, 202, 203
Conventicles Act. See Statutes
Conviction rates. See Homicide; Theft
Coroner, 34 nn.16 and 18, 77, 80 n.44, 89 n.78, 91 n.91, 171; enrollments of, 45 n.66, 58; rolls of, 14, 33, 35-36; treatment of accidental homicide, 86 n.62, 93 n.96
Coroner’s inquest, 17, 36 n.25, 52, 58-59, 61, Chapter 2 passim, 88 n.72, 210 n.33; alteration of facts by trial jury, 38 n.28; assessment of defendant’s reputation, 58: how verdicts were reached, 37
Council, 113, 131, 277
Counsel, 16, 135 nn.127-28, 136 n.131, 270, 270-71 n.2, 339, 363, 366; denial of, 135-36; for Quakers, 211; right to, 172, 173, 175, 194, 199 n.170
County: trials in, 179, 181, 186 n.108, 188
County court, 7, 17, 21
Court, Royal, 250
Courts. See Anglo-Saxon; Chancery; Common Pleas; County; Exchequer; Hundred; King’s Bench; Star Chamber
Courts baron, 181
Courts leet, 181
Crime: increase of, 305, 313; perception of seriousness of, in fourteenth century, 73 n.23. See also Arson; Burglary; Causes of crime; Homicide; Larceny; Murder; Robbery; Theft; Treason
Criminal law. See Crime; Law
Criminal trial, nature of: in eighteenth century, Chapter 7 passim; in Middle Ages, 14-20; observers’ commentaries on, in eighteenth century, 285-88, 286 nn.57-58 and 60, 287 n.62; in sixteenth century, 129-43. See also Criminal trial jury; Judge; Verdict; Witnesses
Criminal trial jury:
acting in tandem with judge, 284, 284-85 n.54
alteration of facts, Chapter 2 passim, 77, 96
application of law, 260-61, 346-49
attempts to secure jury friendly to authority, 132-33
behavior in medieval period (summary), 98-100
Blackstone’s view of, 294-96, 296 n.94
bulwark against tyranny, 333, 334, 379
cochercion by judge. See Coercion of jurors
competence of jurors debated, 161, 161 n.26, 182, 182 n.102, 187-88, 325-31, 335, 339-43
composition of, 13, 21-22, 52 n.92, 114, 132 n.106, 133, 133-34 n.111, 271, 271 n.4, 351 n.142
consent to trial by, 12 n.36, 15, 15 n.45, 20 n.63

Index 397
contemporaries’ perception of, in eighteenth century, 310–17
contemporaries’ views on role of, in sedition libel, Chapter 8 passim
corruption of, 19, 22, 26, 27, 28, 63, 65, 76, 102, 105, 114 n.24, 140
costs of system of merciful discretion, 382
Dagge’s view of, 300–301
debate in Parliament concerning seditious libel. See Parliament: debate concerning seditious libel law
deliberations, 18, 139, 139 n.42, 150–52, 272, 272 nn.7 and 10, 287–88
duty of, regarding truth, 138
early forms of, 14
Eden’s view of, 298–99
effect on development of the law, 72, 76, 77–79, 82, 84, 85–86, 89 n.80, 93–94, 100 n.105, 129
embellishment of verdicts, 36–37
encomiums to, 334–35
exercise of merciful discretion, 26, 63, 126, 198, 239, 280, 307, 312–13, 369–70
fear of reprisal, 26, 28, 29
Fielding’s criticism of, 292
finality of verdict, 20 n.63, 147. See also Bushel’s Case
foreman, role of, 272
Hawles’ view of duty of, 255–58
impact of tradition of discretion on administration of criminal law in eighteenth century, 344–46, 350–51, 352–53, 365
impaneling of second jury, 67–68 n.6
inexperience of jurors, 150–52 n.179
Interregnum movement for law reform, 160–62, 186, 187, 187 n.109. See also Hale Commission
judge-jury relationship. See Judge: judge-jury relationship
judges of law as well as fact, 153, 159, 173, 174–75, 195, 206, 224, 228, 229–30, 235, Chapter 8 passim, 381
jury’s perspective on right to employ discretion, 150–52 n.179
knowledge of attitudes of common people, 341–43
law-finding theory, 168, 173–75, 184, 191, 196, 197–98, 207, 248–49, 252–58, 260–64, 299, 331 n.64, 333–34, 335, 381, Chapter 8 passim. See also Criminal trial jury: judges of law as well as fact
law-finding traditions, fusing of, 349, 351–52, 375, 381
Leveller perspective on, Chapter 5 passim
merciful tendencies of, mocked by prisoners, 361–62
mitigation by, criticism of, in eighteenth century, 288–310 (text and notes passim), 358–59
mitigation of law, motives for, 29 n.2; 58, 282 nn. 47–48, 280–84, 379–80
names of defendants and charges supplied to, 134
nullification of law by, xviii–xx, 26, 27, 62–63, 228, 239. See also Criminal trial jury: discretionary role; judges of law as well as fact; law-finding theory
nullifying role, origins of, 364
orality, importance of, 137
origins of, 4, 11, 11 n.30, 13 n.39; as asserted in eighteenth century, 331–32
origins of tradition of merciful discretion, 376–77, 380
out-of-court-information, in eighteenth century, 283–84 n.52, 287, 287 n.64. See also Criminal trial jury: self-informing
packing of, 251, 270
partisan behavior, 28, 29
Penn’s appeal to, 224, 225–26, 228, 229–30
qualifications for service, 22, 26, 114, 132, 132 n.104, 188, 189, 251
recommendation to judge to seek pardon, 282 n.48
relation to presentment jury, 8 n.20, 14, 16–17, 19, 21–22
religion and merciful discretion, 375–79, 381
responses to judicial questioning, 67–68, 67 n.5, 67–68 n.6, 68 n.7, 81–82 n.49
right to trial by, 115, 116, 144, 149, 229, 258, 260, 261, 347
Rudyard’s views on role of, 230–31, 232
scope of fact-finding power discussed, 254-55, 262
self-informing, 16-18, 17-18 n.55, 18 n.56, 27, 105-6, 114, 216 n.69
self-informing, decline of, 108-9, 119
standard of proof for guilt. See Evidence: standard of proof
Star Chamber proceedings, 113-14; responses to examination by, 142, 141-42 n.152, 142 nn.53-56, 143 n.57
statutes read to, 256
summary of arguments concerning role of, 367-83
undervaluation of stolen property, 107, 127, 275, 276, 276 n.28, 280, 292, 295, 298
unsubstantiated testimony, 33
Vaughan's view of role of, 241-43
veracity of verdicts in Middle Ages, Chapter 2 passim
views of role of, in Bushel's Case, 236-49 Crown, 295-96; claim to be able to interpret law, 163; as fount of justice, 71; pardon policy and revenues of, 95; and pardon process, 72-73, 72-73 n.21; pleas of, 5-6, 50, 367; restraints on power to pardon (see Pardon; Statutes); theory of royal mercy, 86, 376-77 (see also Mercy; Wite)
Custom, 178, 335

Depositions, 109 n.4, 111 n.12, 137, 137 n.137, 272 n.9
Deterrence, 95 n.99, 102, 289, 295, 297, 299, 303, 307, 366
Diggers, 190 n.122
Discretion: exercised by presentment jury, 8, 9. See also Criminal trial jury: discretionary role; law-finding theory; Mercy
Disturbance of peace, 222, 225, 226-27 n.114, 227
Domination, 382
Due process, 196, 228, 235, 352
Enforcement. See Selective enforcement
English Civil War. See Civil War, English Enlightenment, 268
Enrollments, 68 n.8, 73 n.23, 87, 97 n.101, 129; accuracy of, 49 n.78, 68; details of testimony, 47-48. See also Chapters 2 and 3 passim; Coroner: rolls of Equality, 191-92 n.132
Error, writ of, 239
Evidence, 7-8 n.18, 16, 16 n.48, 17, 18, 26-27, 28, 37 n.27, 150-52 n.179, 224, 229, 230, 241-44, 251, 251 n.201, 252, 253-54 n.210, 270-71 n.2, 271, 271 n.6, 272, 278, 281, 282; law of, 267, 274, 336; standard of proof, 25-26, 26 n.94, 273-75, 273 n.13, 280-81, 286 n.58, 347 n.129
Exaction, 16
Examination, pretrial, 119, 137, 139, 275. See also Depositions
Exchequer, 210; barons of, 236 n.150; Court of, 210, 211
Exclusion crisis, 250-51
Excusable homicide. See Homicide
Execution, 5, 6, 7, 9, 10, 19, 79, 80, 101, 144, 306-7 n.132; percentage of convicts actually subjected to, 144-45 n.162; rate, for capital offense, 279-80; after summary process, 80, 80 n.44, 81-82 n.49, 82 n.50
Eyre, 11 n.30, 12-15, 16 n.48, 17, 17-18 n.55, 18-19 n.59, 20, 20 n.64, 22, 22-23 n.79, 23, 25 n.93, 32 n.10, 47, 52 n.92, 68 n.8, 180
Fact, questions of. See Bushel's Case;
Criminal trial jury: law-finding theory;
Seditious libel: law of
False imprisonment, 236 n.150
Famine, 24, 69
Felons, manifest, 30, 35, 79–80 n.40, 80 n.42, 83; power of justices of the peace to try, 24
Felony. See Crime
Feud, 50, 51, 80, 80 nn.42–43, 367
Feudal tenures, 155
Fifth Monarchy, 157
Fines, 9, 14, 15, 25, 51, 51–52 n.88, 53, 66, 89 n.78, 114 n.24, 180, 225. See also Wite; Coercion of jurors: fining by judge
Firearms, 93, 123–24
First finder, 37
Flight (from justice), 30, 80 nn.41–42, 81–82 n.49, 89 n.78, 90–91 n.87
Forfeiture, 15, 30, 77, 86, 88–89 n.75, 90–91, 90–91 n.87, 91 n.88, 92 n.92, 93, 95, 95 n.99, 99, 100, 100 n.105, 122, 123, 380
Forgery, 22–23 n.79
Fox's Libel Act. See Statutes
Frankpledge, 7 n.15, 15
Freeholders, 52 n.92
Free press, 341, 350
Free speech, 341, 350, 353
Free will, 296, 301, 302, 302 n.118, 316, 378–79, 383
Fundamental constitution, 189
Fundamental liberties, 183, 268, 307
Games, accidental deaths in course of, 90
Gangs, 69, 73 n.23, 76, 127
Gaol. See Prison
Gaol delivery, 16, 20, 20 n.64, 21 n.70, 21–22, 22–23 n.79, 23, 34; conviction rates at, 32 n.10; false accusation at, 25 n.93; rolls, 60, 90–91 n.87
General verdict. See Verdict: general
Glorious Revolution, 262, 320, 321
God, 3, 14, 19, 27, 88 n.69, 164, 166, 167, 169, 171, 181, 182, 183, 185, 186, 186 n.107, 191, 204, 206 n.19, 208, 215, 225, 227, 246 n.182, 252, 305, 349, 376, 381
Goths, 331
Grand assize: jury of, 11
Grand jury, 66, 97–98, 113, 115, 131, 171 n.59, 214, 250, 258, 258 n.225, 259, 261, 274–75, 275 nn.20 and 22, 280, 312, 361, 377; relationship to presentment jury, 8 n.20; and transition from presentment to indictment, 112. See also Presentment jury
Guildhall, 170
Habeas corpus, writ of, 168, 210, 237, 237 n.151, 240, 241
Haberdashers’ Hall, Committee of, 192
Hale Commission, 156–57, 157 n.12, 160 n.22, 186, 187 n.109
Hamond v. Hamond, 236 n.150
Hamsonken, 54, 82 n.52, 85 n.61. See also Housebreaking
Hanging. See Execution
High Commission, Court of, 155
High Court of Justice, 156
High misdemeanor. See Misdemeanor: high
Highwaymen, 60
Historical evidence, 180
History: Leveller views of, 184, 189, 198 (see also Norman Yoke); Penn's use of, 227 n.116; role of, in seditious libel debate, 331–33; Starling's views on Penn's use of, 228
Home Circuit, 150–52 n.179
Home Office, 277
Homicide, 5, 6, 9, 10, 17, 26, 33, 108, 243, 256, 269, 368, 369, 372; through accident, 12, 16, 17, 24 n.88, 30, 51, 70 n.14, 71, 79; through accident, rules of, 86–93, 105, 123–24; analogy of jury's role in, to seditious libel, 324, 326, 329, 342–46; capital and clergyable, line between, 126; chastisement, in course of, 214, 217; comparative treatment of, through self-defense and accident, 89 n.80, 90–91; conviction rates for, 22, 22–23 n.79, 34, 61–62, 106–7, 122; false accusation of, 25 n.93; fining by Kelyng in cases of, 214, 216–220; gradation of, 106–7; through insanity, 24 n.88, 30, 70 n.14; jurors fined for verdict in cases of, 209 n.31; justifiable, 30, 41, 79–86, 81 n.48, 86 n.62, 92, 122–23; law of, 30, 119–20, 120 n.58, 253–54 n.54, 380; law of, and relationship to jury, in early modern period, 124–25 n.80; malice implied in, 254;
murder-manslaughter distinction, 30, 125, 126 n.82, 143, 216, 216 n.70, 217; presentment for, 8; reporting requirement, 10 n.27; in self-defense, 12, 16, 17, 22–23 n.79, 24 n.88, Chapter 2 passim, 70 n.14, 71, 77, 78–79, 81–86, 122–23, 123 n.72, 214, 216–18, 256, 344; in self-defense, rules of, 35, 37–38, 71 n.17, 82 n.52; slaying self in attempt to slay another, 90–91, 91 n.89, 92 n.92, 123; societal distinction between simple homicide and murder, 32; unemendable, 50. See also Man­slaughter; Murder

Hot blood, 56, 122
Housebreaker, 30, 77–78 n.34
Housebreaking, 55, 60, 82 n.50, 83, 84
House of Commons. See Parliament
House of Lords. See Parliament
Hue and cry, 17, 32–33, 36 n.25, 79–80 n.40, 81–82 n.49
Hulks, 361
Human nature: and merciful sentiments, 303, 375–83 passim
Hundred, 6, 8 n.19, 17, 178, 186 n.108, 188, 189; bailiff of, 21, 52 n.92
Hundred jury. See Presentment jury

Imprisonment, 3–4; false, 236 n.150. See also Causes of crime; Prison
Indictment, 134, 135, 222, 223, 224, 225, 227, 228, 231, 257, 261, 287 n.61; relationship to presentment, 25; relationship to trial verdicts, Chapter 2 passim. See also Grand jury; Presentment; Presentment jury

Infanticide, 269
Information, 210, 261
Infortunium, 86, 87
Innocence, presumption of, 274
Inns of Court, 119, 119 n.54
Inquest: special, 15 n.45; early form of trial jury, 9 n.25, 12; on writ de odio et atia, 11–12
Insanity. See Homicide: through insanity; Pardon
Insanity, criminal, 379
Intent, criminal, 253, 253–54 n.210; felonious, 120; jury assessment of, 126, 150, 323 n.16, 342–44, 347, 348–49; in sedi-
n.105, 115, 115 n.29, 126, 128, 150-52 n.179, 307
questioning of jury, 67-68, 67 n.5, 68 n.8, 81 n.48, 140
reasons for recommending mitigation of law, 282 n.49, 283-84, 283 n.51, 283-84 n.53
right to punish jurors (before 1660), 140, 141 nn.150-51
role in criminal trials, 16, 18, 18 n.58, 270-71
suspicion regarding alleged accidental slayers, 91-92
suspicion regarding alleged property defenders, 84
suspicion regarding alleged self-defenders, 49, 79
Vaughan’s view regarding role of, 240-42
Wilkite criticism of, 334
See also Commonwealth bench;
Westminster bench: Judgment: verdict notwithstanding, 277
Junius trials, 324
Jurisdiction, private: and criminal law, 24 n.86
Juror. See Civil trial jury
Jury. See Civil trial jury; Criminal trial jury; Grand jury; Presentment jury; Special jury
Jury bill. See Parliament: Commons committee on jury bill; Lords’ consideration of jury bill
Jury packing. See Criminal trial jury: packing of
Justices: local, 7 n.17, 179
Justices of assize, Chapter 4 passim; 270-88 passim
Justices in eyre, 3, 6, 7, 7 n.17, 14, 47, 178-80, 182
Justices of gaol delivery, Chapters 2 and 3 passim
Justices of oyer and terminer, 21, 130, 210
Justices of the peace, 21 n.70, 24, 34 nn.16 and 18, 58 n.115, 61, 66, 69, 74, 364, 369; and bail statute, 109-10; origins of investigatorial role of, 111-13
Justices of trailbaston, 178
Keeper of the peace, 21 n.70, 24, 112, 112 n.19, 179
Kin, 51, 58, 80 n.42, 86 n.62; defense of, 77-78, 77-78 n.34; prosecutions by, 5
King. See Crown; Royal authority
King’s Bench, Court of, 130, 141 n.150, 168, 178-81, 206 n.19, 209, 210, 211, 212, 237, 237 n.51, 241, 272 n.9, 277, 323
Kingship, 163; theories of, 369
King’s peace, 6 n.13, 80 n.42
Knights, 15-16 n.47, 52 n.92
Labor, imprisonment at hard, 191
Laggamanni, 332
Land registration, 157
Larceny, 5, 6, 10, 60; grand, 127-28 n.86, 279; grand, conviction rate for, 107; petty, 11, 20 n.63, 107, 127-28 n.86, 275, 279
Last resort. See Homicide: in self-defense, rules of
Latin, 49, 162 n.28
Law: certainty of, 309; changes in, and effect on judge’s perspective on trial jury behavior, 370; changes in, and effect on trial jury practice, 370; charge of obstruction of, 114; decentralization, 178-80, 185-86, 187; fundamental, 183, 191, 197, 224; law and fact joined, 260-61 n.231; law and fact distinguished, 169, 169 n.49, 173-75, 184, Chapter 8 passim; Leveller view of nature of, 184-86; principles of development of, 93-94; “true,” and Quakers, 207-8; whether knowable, 339-40. See also Anglo-Saxon; Community; Crime; Criminal trial jury; Homicide; Judge; Private law; Seditious libel
Law French, 165
Law reform: Angevin, 6, 6 n.13; of Edward I, 23, 24, 86-87 n.64; eighteenth-century movement for, 288-310, 354-55, 378-79; Interregnum movements for, 155-57, 160, 176, 180, 186-92; nineteenth century movement for, 356-63. See also Hale Commission; Levellers
Lechery, 78 n.36
Leech’s Case, 210, 210 n.35, 233, 233 n.140, 244-45, n.177
Leets. See Courts leet
Legislation, 70-71; capital sanctions, 311; of Edward I, 23; exclusion of offenses from benefit of clergy, 117-18, 118 n.49, 127 n.84, 275, 275 n.24, 280; qualifications for jury service, 114, 132. See also Statutes

Levellers, 153-59, 160, 162, 187, 332, 371-72, 381; criticism of system of criminal law, 162, 162 n.28; natural rights theory, 164 n.32-33; opposition to discretion of authorities, 167 n.42; phases of debate over the jury, 159-60; and Scripture, 164, n.33; understanding of history, 153 n.3, 164 nn.32-33, 165-66; view of the bench, 184; view of history of judiciary, 165 n.36; view of the medieval jury, 165-66, 198. See also Law reform:

Interregnum movements for
Leveller tracts. See Index of Persons and Places, passim

Liberties, 7

Literacy test: benefit of clergy, 118, 118 n.50. See also Benefit of clergy

Local politics, 370

Lockeian, 332

Magistrate, and exercise of discretion, 275 n.23

Magistrate, Godly, 186, 190

Magna Carta, 13 n.39, 165, 178, 179, 180, 181, 183, 189, 196, 219-20 n.81, 222 n.94, 229, 232, 257

Malice, 12, 53, 54, 71, 93, 125, 219, 219 n.80, 253-54 n.210, 254; aforethought, 54, 55, 56, 74. See also De odio et atia

Manifest felons. See Felons, manifest

Manslaughter, 52, 107, 118, 118 n.49, 122, 124, 214; as distinct from murder (sixteenth century and after), 106-7; involuntary, 124 n.78. See also Homicide

Mayor of London, Lord. See Starling, Sir Samuel

Mens rea, 56, 57, 339-40

Mercy, 5, 10 n.26, 86, 86 n.62, 99, 106, 195, 198, 207, 245, 293-94, 307, 311, 336, 382; characteristic of English law, 347-48; exercised by presenting jury, 13 n.38; and royal pardon, 24 n.88, 376-77. See also Criminal trial jury: discretionary role; Judge: encouragement of jury to mitigate

Military service and pardon policy, 31, 70, 72-73 n.21, 101, 146

Misadventure. See Homicide: through accident; Infortunium

Misdemeanor, 24, 241; high, 225, 372

Mitigation: debate over who should exercise power of, 288-310; inevitability of, under general capital sanction, 308-10; system of, in eighteenth century, 274, 280-88. See also Benefit of clergy; Criminal trial jury; Judge; Pardon; Pregnancy, claim of; Reprieve; Royal authority; Transportation

Moral certainty. See Evidence: standard of proof

Moral regeneration, 376

Murder, 5, 8 n.19, 10, 35-36, 36 n.25, 45, 50 n.80, 53-58, 53 n.95, 58 n.115, 73-74 n.24, 214, 234, 253-54 n.210; in Anglo-Saxon law, 50, 53; definition of, in fourteenth century, 74-75, 74 n.25; definition of, in late fifteenth century, 117 n.46; as distinct from manslaughter (sixteenth century and after), 106-7; indictment for, 33, 34, 34 n.18; and pardon statute (1390), 33; societal distinction between murder and simple homicide, 32, 53-59

Murdrum, 51, 53, 55, 74 n.25, 100 n.105

Mutilation, 9, 10

Natural justice, 295, 296

Natural rights, 186 n.107

Necessity: and criminal behavior, 293; as legal defense, 296, 297 n.96; theory of, in theft, 128, 128 n.87

Negligence, 86, 87, 88 n.72, 89, 89 n.78, 91, 124

Neighbor, and theory of merciful jurors, 195

Newgate, 60 n.127, 213 n.52, 222, 229, 236, 362

New Model Army, 155-56

Norman Conquest, 4, 50, 163, 187, 189-90 n.121

Norman legal procedures, 164 n.32

Norman Yoke, 162, 163, 165, 173, 189. See also Levellers
Novel disseisin, 174, 175
Nullification, jury. See Criminal trial jury

Oath, 7, 7 n.17, 8, 13, 19, 20 n.63, 27, 66–67, 80 n.42, 82, 114, 189, 275 n.23, 307, 327 n.49, 359
Officials, local, 17
Old Bailey, 194, 208, 213, 222, 226, 362
Old Testament, 186, 195
Ordeal. See Trial by ordeal
Ordinances of 1311, 70 n.14
Outlawry, 16 n.48
Outlaws, 30, 80, 80 nn.41–42
Oyer and terminer, 24; commissions of, 21, 113; trials on commissions of, 21 n.70. See also Justices of oyer and terminer

Pardon, 10 n.27, 12, 19, Chapter 2 passim, 145, 289, 295 n.90, 304, 306, 311, 336, 348, 366, 368, 380, 381; charters of, 86; granted on condition (transportation), 279–80; for homicide, rules regarding, 30–31; and increase of crime, 24–25 n.89; judge’s request to Crown for pardon, 139–40, 277 n.34; of course (de cursu), 24 n.88, 30–31, 61 n.131, 70, 72–73, 75, Chapter 3 passim, 100 n.105, 117; of course, for defense of kin, 77–78 n.34; of course, and development of law, 93; of course, and pardon policy, 72–73 n.21; of course, rules applicable to, 83, 84; of grace (de gratia), 24–25, 24 n.88, 30–31, 46–47, 70–71, 73–74, 85, 99, 116–17, 120, 280, 386; of grace, attempts to restrain royal granting of, 25, 70–76; of grace, and development of law, 119 n.54, 121 n.63; of grace, protests against, 33; of grace, and statute of 1390, 33–24, 75; reasons for granting, 145 n.163, 283, 283 n.50, 301, 378; royal policy toward, and effect on jury, 59; statutory grants of, 117 n.40, 121 n.63; terms of, 86 n.62. See also Military service; Statutes
Pardonable homicide. See Homicide: through accident; through insanity; in self-defense
Parliament, 63, 72–76, 155, 156–57, 163, 164, 167, 167 n.43, 168, 169, 170, 171, 172 n.63, 180, 192, 193, 194, 195, 196, 197, 204, 212–21 (text and notes passim), 236 n.150, 241, 242 n.169, 243, 250, 313, 322, 324, 326, 328 nn.51–52, 332, 349, 353, 356, 358, 359, 361, 363; attempts to limit pardons, 70 n.14, 73–74, 73–74 n.24, 75–76; attention to crime, 25; bail and committal statutes, 110–11 (see also Statutes); committee for reform of criminal law, 362–63; Commons committee on jury bill (1667), 221 nn.86 and 87, 238; concern with jury corruption, 26, 114 n.24; concern with serious crime, 73 n.23, 73–74, 73–74 n.24; debate concerning seditious libel law, 324, 330, 330 n.62, 331, 331 n.64, 349, 352, 352 n.147 (see also Statutes: Fox’s Libel Act); Lords’ consideration of jury bill (1667), 221 n.87; and pardon process, 71–73, 72 n.20, 73 n.22; proceedings regarding Kelyng, 212–21, 232, 237, 246, 248, 345; and qualification for jury service, 114, 132. See also Statutes
Parliament, and gradation of punishment. See Benefit of Clergy; Legislation; Statutes

Partial verdict. See Verdict: partial
Peine forte et dure, 15
Penn and Mead’s Case, 208, 243, 256. See also Trial: of William Penn and William Mead
Penology, 190, 267, 268, 276, 368; English approach to, in eighteenth century, 289; English reform movement (eighteenth century), special characteristics of, 290–91. See also Law Reform
Perjury: by jurors, 114 n.24, 140, 242, 359–63. See also Criminal trial jury: corruption of
Petition of Right, 189, 257
Petitions: to Parliament, protesting royal pardon policy, 73–74 n.24; for commutation or pardon, 283, 283 n.51

Petty assize, 11, 20 n.63
Petty larceny. See Larceny, petty
Petty treason. See Treason, petty
Philosophical necessity, 301–2, 301 n.116, 302 n.118. See also Dawes, Manasseh
Pilfering, 292
Pious perjury, 295, 298, 335, 360
Piracy, 118 n.49
Plague, 24, 69
Plea bargains, 118 n.50, 131–32 n.100, 132, 148, 150–52 n.179
Plea rolls. See Enrollments
Plead, refusal to, 194. See also Peine forte et dure
Poachers, 270
Poisoning, 50 n.80
Police, 357–58; professional force, 362; system, reform of, 364
Policing, 380
Political offense. See Treason; Seditious libel
Political prosecutions, 270
Popish Plot, 250–51, 250 n.193, 252
Pregnancy, claim of, 118 n.50, 186
Premeditation, 45, 53–56, 121–22
Presentment, 6 n.14, 7, 7 n.17, 9, 10, 13 n.39, 14, 17, 18–19 n.59, 21, 24, 25, 25 n.91, 26, 51, 51 n.87, 51–52 n. 88, 52, 98
Presentment jury, 3–4, 7, 7 n.17, 8, 8 nn.19–20, 9, 10, 11, 11 n.30, 12 n.35, 15, 16 n.48; and discretion, 10–11, 10 n.26, 12, 13–14, 14 n.41, 98, 367; and fine for concealment of felony, 9; how informed, 16–17; relation to trial jury, 13–14, 15–16. See also Grand jury
Press, free, 341, 350
Presumption of innocence, 274
Printing: unlicensed, 253 n.209, 258
Prison, 7 n.15, 15, 32, 52; breach of, 22–23 n.79; at hard labor, 191; and Lilburne, 197 n.163
Prison reform, 160, 191 n.129, 296, 300, 301 n.112, 309 n.52, 361, 366. See also Law reform; Penology
Private law, 11, 18, 20 n.63, 188, 189, 327, 372; complaints about, 187
Probability. See Evidence: standard of proof
Proof, method of, 7–8 n.18. See also Compurgation; Criminal trial jury; Trial by ordeal; Trial by battle
Property, 158, 187, 190 n.122, 227, 275, 372; defense of, 79, 84
Proportionality, 289
Prosecution, 5, 7; development of royal practices regarding, 108–9; malicious, 25 n.91
Prosecutor, private, 135, 270, 271, 275, 377
Protectorate, 157
Protestants, 250
Provocation, 219, 219 n.80, 253–54 n.210; See also Homicide: in self-defense, rules of; Manslaughter; Murder
Punishment: certainty of, 309, 383
Punishment of jurors. See Bushel’s Case; Coercion of jurors
Puritan Revolution. See Civil War, English Puritanism, 186; and penology, 283 n.50
Quarter sessions, 24, 111, 369, 371. See also Justices of the Peace
Questions of fact. See Criminal trial jury: law-finding theory
Questions of law. See Criminal trial jury: law-finding theory
Rape, 26, 15–16 n.47, 269
Reason and common law, 163, 171, 172 n.63
Reasonable doubt, beyond a. See Evidence: standard of proof
Recorder of London, 213. See also Howel, Sir John
Reformation, English, 128, 185
Rehabilitation, 191 n.129, 293, 361, 378
Religion, and system of selective enforcement of criminal law, 376–78
Religious orders, 7 n.15
Reprieve, 139, 145–46, 145 n.163, 239, 366. See also Judge
Reputation, 7 n.15, 8, 10, 17, 20 n.63, 26, 58, 62, 73–74 n.24, 217, 245, 283, 283 n.52, 287, 343, 367. See also Criminal trial jury: mitigation of law, motives for
Respectability, 283–84 n.53
Restitution, 191 n.129
Restoration, Stuart, 157, 253, 263–64, 274, 275, 381
Restoration bench, 252 n.203
Retreat, rule of, in law of self-defense, 38.

See also Homicide: Self-defense, rules of
Retrial, 277
Rex v. Care, 253 n.208
Rex v. Franklin, 321, 322, 341
Rex v. Green [et al.], 251 n.201
Rex v. Harris, 253 n.208
Rex v. Hood, 219
Rex v. Langhorn, 251 n.202
Rex v. Owen, 324
Rex v. Selby, 210, 210 n.35
Rex v. Stockdale, 329 n.56
Rights, natural, 186 n.107
Riot, 224 n.104, 226
Riot Act, 308 n.139
Robbers, 8 n.19, 10, 73-74 n.24, 80 n.44, 81-82 n.49, 82-86, 94, 95 n.98; rules of law regarding, 30
Robbery, 60, 75, 79, 81 n.49, 82, 84, 118 n.49; conviction rates for homicide and, 62 n.134
Roman law, 247
Royal authority:
concern with serious crime, 63, 69, 70, 102
concern with state trials, 129, 132, 133
control over law, special form of, in eighteenth century, 314-15 n.156
and criminal law, 7 n.16
divine right, 163
enforcement of law, 7
extension of mercy, 70-71, 73, 99, 376-78
failure to introduce gradations in law, 96, 99-100, 101-2
jurisdiction of, 9, 10, 51
limits of power of, 4, 27, 68-69, 147, 352 n.141, 350-51, 352 n.144, 375, 377, 382
mitigation of law, 267
opposition to corruption, 28, 68
original assumptions about role of criminal trial jury, 13, 367, 377
and perspective on behavior of criminal trial jury, 26, 27, 98-99, 105, 137, 140, 147-48, 149, 368-69, 378
and reach of legal rules, 80-81
relationship to tradition of criminal trial jury discretion, 374-75
remedies, 9
use of criminal trial jury in administration of law, 98, 364-65
use of system of selective enforcement, 101-2, 267, 310-15, 374, 381-82
See also Crown; Judge
Royal Court, 250
Royal prerogative, 24 n.88, 30, 163
Rump Parliament, 156-57, 192
Rye House Plot, 250-51
St. Asaph's Case, 328, 330, 333, 353 n.148
Salisbury's Case, 121-22, 121 n.62
Sanctions, law of: scope of capital, 275-76; movements for reform of, 160, 187, 190, 356-63, 378-79, 383 (see also Law reform; Penology). See also Execution; Imprisonment; Mutilation; Transportation
Sanctuary, 80, 80 n.42, 116 n.38
Satisfied conscience. See Evidence: standard of proof
Saxon, 331
Scandalum magnatum, 253 n.208
Science, 247, 252 n.203, 274
Scientific, 252 n.203; assessment, 274; theory, 273
Scripture, 159, 164, 164 n.33, 182-83 n.103, 186, 190, 191-92, 191 n.130, 191-92 n.132, 204, 207, 246, 335, 339; Leveller identification of, with law, 185, 186
Seditious activity, 222; of Quakers, alleged, 203, 203 n.10, 206
Seditious libel, 243, 249, 254, 257, 262, 262 n.232, 263, 316, Chapter 8 passim; debate over law of, Chapter 8 passim; law of, 252, 253 nn.208-9, 253-54 n.210, 255, 319-20, 321 n.11, 342 n.117, 350 n.138, 381; Mansfield's views on, 32 n.10; reform of law of, 365; stages of the eighteenth-century debate concerning, 321-31; tracts concerning, Chapter 8 passim (see also Index of Person and Places)
Selective enforcement: criticism of, 359-63; contemporaries' mistaken assumptions about, 382; endorsement of, 303-4; opposition to, in eighteenth century, 290; system of, in eighteenth century, 314-15 n.156, 289-90, 374; use of, by royal authorities, 310-15,
310–11 n.148. See also Criminal trial jury; Judge; Royal authority
Self-defense. See Homicide: in self-defense; Pardon
Sentences, in cases ending in partial verdicts, 279
Sentencing, judicial behavior at moment of, 306–7
Servant: defense of master, 40, 78 n.36; slaying of master, 57–58
Settlement, out of court, 9, 9 nn.24–25, 11 n.30, 58
Seven Bishops’ Case, 263, 320, 321 n.11, 326, 328
Sheriff, 6, 7 nn.15 and 17, 16, 21, 52 n.92, 61, 66, 178; tourn of, 181
Ship Money, Case of, 241
Simple homicide, 46, Chapters 2 and 5 passim. See also Homicide
Social conditions. See Causes of crime
Society for Supporters of the Bill of Rights, 334
Special inquisitions, 22–23 n.79, 47–48. See also Inquest
Special jury, 321 n.11, 322
Special verdict. See Verdict, special
Standard of proof. See Evidence: standard of proof
Star Chamber, Court of, 106, 113–14, 132, 155, 241, 245, 253, 253 n.209, 319; examination of trial jury by, 137, 140–43, 140–41 n.149, 141–43 nn.152–57, 150–52 n.179
State trials, 106, 120, 130, 132–33, 137, 138, 140
Statutes:
52 Hen. 3, c.26 (1267): Marlborough, 100 n.105
6 Edw. 1, c.9 (1278): Gloucester, 100 n.105
13 Edw. 1, c.1 (1285): Winchester, 23 n.82
28 Edw. 1, (1300): Articuli Super Cartas, 178, 279
2 Edw. 3, c.2 (1328): Northampton, 70 n.14
10 Edw. 3, c.2 (1336): limiting pardons, 70 n.14, 73–74 n.24
14 Edw. 3, stat. 1, c.4 (1340): abolishing Murdrum fine, 74 n.25
14 Edw. 3, stat. 1, c.15 (1340): limiting pardons, 73–74 n.24
25 Edw. 3, stat. 5, c.3 (1352): challenge of jurors, 22 n.75
2 Hen. 5, stat. 2, c.3 (1414): juror qualifications, 114 n.25
11 Hen. 7, c.3 (1495): dispensing with grand jury, 115
23 Hen. 8, c.13 (1531): juror qualifications, 114 n.25
24 Hen. 8, c.15 (1532): slaying of felons, 30
26 Hen. 8, c.4 (1534): Welsh Marches, 114 n.24
1, 2 Phil. and Mary, c.13 (1554–55): bail, 109–10, 113
2, 3 Phil. and Mary, c.10 (1555): commitment, 109–11, 113, 131
4, 5 Phil. and Mary, c.7 (1557–58): tales, 114 n.27
14 Eliz., c.9 (1572): tales, 114 n.27
14 Chas. 2, c.1 (1662): Quaker Act, 202
16 Chas. 2, c.4 (1664): Conventicles Act, 202–8, 216, 216 n.69, 222, 224 n.104, 226, 227, 242, 254, 256
4 Geo. 1, c.11 (1718): transportation, 276 n.29, 276–77 n.30
3 Geo. 2, c.25 (1730): juror qualifications, 271 n.4
32 Geo. 3, c.53 (1792): act for stipendiary magistracy, 358
10 Geo. 4, c.44 (1829): police system, 358
Strangers, 59, 81–82 n.49
Stuart bench, 251, 262–63
Stuart monarchy, 153, 167, 320–21, 375
Suicide, 92 n.92
Suspects, 8 n.20, 10, 11, 13, 13 nn.37–38, 14, 15, 16 n.48, 17, 22, 23, 32, 51–52 n.88, 60
Tales de circumstantibus, 114, 132, 133, 322 n.145
Target shooting, 88, 88 n.72, 88-89 n.76, 89-90, 94, 123-24
Terror and criminal law, 274, 277, 277 n.32, 292, 308, 308 n.139, 311, 311 n.150, 357, 362
Testimony, 66, 119, 253-54 n.210, 270, 272, 274, 281, 286; at coroner’s inquest, 17; before presentment jury, 18-19 n.59
Theft, 9, 10 n.27, 21 n.70, 26, 59-60, 60 n.127, 61, 62, 73 n.23, 85 n.61, 106-7, 120, 126-27, 190, 191, 269, 344-45, 363; acquittal rates, 59; conviction rates, 22, 22-23 n.79, 61-62, 279-80; false accusation of, 25 n.93; jury's refusal to convict for, 26; law of, 128 n.88; presentment for, 8
Thieves, 8 n.19, 70 n.14, 73-74 n.24, 75, 80 nn.42 and 44, 82 n.52, 84, 94, 101, 182, 182-83 n.103, 190, 374; caught in the act, 79; hand-having, 79-80 n.40, 80 n.44, 82
Throckmorton’s Case, 141 n.151
Tower of London, 169, 176
Trailbaston, 21, 24, 25 n.93
Traitors, 10
Transportation, 127-28 n.86, 146, 276, 276 n.29, 276-77 n.30, 277, 279, 280, 284, 293-94, 313, 316, 361
Treason, 5, 62, 106, 128-29, 130, 131, 131 nn.98-99, 134, 135, 156, 170, 171, 199 n.170, 234, 249, 250, 253, 257, 259, 274, 365; law of, 119, 128 n.89
Treason, petty, 57-58, 118
Treatises, medieval: 369; perspective of, on law of homicide, 71-72, 71 n.17, 82 n.50
Trespass, 21, 21 n.70; civil, 174, 372; criminal, 60, 64, 112 n.19, 225, 234; and private prosecution, 60-61
Trial: of John Lilburne (1649), 170-76, 181, 183-84, 198; of John Lilburne (1653), 192-97, 198, 204; of William Penn and William Mead, 208, 222-25, 228-29, 231, 232, 337; of John Penruddock, 199 n.170; of Quakers, 203, 203 n.10, 206 n.18, 213; of Thomas Rudyard et al., 230; of Seven Bishops, 321; of Sir Nicholas Throckmorton, 177 n.84; of Sir George Wakeman, 251
Trial, new, 242 n.169
Trial by battle, 5, 11, 12 n.36
Trial by jury. See Criminal trial jury: consent to trial by; right to trial by
Trial by ordeal, 3, 4, 5, 7, 7-8 n.18, 8, 8 n.20, 10, 10 n.26, 11, 12, 13, 13 nn.37-38, 14, 19, 25, 51, 52 n.89, 97
Trial rolls, 17-18 n.55
Truth, not a defense in seditious libel, 319, 337
Tudor monarchy: and changes in criminal law and procedure, Chapter 4 passim; and perspective on administration of criminal law, 377
Tumult, 227 n.115
Undervaluation. See Criminal trial jury: undervaluation of stolen property
Unlawful assembly, 222, 226-27 n.114, 227
Verdict: God's judgment, 14; inscrutability of, 27; non-unanimous, 18; general, 174, 175, 267, 325, 352, 354, 355; partial, 150-52 n.179, 209, 279, 280, 281, 286, 295 (see also Criminal trial jury: discretionary role; Judge: encouragement of jury to mitigate); special, 19, 209, 217, 230, 260-61 n.231, 338; unanimous, 18. See also Bushel’s Case; Criminal trial jury: finality of verdict
Victoria, queen of England, 356
Vill, 8 n.19
Wagstaffe’s Case, 210-11, 210 n.36, 212, 213, 213 n.52, 215, 233, 236-39, 244, 244-45 n.177, 246, 246 n.183, 248
War, 24
Wards and Liberties, Court of, 155
Wergeld, 31, 50, 51, 58
Western Circuit, 212, 217
Westminster bench, 182, 217, 278
Wharton’s Case, 238, 244, 244-45 n.177
Whigs, 250, 263
Whipping, 127-28 n.86, 150-52 n.179, 276-77 n.30, 277
Wife: and defense of, 78 n.36; and slaying of husband, 57-58
Wilkites, 291, 324, 326, 334, 335, 341, 348 n.133
Wite, 5, 50, 51
Witnesses, 16, 16 n.48, 18–19 n.59, 37, 135, 136, 136 n.135, 204, 205, 222–23, 242, 243, 253–54 n.210, 271, 281, 312
Women, 376; and benefit of clergy, 118 n.50; and claim of pregnancy. See also Pregnancy, claim of
Workhouse, 293, 293 n.79
Writ: de procedendo ad judicium, 182; of attachment, 182; of compulsion to execute, 182; of "life and limb" 13 n.39. See also De odio et atia
Yearbooks, 15–16 n.47, 72 n.20, 73 n.22, 90–91, 92 n.92
Zenger's Case, 252, 322, 323