

Index

- Abbey of the Holy Ghost, The* 18
Abbot, George (Archbishop) 173
Abraham (and Isaac) 191, 200, 202
accident (*versus* 'essence') 166n.
acquittance, failure of debtor to obtain
 60–61, 63, 68–9, 82, 83, 85, 104–5,
 120, 135, 147
actus reus 130
adiaphora (indifferent matters) 56, 57, 61,
 103, 117, 119, 120, 129, 131, 169,
 230, 246n.
aequitas 45, 47, 48, 49, 154; *see also*
 epieikeia; equity
Albermarle v. Cutler 215, 255
Alford, J. 19–20
Allen, C.K. 1, 39, 51
Allen's Case 163
Ames, William 107n., 113, 115–6, 117,
 118n., 121, 122, 126, 127, 129,
 130, 131, 133, 138, 144–50, 151,
 234, 241
Andrewes, Lancelot 130
Annesley, Samuel 188, 197n.
Anthology of Chancery English, An 14
Aquinas, Thomas 32, 34n., 35, 36, 45, 47,
 48, 53, 54, 55, 87, 113, 121, 131,
 145, 160, 201, 202n.
arbitrio boni viri 2, 3
Arden v. Darcy 180n.
Aristotle 1, 46, 65n., 90n., 108, 160, 170n.,
 185, 247
Arrundel v. Trevillian 178, 179n.
Ashe, Thomas 150
Ashley-Cooper, Anthony (Lord
 Shaftesbury) 253
Atkins v. Temple 179
Atkyns, Robert 224–5, 270n.
Attorney-General v. Abington 180n.
Audley, Mervin (Earl of Castlehaven)
 178n.
Audley, Thomas (Chancellor) 43n., 69n.
Augustine 160
Avery, M.E. 14n.
Ayenbite of Inwit, or Remorse of
 Conscience 18
Aylloffe v. Thomson 251n.
Bacon, Francis 1n., 7, 87, 109, 111, 131,
 141, 157, 165–72, 173, 179n.,
 180n., 181, 185, 228, 238
 empirical or inductive epistemology
 171
 light of nature 171
Bacon, Nathaniel 223
Bacon, Nicholas (Lord Keeper) 179n.
Bagshaw, Edward 211, 212, 213, 266–7
Baildon, W.P. 13
Baker, J.H. 3n., 4n., 6, 7, 9, 10, 44, 49,
 50n., 53n., 68, 70n., 89n., 157,
 163n., 177
Barbour, W.T. 1, 9, 16n., 26n.
Barkly v. Penn 226n., 254n.
Barlow, Thomas 113n., 238n., 247n., 268n.
Barnes, Barnabe 155–6
Barnes, Thomas 110n., 115, 136
Bartolus de Saxoferrato 28
Barton, J.L. 2n., 4, 13, 27, 44, 45, 46, 51n.
 52, 59, 66, 68, 76, 242n.
Bateman v. Tidcomb 226n.
Baxter, Richard 107n., 183, 237n., 238n.,
 247–50, 251n., 261, 271
Baylor, M.G. 3n., 5, 32, 33, 34, 35, 36, 38,
 53n., 54n., 75
Beaufort, Henry (Chancellor) 15n.
Behrens, G. 49n., 69n.
Beilby, M. 14n.
Beresford (Justice) 29–30
Berkeley, George (Lord Berkeley) 253
Berman, H. 69, 75, 97

- Bernard, Richard 108, 114, 115, 117n.,
121, 123, 124n., 125, 126, 127n.,
132, 133, 134
- Bernard, St. 123
- Birks, P. 2
- Blount, Thomas 219–20
- Bluck v. Crisp* 254
- body politic (corporation), lacks soul 81,
160, 167
- bona fide* purchaser 86
- Bonaventure 32–3
- Book of Common Prayer* 269
- boroughenglish 58
- Botham v. Farrington* 252n.
- Botham v. Townsend* 238n., 239
- Bourchier, Thomas (Chancellor) 26, 30
- Bourne, Immanuel 109n., 110, 118n., 122,
123, 124n., 127, 128, 172n., 173n.
- Bovey v. Smith* 239n.
- Bowyer v. Birds* 227n.
- Boys v. Wilkinson* 252, 258n.
- Bracton, Henry de 154
- Brend v. Brend* 227n.
- Bridgman, Orlando (Lord Keeper) 221,
233n., 256, 258n.
- Bromley, Thomas (Lord Keeper) 80, 180n.
- Brown, M.L. 5, 76, 77, 106n., 115n.
- Brown, William 220, 253
- Bryan, Thomas (Chief Justice) 39n.
- Bryson, W.H. 2, 80ff.
- Burges, Cornelius 114, 115
- Burges v. Skinner* 226n., 227n.
- Burnet, Gilbert 184n.
- Burroughs, Edward 209, 213n.
- Butcher v. Hinton* 227n., 251n.
- Butler v. Harrison* 237–8, 245
- Cade, Anthony 10n., 126, 127, 129, 133,
134, 240n.
- Calamy, Benjamin 189, 190
- Calamy, Edmund 108
- Calvin, John 65n., 112, 202
- Calvinism 172n.
- Calvin's Case* 159
- Cambridge Platonists 202n.
- Campbell, John (Lord Campbell) 43n.,
69n., 184n., 260
- canon law 1, 5, 6, 20, 27, 45, 47, 52, 56,
62, 71, 76, 270
- equity, law of 24–6, 47
- positivism of 51–2
- capacity, of party 83–4, 105, 106
- Carpenter v. Tucker* 178
- Carpenter, Henry 106n., 111n., 190n., 194,
197n., 268n.
- Carpenter, Richard 109n., 113, 122n., 123,
124n., 126n.
- Carter v. Scoble* 165n.
- casuistry (case divinity) 5, 11, 77, 78, 108.
186, 259–60
- Catholic 5, 52, 76–7, 112, 187
- Jesuit 77, 112, 187n., 267
- legalism of, putative 38, 76, 113,
267
- relativism and 77
- contradictory tendencies of 78
- decline of 216–7
- definition, strict 112n.
- equity and 11
- pejorative connotation 77n., 176n.
- popular interest in during seventeenth
century 107–8
- probabiliorism 77n., 88, 186, 187n.
- probabilism 76, 186, 187, 235
- Protestant 6, 31, 36n., 52, 75–7, 115n.,
187–8, 201
- diffidence of 187
- individualism and 264
- rules, supersession of 268
- spiritual condition, concern with
267–8
- re-marriage after divorce, view of 238
- theological 175
- tutorism 77, 88, 186, 187n.
- caveat emptor* 251, 271
- Cavendish, George 11, 41n., 42
- ensorian jurisdiction 170
- certainty; *see also* probability
- authority and 185
- conscience and, *see* conscience,
variable or uncertain
- empirical 185
- epistemological 184, 185
- essential to law 152, 168, 181, 263
- infallible 185–6

- mathematical (conditionally infallible)
 185, 256
 moral 185–6
 problematic nature of 78n., 152
 rhetoric of 187
- Chancellor, Lord (or Lord Keeper)
 ‘absolute’ power (*potentia absoluta*) of
 90, 91, 97, 155, 164, 220, 223–5,
 253, 255
 confessional role of 24ff., 27, 30, 39,
 81–2, 124, 128
 conscience 100, 102
 acts on 80, 119, 158
 good, requires 230
 informing of, *see* Chancellor,
 factual inquiry, and
 judge of 79
 jurisdiction, based on 2, 4n., 6, 9,
 14, 17–18, 19, 21, 22, 29, 35,
 42, 43, 69, 79, 153, 157–8, 163,
 180, 220; *see also* conscience,
 juristic principle, as
 litigants’, limited access to 132–3,
 209
 metaphor for 110–11
 personal 3, 17, 84, 90, 91, 102,
 162–3, 164, 174, 176, 182,
 223–4, 229n.
 rule of 92, 101n., 103, 241, 254
 variable, *see* conscience, variable
 or uncertain
 discretion 42, 43n., 79n., 88, 155, 170,
 224
 divinity, requires knowledge of 159n.
 ecclesiastical 23, 24–6, 31, 37, 45, 124,
 128, 141, 142, 160
 ‘every person his own’ 193
 facts, personal knowledge of 103, 164
 factual inquiry, and 9–10, 29–30, 84–5,
 97–9, 125, 148, 163–4, 232
 keeper of the sovereign’s conscience
 42, 89, 162, 176, 177, 220
 law, knowledge of 102–3, 174–5, 260
 medieval 4n., 15, 25, 43, 51n., 64,
 67–8, 90–91, 160, 161, 242, 244
 ordinary power (*potentia ordinata*) of
 91, 223, 253
 reasoning of 15, 36, 39–40, 43n.
 wisdom of, postulated 70, 92–3, 138,
 153, 174, 224n., 230, 259
- Chancellor’s foot, metaphor for conscience
 2
- Chancery, Court of *passim*
 abolition of, proposed 112, 222
 alien origins of (alleged) 270
 arbitrary power (perceived) and 3, 26,
 88, 90, 97, 111, 153, 155, 170–71,
 220, 223, 224–5, 270
 common law judgments, alleged
 interference with 67, 85–6, 88,
 90–91, 111, 157, 158, 167, 223
 conscience
 catharsis of 73
 corrected in 35, 36, 91, 156, 157,
 158
 criterion for judgment in 30, 43,
 91–2, 119–20, 164–5, 198, 219,
 225, 271, 272
 metaphor for 110–11
 of 18, 27, 88–9, 91–2, 104, 128,
 151, 231, 254
 court of conscience, as, 5, 11, 13, 16n.,
 17, 42, 44, 49, 62, 68, 80, 84, 88,
 93, 96, 97, 99, 109, 111, 141, 152,
 153, 157, 167, 220, 221, 223, 248
 Ellesmere’s view of 157–8
 factual inquiry and, *see* Chancellor,
 factual inquiry, and
 jurisdiction, limited, as 91, 128ff.,
 234–50 (generally)
 Nottingham and 226, 270
 popular understanding 99–100,
 180, 273
 pretence to be 224–5
 Protestant account of conscience
 and 119, 125, 128, 138, 145
 convenience, criterion in 66, 91, 97,
 119n., 255n.
 discretion, associated with containing
 79, 171, 182n., 224
- Elizabethan ch. 4 *passim*
in personam, acts 90–91, 102–3
 medieval ch. 2 *passim*
 Papal authority, as 41n.
 pleadings in 13–14, 30, 79, 94, 99,
 220–21

- precedent in 89, 92, 142
 prerogative and 111, 141, 157, 173, 175, 223, 270
 procedural flexibility 9, 30, 49, 50, 61, 68, 69, 91, 95, 97, 103, 128, 182, 231–2
Chapman v. Emery and Porter 169n.
 charity
 Chancery, not enforceable in 91, 92, 93n., 248, 251
 civil (external) 248, 249
 commerce, and 247n., 249, 250–51, 271
 conscientia civilis and 252
 conscientia interna and 110n., 252
 ecclesiastical (spiritual, Christian) 82, 93n., 248, 250
 Golden Rule and 249
 gratitude and 395, 400
 inner disposition and 135
 justice, and 247–8, 250, 251
 contrasted with 135–6, 139, 247ff., 271, 273
 legacies for the poor, preferential treatment 136n., 167n., 248n.
 liberality and 135
 petitions to Chancellor, appeal to in 13, 14n.,
 spiritual things, associated with 248
 usury, and 271
 Charles I 176, 228
Charter of the Abbey of the Holy Ghost, The 18, 33
Cheke v. Lord Lisle 249n.
Child & Baylie's case 255
 Chillingworth, William 185
 Cicero 1n., 47, 153
 civil law 1
 conscience and 1n., 81
 English equity, influence on 15, 24, 25–6
 ‘civils’ 8, 65, 75, 101, 118, 132–3, 210–12, 213, 240–45, 248, 273
 Clarke, Samuel 111n., 249n., 268
 ‘clean hands’ 82, 243
Clench v. Tomley 163–4
Clerk v. Perryer 243n.
Clishold v. Backwell 246n.
 Coing, H. 1, 7, 15, 27–8
 Coke, Edward (Chief Justice) 242, 243, 259
 Ellesmere, confrontation with 67, 111, 141, 145, 223
Coke v. Bishop 226n.
Coles v. Hancock 254
 common law
 circumstances within the fact, considers 103–6
 common reason, as 50, 166
 conscience, criterion for 46, 52, 58–62, 71, 270
 conscience in 8–9, 46, 60, 61, 62, 96, 149, 166, 258
 ‘Englishman’s birthright’, as 224, 270
 equity in 44, 46, 49, 57, 100, 103, 150, 152, 154
 maxims (‘grounds’) of 49, 50n., 57, 90, 104, 154, 168n.
 natural law, grounded in 159
 ‘nicety’ of 85, 227n., 255
 procedural strictness (rigour) of 3, 29, 68–9, 71, 91, 94, 97–9, 103, 148, 155, 158, 164n., 219, 221, 253–4
 Common Pleas, Court of 50, 80, 243
 compassion 81, 93n., 163, 247, 248, 249n., 251, 254, 258
Compleat Clark, The 220n., 221n.
 confession 124
 Anglican attitude toward 113n.
 before Chancellor 10, 24–5, 30, 34, 39, 99
 evidence of internal states 39n., 65, 67–8, 236
 Protestant view of 124n., 177n.
 confessor
 authority over conscience 76, 113, 209, 211
 Catholic 30–31, 113, 124, 128, 177n.
 Chancellor as, *see* Chancellor,
 confessional role of
 matters concerning only person and 9, 23–4, 27, 65, 66, 68, 160–61, 232, 242, 244n.
 conscience, *passim*
 act or actualization, as 33–4

- affective 122, 174, 204; *see also*
synteresis, affective or dispositional
 faculty
 antecedent 34n.
 anarchic tendencies 78
 arbitrary power and 3, 270
 authentic 265–6; *see also* conscience,
 sincerity of conviction and
 authority of 7, 265–6
 authority, human, and 12, 75, 77, 113,
 118–19, 120, 138, 209–12, 264
 awareness (or notice) as factor
 affecting 82n., 86–8, 131, 166, 237,
 245
 canonist (or Catholic) 5, 26, 38, 44n.,
 51n., 107, 109, 111, 112–13,
 137–8, 265
 Chancellor's; *see under* Chancellor,
 Lord
 Chancery and; *see under* Chancery,
 conscience, metaphor for
 commerce, and 88, 248n., 249, 271
 common 17, 200–201, 216
 common law and, *see* common law,
 conscience in; common law,
 conscience, criterion for
 consequent 34n.
 contracts, and 59–61, 250–51, 260, 271
 formality, lacking 135n., 146–8,
 150
 sale of land 63–4
 convenience and 61, 78, 91, 97, 119n.,
 149, 152, 255n.; *see also* equity,
 convenience, factor in
cordis scientia, as 196
 court of 5, 11, 42, 90, 96, 98, 119,
 125, 128, 138, 145, 152–3, 156,
 163, 167, 180, 231, 234–5, 240,
 242, 246, 250, 255, 273; *see*
also Chancery, Court of, court of
 conscience, as
 in the soul 10, 59, 110, 127, 145–8,
 198, 210
 court, of 34, 226, 231
 debts, mandates payment of before
 legacies 64, 81, 136, 167n., 244,
 248
 destabilizing tendency of 12, 28, 78,
 266
 devolution of land, law respecting,
 and 58
 discourse of 2, 10–12, 70–71, 78–9, 86,
 110, 111, 125–6, 197, 219, 262
 disposition (habit), as, 32n.
 diversity of 2, 12, 77, 112, 208–9, 264
 dual nature of in public official 21,
 29–30, 103, 147–9, 151–2, 176,
 233–4
 enlightened (or illuminated) 133–4,
 194, 208, 241
 equity
 (conscience) in 10, 30, 61, 68, 93,
 128, 163–4, 230–34
 rules in, source of 162, 219–20,
 223–4, 225n., 226, 258
 synonymous with 41, 73, 92, 219,
 220
 erroneous, *see* ignorance, corrigible;
 ignorance, incorrigible
 etymology of 17, 36, 121–2, 123–4,
 194n., 197n., 199
 executorship and 35–6, 64, 80n., 161–2
 faculty (potentiality), as, 19, 32n., 37,
 123, 268
 formalities and 63–4, 135n., 146–7,
 150
 formulaic invocation of 73, 79, 94,
 221, 264
 general 7, 86–7, 165, 228
 God only lord of 200, 205n., 209
 good faith, and 13n., 17, 20, 23, 29,
 36, 80
 gratitude and 247, 248n.
 honour, and 21, 246
 impersonal (non-individualized)
 17–18, 61, 182, 234
 individualization of 5–6, 17, 76, 114,
 208, 217, 219, 264–5
 infallible 95, 101n., 107n., 128
 intuitive 2, 28, 259
 inward dispositions and 16n., 21, 27,
 38–9, 65–6, 129–31, 134, 135,
 199–200, 211–12, 214–15, 232,
 234–40, 267

- judge's 18, 29, 100, 103, 148–9, 151–2, 155, 164, 229, 233–4
- juristic principle, as 1–6, 11, 12, 18–9, 24, 32, 38–9, 44, 69–70, 75, 77–8, 90ff., 108, 111, 121–2, 128, 137–8, 150, 153, 157, 159, 164–5, 191, 195, 198, 199, 207–8, 217–8, 225, 263–4, 272–3
- jury, of 43, 84, 125, 151, 270
- justice and 17, 18–19, 22, 24, 39, 42, 73, 108–9, 139, 142, 186
- justiciable (versus non-justiciable) 6–8, 9, 10, 17–18, 20–22, 23–4, 27–8, 39, 42, 49, 65–6, 67–8, 73, 92, 93, 96, 108–9, 128–39, 157, 160–61, 234ff., 170, 186, 189, 220, 221n., 238n., 247ff., 255n., 271–2
- knowledge, and 4, 33, 35, 36n., 39, 54–5, 95, 107n., 114, 121–5, 127–8, 137–8, 168n., 186, 193–4, 197, 208, 259
- God, with 17, 36, 39, 85, 123–4, 195, 197n., 199
- of oneself 123, 162–3
- opinion or persuasion, contrasted with 3–4, 35, 194, 195–6, 206n.
- krisis* (judgment) of 126, 188, 197
- labyrinth metaphor for 106, 192
- latitude of 126n., 253–4
- law (or rule), based on 25–6, 52, 56ff., 114–15, 189–90, 193, 194, 205
- law of, inscribed by God 95, 112, 133, 145, 151, 172n., 186, 219n., 249
- legal metaphors for 10, 18, 109–11, 184n., 198
- liberty of 108, 112, 132, 195, 207–15
- practice, liberty of, contrasted with 208, 212–15, 267
- Protestantism and 193, 208
- logic and 125–6, 138, 193–4, 196–8, 206, 259
- natural 133, 186, 188, 190n., 208, 227, 234, 241, civic duties and 133, 208, 241
- normative and factual aspects of 10, 31, 34–6, 38–9, 54–5, 95, 126, 138, 197–8, 199
- equity, in 9–10, 30, 61, 68, 84, 93, 128, 163–4, 230–34
- oath, bound by, *see* oath
- obedience (to governors), mandates 57n., 200, 210, 215, 228n.
- objective 2, 3–6, 7–8, 31–2, 40, 52–4, 77, 92, 102, 114–28 *passim*, 137, 153, 156, 163, 185, 188–98 *passim*, 199, 201–2, 207, 216, 217, 222, 263–4, 273
- ordinary meaning of 113, 206
- outward (overt) acts and 21–2, 38–9, 65–6, 118, 130, 131, 133, 135, 175–6, 199–200, 208, 240n., 245, 247
- particular 12, 87, 91, 114, 166, 189, 216, 230
- particular actions and 5, 54, 55, 75, 76, 122, 241, 267–8
- particular circumstances and 33, 35, 37, 49, 61, 78, 98, 122
- party, of 6, 7, 9, 10, 17, 21, 30, 31, 66–7, 83, 84, 85, 88, 117, 119, 125, 157, 158–9, 167, 221, 228, 230, 234, 239n., 242,
- penalty, payment of purges 19, 169–70, 270–71
- preoccupation with in seventeenth century ix, 5–6, 107–8, 138, 217
- private (or personal) 6, 7, 9, 10, 20–1, 27, 30, 57, 61, 64–7, 130–31, 142, 143, 145, 146, 148, 149, 152, 162, 165, 175–7, 189, 215–6, 222, 227–30, 231–2, 234, 240–41, 244n., 246, 259, 269, 288,
- privatization or internalization of 5n., 76, 149, 199–200, 207–9, 212, 267
- property and 58–9
- Protestant 5–6, 31, 36n., 38, 75–6, 77, ch. 5 *passim*, 177n., ch. 7 *passim*, 268–9
- public (or 'general') 7, 142, 152, 165, 168, 175–7, 215–16, 227–30, 231–2, 244n., 263, 267, 269
- reason and, *see* reason
- relativity, historical, of 3–6, 99
- relativization of 5n., 6, 77, 188n., 208–9

- religious 165, 208
 religious matters, judge of 133, 186,
 195–6, 210, 240–42
 rhetoric of 10–12, 41, 70–71, 150, 173,
 195, 217, 223, 270
 right (contrasted with good conscience)
 206–7
 rule of 25–6, 35, 96, 114–15, 189–90,
 207n., 211–12, 214, 241, 264
 dissonance, potential 191–2
 God's law (or will) as 92, 115–16,
 132, 145, 189–92, 202, 205–6,
 209–10, 216
 scripture not adequate 190–93
 rule of law, and 3–4, 71, 224, 263
 scholastic 5, 32–3, 36, 54n., 56n., 75,
 113, 124, 260, 263, 265
 science, and 114, 123, 126, 172, 187,
 194, 197, 226, 258–9
 sincerity of conviction and 3–4, 33, 77,
 194, 206–7, 210, 217, 266, 268
 sovereign's 42, 89, 162–3, 174, 176–7,
 220, 226, 253–4,
 spark of (*scintilla conscientiae*) 32n.,
 53, 95, 122n., 171–2
 spiritual 22, 24, 65, 129, 138, 161,
 208, 212–3, 267, 385; *see also*
conscientia naturalis et interna;
 'spirituals'
 spiritual condition (general) and 5,
 18n., 75, 142, 267–8
 structure of 32–4, 101, 112–13, 126
 subjective 2, 4, 6, 12, 17, 32, 33, 76–7,
 92, 112, 122, 123–4, 142, 189,
 215–16, 217, 228, 259, 264, 267
 supernatural sanctions and 42
 syllogism of 34–5, 54–5, 58–9, 68, 76,
 125–8, 197–8, 199, 230–31, 237–8,
 249–50, 257
 thousand witnesses, as 95, 127, 178,
 230, 236
 tribunal in the soul, *see* conscience,
 legal metaphors for
 tripartite account of 10, 100–101, 126,
 188, 197
 uniform; *see* conscience, objective
 variable or uncertain 2–3, 43, 69–70;
see also conscience, subjective
 volitional 33, 54n., 122, 204, 216n.
 witness, as 10, 34, 112, 126, 127, 162,
 186, 202
 worm of 33n.
conscientia, as aspect of conscience 33–4,
 36n., 78, 124n., 162
conscientia naturalis et interna 7, 10, 227,
 229, 232, 234, 238, 240, 241, 243,
 244, 259, 261, 273
conscientia politica et civilis 7, 10, 227,
 229, 232, 240, 241, 244, 252, 261,
 272, 273
conscientia, regulata 92, 252ff.
conscientia, simplex 92, 252ff.
 consent, factor in equitable obligation 28
 consideration (*quid pro quo*), factor in
 equitable obligation 16, 28, 63, 79,
 86, 87, 89, 105, 136, 147, 148n.,
 166, 167, 178, 246, 247, 251n., 257
Considerations Touching the Dissolving or
Taking Away the Court of Chancery
 220n., 222n.
Cook v. Fountain 7, 227, 232, 236, 252
 Coquillotte, D. 165, 170, 171
Corbet's Case 80n.
Cotton v. Causton 80n., 99n.
Coulston v. Gardner 226n., 254n.
Countess of Radnor v. Vandembendy 256
 court Christian (or ecclesiastical) 5, 6
 Coventry, Thomas (Lord Keeper) 109, 157,
 175, 177–80
Cox v. Quantock 226, 254
 Cranmer, Thomas 42, 43, 69, 90n.
 Cromartie, A. 259n.
 Crompton, Richard 74, 79, 80, 88–9, 92,
 94, 97n.
 Crook, John 209n.
Crudge v. Lower 80
 Cudworth, Ralph 183, 184, 202
 intellectualist position 201n.
 innatism and 203
 private and public conscience 228, 267
 Culverwell, Nathaniel 199n., 202n., 211
 Cyprian, St. 47n.
Damery v. Woston 80
Danby v. Read 226n.
 Davies, John 152n., 159n., 162n.

- deceit, affects conscience 147–8; *see also* fraud
- ‘Decius, Theophilus’ 110n.
- Deguileville, Guillaume 33n.
- denunciatio evangelica* 7, 27–8, 29, 36
- denunciatio judicialis privata* 7
- Denyès, Agnes (*Paston Letters*) 20–21, 27n.
- de Reco, Bernard (petitioner) 25n.
- deus est procurator fatuorum* 23n., 60n., 82; *see also* folly, relief of in equity
- discovery (of facts) 9, 126, 221
- Dobbins, S.K. 2, 47, 51
- Doderidge, John 151–3, 154, 155, 156, 160n., 180
- Dodson v. Lutterford* 169
- Doe, N. 8, 45n., 46, 51
- Donne, John 8, 106n., 117n., 118n., 121n.
- Drewes, J.B. 33n.
- Dugdale, William 89n.
- Duke of Newcastle v. Clayton* 246n.
- Duke of Newcastle v. Heathcott* 227n.
- Dux Albermarle v. Cutler* 225
- Dyke, Jeremiah 110, 115, 123, 124n., 126, 127, 137n.
- Earl of Dorset v. Hospital of East Grinstead* 248n.
- Earl of Feversham v. Watson* 226, 246n., 252, 253–4, 260n.
- Earl of Leicester v. Sidney* 231n., 246
- Earl of Northumberland v. Bowes* 169
- Earl of Oxford’s Case* 158, 159, 164n.
- Earl of Shrewsbury’s Case* 80
- The East India Company v. Blake* 255
- Eburne, Richard 109n., 135n.
- Edmunds v. Povey* 256
- Edward IV 14, 22
- Egerton, Thomas (Lord Ellesmere) 67, 74, 76, 80n., 81, 86n., 111, 141, 157–65, 167, 168, 172, 173, 179, 180n., 182, 223, 224n., 225, 228
- conscience and fact-determination by 84, 163–5
- conscience, private 162–3, 164
- folly, refusal to relieve 82–3
- inward dispositions, and 84–5
- notice of trust, and 87–8, 239n.
- religious cast of mind 81–2, 142, 159, 160n., 242, 243
- Eldred v. Rawleigh* 169
- Elizabeth I 11, 89n
- Endicott, T. 43, 44, 50n.
- epieikeia* (*epikeia*, *epikie*) 45–8, 51, 52, 62, 144–5; *see also* equity
- law, of the 103
- equity
- ‘alien’ provenance of, alleged 270
- Aristotelian 1, 46–7, 48, 52, 247
- canonical 24, 25–6, 45, 47
- capacity, compromised, relief in cases of 83–4
- ‘cerebral’ or natural 25
- certainty and 3, 52, 78, 170, 226, 252, 254n., 256, 257–8
- Chancery 1–2, 49, 50, 52, 67, 74, 100, 102–3, 106, 120, 128, 145, 150, 181–2, 242n., 250, 253–4
- ‘clean hands’ doctrine and 82, 242–3
- collateral circumstances, considers 85–6, 103–6, 153, 242
- common 116
- common law, of 1–2, 44, 93, 100, 150
- common law, patterned after 62–3, 241n., 254, 270
- conscience, said to have superseded 4, 13, 44, 46, 49
- convenience, factor in 66–7, 88, 91–2, 93n., 96–7, 98, 119n., 142–3, 149, 152, 255
- corrective of law 20, 41–2, 43, 47–8, 50, 52, 61, 90, 93n., 120, 134, 142, 143, 144–5, 152–3, 158n., 167, 215, 219–20, 242n.
- culture of 12
- discretion and 26, 43, 47, 48, 79n., 155, 156, 157, 170–71, 224
- ecclesiastical to secular, transition 74
- excesses of (alleged) 168–9, 170, 223–4
- extraordinary recourse to 47, 48, 61, 170, 181, 223, 272
- ‘extremity’ and 142–3, 152, 153, 167, 220
- general 150, 249, 253
- good faith in 17, 20

- Hobbes on 47, 259
- House of Lords, in 246n., 253–4
- institutional separation of 45–6, 49–50, 71, 78–9, 88, 95, 170–71,
- intention, not form, regards 135–6, 163, 226, 229, 234
- internal dispositions and 16n., 84–5, 209–11
- interpretive principle 41n., 46–50, 144–5, 150, 152, 155, 242n.
- intrinsic to law 9, 44, 46–9, 61, 71, 100, 104, 106, 145
- like cases to be decided alike 152, 154, 272
- meanings of, multiple 45–50, 93
- medieval influences on, continuing 51–2
- mercy (*miser cordia*) as element of 46–8, 102, 153, 155, 168, 174, 247, 249
- mistake, relieves for 82n.
- ‘mother of justice’, as 25
- mutuality and 16, 147, 148n., 167, 178; *see also* consideration
- natural justice, and 39, 93n., 249, 251n., 257, 258
- official discourse of conscience, as 11
- particular 116
- precedent and 52, 89, 92, 168, 169, 174–5, 179–80, 182, 248, 255–8, 260, 272
- private (contrasted with ‘public’) 142–3, 150, 175, 179
- reason of the law, as 242n.
- ‘regular’ (or ‘legal’) 7, 96, 174–5, 182, 225, 226–7, 234, 238, 246, 250, 252–4, 270, 272, 273
- regularization of 74, 76, 225ff., 261
- Roman theory of 47
- rules of 220, 221, 242n., 246n., 249, 253–5, 269
- ‘scientific’ 225n., 227, 258
- secularization of 74
- St. German’s description of 47–9
- statute, of the 49, 57; *see also* equity, interpretive principle
- ‘volunteer’, attitude toward, *see* consideration
- Exact Relation of the Proceedings and Transactions of the Late Parliament, An* 222n.
- examination 30–31
- Chancery, in 30, 68, 90, 99, 103, 105, 230
- ad informandum conscientiam judicis* 84, 148, 165n.
- oneself, of 76, 109n., 124n., 267–8
- example (contrasted with precedent) 179n.
- Exchequer, Court of 19, 109
- Eyre, Robert 189, 207, 240, 265n., 268
- faith (or belief)
- reason or understanding, contrasted with 30, 37, 75, 123, 126, 194–6
- Fall, the, effect on human faculties 37, 75, 133, 154, 171, 172n., 240n.
- Fastolf, John 22, 24, 30
- Fenner, Edward (Justice) 7, 228
- Fenner, Edward 125–6, 129n., 133n.
- Finch, Heneage (Lord Nottingham) 1n., 2, 205, 225ff.
- arbitrariness of equity, concern about 226, 227
- casuistry, and 238, 259
- ‘certain measures’ 40, 227, 252, 256, 258
- charity, factor in Chancery 247–51, 252
- conscience
- Chancery, limited in 7, 76, 225ff., 246, 252–3
- factual aspect of 230–31, 232–3, 234, 236
- invocation of, frequent 226–7
- normative aspect of 10, 230ff.
- personal 229, 234, 243
- private versus public 30, 103, 161, 222; *see also conscientia naturalis et interna; conscientia politica et civilis*
- equity, regularization of 4n., 76, 225ff., 246, 252–3
- ‘father of modern (systematic) equity’ 225n.
- folly, attitude toward 251–2
- formalism of 225n.

- honour, as factor in equity 246
 ignorance of fact, attitude toward
 238–4
 law, based rules of equity on 241–2,
 254–5
 pity, affected by 238
 precedent, attitude toward 255–8
 reasons, written 226n.
 religious sensibility 184, 243–4
 rules, preference for 253–4
 conscience, of (contrasted with
 rules of ‘law’) 255, 258
 scholasticism, and 260
 science (of equity) 226, 252, 254,
 258–61
 soul, equivocal concern for in equity
 24n., 64, 242–3
 Finch, Henry 154–5, 156, 180–81
Finch v. Hawtry 239n.
Finch’s Case 81
 Fineux, John (Chief Justice) 23, 160
 Fitzherbert, Anthony 166
 Fitzjames, John (Chief Justice) 6–7
 folly, relief of in equity 23n., 60n., 82–3,
 90n., 251
Foly v. Paston 244n.
 formality 102, 135n., 146–7, 148n., 150
 as act itself versus proof of an act 68–9
 Forsyth, James 8, 111
 Fortescue, John (Chief Justice) 15–17, 23,
 36, 39, 44, 124
Forth v. Wade 248n.
 Fortier, M. 12, 86, 157n.
forum coeli 118–19
forum conscientiae 6, 21, 190n., 234n.,
 238n.
forum externum (external forum) 6, 147,
 149, 213, 214, 227
forum internum (internal forum) 6, 57, 63,
 66, 145, 227, 243
forum soli 118–19
 Fowler, Edward 197n., 212
 fraud (‘covin’, ‘cosinage’) 19, 20, 21, 65,
 81, 83, 84, 86, 90, 103, 104n., 120,
 147, 158, 163n., 178, 221, 222n.,
 236n., 243n., 250
Freeman v. Blagrove 169
 Fretchville, John (Lord Fretchville) 253
Furner v. Lane 258n.
Fry v. Porter 256
 Fuller, Thomas 219
 Gallagher, L. 11–12, 28, 77, 78, 106n., 266
 Garey, Samuel 109n.
 gavelkind 58
Gawdy v. Marriot 227n.
 generosity 130, 135, 136, 138, 143–4, 167,
 235, 247–51; *see also* charity
 George, C.H. and K. 138n.
 Gerson, Jean 48, 51–2, 53, 55, 56n., 65n.,
 119n., 202n.
*Treatise Against ‘The Romance of the
 Rose’* 68
Gibson v. Kenwyn 227n., 252
 Gilbert, Geoffrey 184n., 221n., 236n.
Giles v. Gesling 178
 Gilmore, M.P. 47
Glanville’s Case 163n.
Godfrey v. Lloyd 252n.
 Golden Rule 34, 62n., 64, 83, 127n., 132,
 135, 248, 249–52, 268
 law, metaphor for 90
 God
 human relationship to and conscience
 132–4
 judgment of, infallible 8
 law of *see* law, divine
 lord of conscience (sole) 205n., 209
Goodfellowe v. Morris 169n.
 Goodman, John 110, 135n., 184n., 211n.
 Goodridge, J.F. 18n.
Gravenor v. Cartwright 252
 Gray, Charles M. 157n., 168n.
Green v. Gardner 238n., 239
 Greene, R.A. 33n., 53n., 122n., 171–2
 Gregory the Great, St. 113n.
Grey v. Grey 243
 Guy, J.A. 14n., 43n., 44, 47, 48, 51n., 65,
 69n.
 Hacket, John 159n., 173n., 174, 175, 260
 Hake, Edward 1–2, 31, 73, 74, 83, 86, 88,
 89, 100–106, 128, 145, 150, 265
 Hale, Matthew 186, 189, 196n., 198, 260
 Hall, Joseph 107n., 183, 187, 238n., 247,
 249, 264, 271

- Hall, Thomas 240n.
Halliwell, M. 2n.
Hammond, Henry 188–9, 194n., 211, 212, 217, 241, 245
Harris, Robert 109n., 110–11, 121, 128
Haskett, T.S. 4n., 12, 24n., 26
Hatchett v. Bindon 226n., 258
Hatton, Christopher (Chancellor) 89, 90, 91n., 93n.
Hatton v. Long 252n.
Hault, Anne 20–21
Havers v. Burton 178
Hayward v. Trumble 81n.
Hele v. Hele 244n.
Helme v. Conham 165n.
Henry V 17, 18n.
Henry VI 14, 18
Henry VII 14
Henry VIII 11, 41n., 42, 69n., 70
Herbert, Edward (Lord Herbert of Cherbury) 41n., 137n., 172n.
Herbert v. Lowns 178
Hickson v. Wytham 64n., 227, 244, 248
Hill v. Bowyer 251–2
Hinckly v. Hinckly 227n.
Hobbes, Thomas 47, 183, 193, 202n., 204–5, 207, 213–15, 228, 259, 260
Holdsworth, W.S. 45n.
Holles, Denzil (Lord Holles) 253
Holmes, P.J. 76n., 135n.
Honywood v. Bennett 246, 253
Hooker, Richard 107n., 202n.
Hoskett v. Hellier 169
Howard v. Duke of Norfolk 225n., 229, 243, 255
Howesoun, John 109–10
Hughes, John 10, 109, 110, 121, 124n., 135n., 136n., 172n., 173n.
Hunt v. Bancroft 169
Huntingdon and Scarsdale v. Greenville 227n.
Hurd v. Dodington 85
Hyde, Edward (Lord Clarendon) 176, 183, 228, 258n., 259, 267
Hyde v. Seymour 244n., 227n.
ignorance; *see also* conscience, erroneous
corrigible (or culpable) 35, 55, 131, 237, 239n.
fact, of 35, 55, 131, 237, 238–9
incorrigible (or invincible) 35, 36, 55, 60n., 105, 131, 206, 207, 237, 239n.
law, of 35, 55, 131, 237
negligent 131
wilful 239
Illington (Justice) 16
individualism, Protestant 77, 114; *see also* conscience, Protestant
‘Ingham’s Petition’ 22n.
injunction 101
innatism 32, 33, 181, 186, 203–5
intellectualism 112, 201–2
intelligence 53, 76, 123
conscience, distinguished from 123
practical 76
simple 53
interrogatory 84n., 99n., 221n.
inwit (conscience) 18n.
Isham v. Cole 179
Jackson, John 10, 107, 111, 114–15, 126, 127n., 241
Jacob 243
James I 167, 168, 177
conscience
account of 168n.
personal 167–8
speech in the Star Chamber 167–8
Janda, R. 51n.
Jarvis v. Middleton 252n.
Jeanes, Henry 135–6
Jeffreys, George (Chancellor) 220n.
Jennings v. Gorges 238n., 239
Jerome, St. 53n.
Jesuits 77, 112, 187n., 267
Jones, Andrew 110n.
Jones, W.J. 4n., 73, 82n., 84n., 86n., 89n., 99n., 157n., 159, 172, 271
Jones, William 152 n. 107
judge
judicial knowledge of 233, 236
private knowledge of 10, 29–30, 148, 164, 233–4
two consciences of 29, 233

judgment

secundum allegata et probata 9, 29,
103, 148, 164

secundum conscientiam 9, 29, 68, 90,
91, 148, 164

secundum discretionem sanam 2, 3

jury, conscience of and fact-determination,
see conscience, jury, of

jus fiduciarium 1n.

jus legitimum 1n.

jus precarium 1n.

justice 229, 432

charity (or liberality), contrasted with
135–6, 139, 247–52, 271, 273

commutative (or corrective) 135, 247n.

distributive 135n.

equity and 25, 26, 45, 47, 48, 49, 93,
135, 155, 170, 179, 221n.

natural 6, 39, 93n., 202, 222n., 238n.,
251n., 255n., 257n., 258, 260, 261

Golden Rule and 249

primary principles of, two 247–8

reciprocity, as element in 247

rigorous (strict) 170, 251

substance of 225n.

universal 170, 245, 255

Kames, Lord 79n.

Katherine of Aragon 11, 41n.

Keeling, John (Chief Justice) 256

Keenan, J.F. 112n.

Kennedy v. Vanlore 207

Kent, J. 39n.

Kettleby v. Kettleby 83–4

King v. Hatchett 227n.

Klinck, D.R. 2n., 3n.

Knafla, L.A. 8n.

Knight v. Coke 252n.

Knight v. Knight 257

knowledge

belief or opinion, contrasted with 3,
35, 114, 123, 126, 155, 185, 194–5,
198n., 206n.

conscience, element in; *see* conscience,
knowledge, and; conscience,
science, and

Laban 243n.

Lactantius 249

Lacy v. Anderson 80n.

Lake v. Phillips 179n.

Lambard, William 88, 90

Langdell, C.C. 26n.

Langland, William 18–20

Langley, Thomas (Chancellor) 17n., 18n.

Last Judgment 8, 111

law

divine (*lex divina*, law of God) 28, 48,
116, 119, 120, 143, 159–60, 168,
191, 242n., 245, 259

assent, requires 191–2, 200–201

ceremonial 116, 117

Christian 211–12, 241, 245, 288n.,

conscience, binds directly or

immediately 115–6, 119–20,

145–6, 149, 209–10, 235

conscience, rule or measure of 17,

32, 92, 102, 114–15, 117, 132,

137, 145–6, 149, 152, 189–90,

205–6, 269

equity and 150, 152, 159, 259

eternal felicity, relates to 56

fountain of equity 142

human law, criterion for 56, 93n.,

119, 154, 156

intellectualism and, *see*

intellectualism

inward things, judges 65

judicial 116

law of England, ground of 57n., 61,

159, 243n.

manifestations, diverse 115, 116,

192

moral 116

obedience to temporal rulers,

mandates 57n., 117, 118, 145,

160, 210, 216

peace, dictated by 97

property and 59, 96, 145–6

remarriage after divorce not

offending 238n.

revelation, given by 56

voluntarism and, *see* voluntarism

eternal 56–7, 205, 216

human 48, 56ff., 120, 144, 156, 186

- civil (domestic) 144–6, 149–50, 200, 216, 218, 230, 260, 269
- conscience and 7, 57, 63, 114, 119, 136
- conscience, binds mediately 115–20, 145–6, 209–10, 235
- conscience, ground of 56ff., 96, 115
- conscience and, mutually exclusive 6–7, 9, 75, 128–9, 269, 271
- contracts, basis of 59–60.
- divine or natural law, inconsistent with 56, 60, 62, 63, 96, 115n., 119–20, 143, 144, 146, 154n.
- equity in 47, 150
- ‘indifferent’ matters and, *see* *adiaphora*
- inward dispositions and 65, 118, 129–31, 199–200, 235–40
- nations, of 115, 144, 219
- obedience (versus assent), requires 200, 234–5
- outward actions, concerned with 65–6, 118, 129, 156, 199–200, 235
- property, basis of 59, 96, 145–6
- public order, concern with 56, 96–7, 117n., 134, 215, 235, 245, 247, 266
- rigour (or extremity) of, subject to conscience 41–2, 43, 94, 95, 99n., 142, 153, 156, 167, 219, 222
- moral 116, 143, 241
- natural (*lex naturalis*) 28, 32, 35, 37, 52, 68, 96, 107n., 112, 115, 146, 150, 154, 155–6, 166, 171, 190, 205–6, 213–15, 243n., 245, 247, 271
- Chancery, applied in 91, 220, 253
- civil law and 144–6, 149
- equity, as 205
- ingratitude crime against 247n.
- inward disposition, and 213–4
- moral law, as 116
- positive, *see* law, human
- reason, of 48, 60, 63–4, 69, 71, 116, 150, 159, 211, 230, 241, 245
- conscience, ground of 56ff., 114
- definition 56
- English law, ground of 57n., 61
- primary 40, 69n., 151–2, 257
- property and 59, 96
- secondary 40, 69n., 151–2, 154
- Roman 20, 25n., 46–7, 48
- science, as 180–81
- strict (*summum jus*) 6, 20, 50, 94, 104, 145, 146–7, 173, 242, 250
- Lawrence v. Berney* 227n., 229, 255
- Lee v. Boles* 222n.
- Lefebvre, C. 25
- legal rules, indeterminacy of 78
- Leigh, Edward 220n., 222n.
- Leites, E. 204, 213, 216, 217
- Lenthall v. Waring* 226
- ‘Lesbian [lead] rule’ 42–3, 90, 152n., 153, 202
- Levington v. Wooton* 179
- Lewis, C.S. 34, 265
- lex conscientiae Divinae* 161, 228
- lex conscientiae politicae* 161, 228
- liberality, *see* charity; generosity
- Lipsius, Justus 95
- Lisle, John 220n., 249n.
- Lister v. Lee* 87–8
- Locke, John 203–4
- Lombard, Peter 53n.
- Lord Cornbury v. Middleton* 221–2
- Lord Dacre of the South, Re* 79n.
- Lord Mordant v. Earl of Peterborough* 226n., 231n.
- Luther, Martin 5, 38
- synteresis* 33, 54n., 75
- two kingdoms 75
- Lydgate, John 33n.
- Lyndwood, William 162
- Macnair, M. 9–10, 29n., 39n.
- Magna Carta* 90, 111, 158
- Mainwaringe v. Lovelace* 164
- Maitland, F.E. 26, 30n.
- malum in se* 169, 238n.
- Markham, John (Chief Justice) 22n.
- Martin v. Hall* 258n.
- Martin v. Marhsall* 162n.
- Mason, Henry 109, 110, 178

- Masters v. Strode* 245
Mathews v. Askwill 55
Maynard v. Moseley 251
Mayor of London v. Bennet 180
 Megarry, Robert (Vice-Chancellor) 131
mens rea 130–31, 237
 Merrill, T. 112–13, 114, 115n., 126n.
 Metzger, F. 14, 23
 Meyjes, G.H.M. Posthumus 45, 46, 48, 51, 52, 56n.
Midleton v. Jackson 179n.
Mirfield v. Morley 238n.
 monition (component of conscience) 101
Montagu's Settlement Trusts, In re 131
Moor v. Hinton 227n., 255
 Moore, Francis 176
 More, Thomas 25n., 38, 42–4, 67, 69
Moreton v. Briggs 169
Morris v. Morris 80
 mortgage, characterization in equity 244, 251n., 257
 Morton, John (Archbishop, Chancellor) 6, 23, 28, 81, 160
 Morton, Thomas 118
Mynn v. Cobb 164

 Nalson, John 189, 190, 194–5, 211
Nance v. Cook 227n.
 nature, light of 37, 56, 144, 151, 171, 172n., 196, 197, 205–6, 208
Negus v. Fettiplace 234n.
 Nelson, B. 5
 Neville, George (Archbishop, Chancellor) 26n.
 New Testament ('Gospel') 27, 102n., 115, 116, 120, 133, 135, 190, 228n., 250
Norcliffe v. Worsly 226n., 227
 Norman, John 188, 197, 199, 229
 North, Francis (Lord Guilford) 225n., 256n.
 North, Roger 225n.
 Nottingham, Lord, *see* Finch, Heneage
Nurse v. Yerworth 226n., 244, 245, 249n., 255, 258n.

 oath 84, 90, 99, 117, 125, 135, 136, 160, 221, 232, 236
 conscience, binds 9–10, 29, 66, 99, 117, 172
 judicial 165
 lawfulness of 55, 88, 163
obligatio naturalis 1n., 16, 28
 Ockham, William of 201, 202n.
 Oldendorp, Johann 6n., 75, 95–6, 97
Omer v. Ashley 86n.
Orrell v. Eccleston 81

 Palmer, R.C. 13
 Park, J.J. 2, 182
Parke v. Wannell 165n.
 Parkes, J. 89, 116n., 243
 Paston, Agnes 21
 Paston, John 17n., 20, 21, 22, 24n., 27n.
 Paston, Sir John 20–21, 30
 Paston, John (the younger) 22, 30, 36
 Paston, Margaret 21, 26
 Paston, William 16n., 21
 Paul, St. 34n.
 Pearson, John (Bishop) 260n.
Peck v. Davis 84–5
 Pecoock, Reginald 37–8, 53n., 65
Pells v. Brown 160n.
 Penn, William 135, 208, 209n.
 Perkins, William 107n., 108, 109, 114, 115, 121, 122, 123, 124, 127, 169, 173, 245
 equity, on 142–4, 150, 175, 179
 human law, how binding conscience 117–20
 law of God, analysis of 116–17
 oaths, how binding 187
 relationships, three kinds 129ff.
 perpetuities, said to fight against God 160, 243
 Peter, St., power of and papal authority 120
 Pett, Peter 193, 210
Petty v. Styward 179n.
 Philip the Chancellor 37n.
 Philips, Ambrose 172n.
 Pickering, Thomas 76, 113, 114
 Pierce, C.A. 34n.
 Pierce, Thomas 189–90, 194, 195, 196
Piers the Plowman 18–20, 26, 42
 Pike, L.O. 8n.

- Piriam (Periam), William (Chief Baron) 109
- Plato 160
- Plucknett, T.F.T. 26n., 46n., 51n., 52, 59n., 66, 68, 70, 242n.
- Pomeroy v. Ford* 81
- Pool v. Pool* 178
- Post, J.B. 26
- Post-nati* (case of) 159, 160, 162, 165, 171n.
- Potts, T.C. 3n., 4, 31, 32–3, 34, 35, 37n., 55
- Powell v. Morgan* 248
- Practice of the High Court of Chancery Unfolded* 160n., 220n., 232n., 243n.
- praetor, Roman 1
- praetorian jurisdiction 170–71, 179n., 181n., 182n., 263
- precedent, *see* Chancery, precedent and; equity, precedent and
- prescriptive acquisition 20, 249–50
- presumptions 59, 105, 147–8, 151, 233n., 239
- Pricke of Conscience, The* 18
- probability (in epistemology) 184–6, 203, 205
- promises 15, 28, 51, 60n., 68, 117, 134, 213
- God, to 65
- mere (or naked) 136
- Chancery, not enforceable in 65–6, 148n., 246, 251n.
- conscience, impose obligation on 65, 136
- oath, under 66, 135, 136
- secret 66, 87
- Pronay, N. 14, 15, 25
- Puckering, John (Lord Keeper) 74n., 80
- Pulter v. Bristowe* 84n.
- purchaser, without notice of prior equity 379
- Puritans, disparagement of reason by 107n.
- Ragland v. Wildgoose* 87
- Radin, M. 6n.
- Rainsford, Richard (Chief Justice) 260n.
- Ramsay v. Goslin* 178
- reason 33, 37, 54, 60–61, 71, 156, 191–2, 202, 205
- common 50, 156
- conscience and, *see* conscience, reason and
- deprecation of 75, 107n., 152n., 154, 190–91, 192, 193, 196, 202
- discourse of 52, 151–2, 154, 197, 198, 217
- ‘doom of’ 37
- equity and 13, 14, 17, 22, 47, 150, 155, 174, 242, 254
- faith, contrasted with, *see* faith
- higher (superior) and lower (inferior) 33n., 54, 65, 101–2, 154, 171
- intellectualism 201–2
- law, criterion for 19–20, 30, 50, 61, 144, 152n., 154
- law of 48, 49, 56–64 (*passim*), 68, 69, 70, 71, 96, 103, 114, 115, 116, 119, 120, 144, 146, 152, 159, 211, 214, 215, 219, 230, 241, 245
- moral discernment 40, 53, 76, 95, 154, 203–5, 211–12
- natural 113n., 205, 242
- ‘perfect’ 95
- practical 76, 121, 144
- primary principles of 69n., 75–6, 151–2, 153
- right 95, 117n., 144, 256
- scriptural imperatives, distinguishes 191–2
- secondary principles of 68–9, 151–2, 153, 154, 197
- St. German on 53–4
- reasoning, equitable 15, 82, 160, 244, 260, 261
- Reformation 5, 6, 12, 74–6, 77, 208, 264
- civil and spiritual matters, relationship 75
- scripture, reading of 102, 193, 265
- voluntarism and 202–3
- Replication of a Serjeant at the Laws of England* 2, 60n., 67, 69, 70–71, 82–3
- Reports of Cases Taken and Adjudged in the Court of Chancery* 220, 272

- ‘representatives’, none in intellectual and spiritual things 211
- restitution 28, 38, 59, 82, 105, 131, 147
 material, penance and 27, 130, 235
 soul’s health and 160–61, 234, 242
- revelation 37, 56, 126, 133, 190–91, 196, 205–6
- Revet v. Rowe* 179
- Reynoldes, Edward 121n.
- right 144
 common 158
 divine 144
 natural 144, 254, 258
 positive 144
 equity and 34, 79, 80, 94, 155, 179, 221n., 244, 248, 251, 256, 257
 legal 19–20, 22, 63, 96
 particular 149
 public 149
- righteousness (‘rightwiseness’) 58
 civil 260
 equity and 18, 37n., 48, 92
 spiritual 116, 267
- Ritchie, John 165
- Rivius, Johannes 101
- Robinson, Henry 222n.
- Rodd v. Ryer* 248n.
- Rolle, Henry 160n., 168n.
- Rolle, Richard 18
- Rolt v. Smith* 167n.
- Roper, William 43
- Ross, Alexander 109, 130
- Rosser v. Evans* 227n., 255
- Roswell v. Everie* 168n.
- Rous, Francis 208, 212
- Rueger, Z. 9, 47n., 48, 49, 51n., 68
- rules, determinate, as desideratum of law 4
- Russell, B. 10–11
- Salsbury v. Bagott* 226n., 235n., 239, 254n.
- Sanderson, Robert 107n., 109n., 112, 183, 188n., 189, 190–92, 194n., 196, 197, 199, 200, 202, 205n., 207n., 211, 235, 241, 245, 248, 264
- Sarten v. Darcy* 250
- scandal 20–21, 237, 245–6
- science 187, 259
 conscience
 aspect of, *see* conscience,
 knowledge, and; conscience,
 science, and
 contrasted with 123, 172, 196
 equity, need for 114, 226, 252, 254,
 258–60
 law, of 2, 4, 152, 155, 180, 182n.
 Scot, Thomas 109n., 115n., 117n.
Scott v. Wray 179n.
- Scripture
 multiple readings of 193, 265
 rules of conscience, source of 102, 115,
 133–4, 159, 163n., 190–92, 210;
see also conscience, rule of
- Scroggs, William (Chief Justice) 243
- Searle v. Lane* 222
- Selden, John 2, 78
- Shapiro, B. 184–6
- Sharp, John 107–8, 193, 205–7, 209–10,
 216n., 217, 265–6
 Nottingham’s chaplain 205, 243
- Sheffield, John 194, 247n., 248, 249
- Sheffield v. Lopton* 158n.
- Shelley, William (Justice) 41–2
- Shelley’s Case* 16n.
- Sheppard, William 219, 220n., 223
- Shipton v. Tyrrell* 246
- Siegel, S. 45, 65n., 184n.
- Simeon v. Dean and Cannons of Windsor*
 169
- simony 178, 246
- Simpson, A.W.B. 1, 6, 13, 14, 15, 17, 23,
 24–5, 27, 51, 242–3
- sin 6, 19, 27–8, 29, 37, 38, 66, 113, 117,
 118–19, 120, 135n., 177n., 189,
 210, 237
 against God 247
 against one’s neighbour 247
 against oneself 247
 Chancery’s concern with 23, 156,
 242n., 243, 244; *see also* soul,
 equity’s concern for
 formal, contrasted with material 130
 heart, of the 129
 mouth, of the 129
 works, of 129
- Slights, C.W. 5n., 76n., 108n.

- Smallman v. Pollard* 81
 Smith, Thomas 100n.
 Snagg, Robert 75, 88, 89–93, 106, 128, 224n.
 Snagg, Thomas 89n.
solennitas formalis 68
solennitas probatoria 68
Solly v. Whitfield 248
 Somers, John (Lord Somers) 249–50
 Sommerville, J. 117n.
 soul
 equity's concern for 6, 23, 24, 27–8, 29, 64, 81–2, 95–6, 132, 156, 160, 167, 242, 243–4
 human law and 65n., 75, 117n., 118–19, 120, 209, 212
 Sparrow, Anthony 113n.
 specific performance, relation to
 conscience 15, 64, 238
 Spence, George 25n., 29, 35–6, 89n., 136n., 227n.
 Spenser, Edmund 11, 78, 106
 'spirituals' 65–6, 75, 101, 118, 132, 134, 210–11, 213, 240–44, 248, 273
 Stafford, Edmund (Chancellor) 15n., 25n.
 Stafford, John (Chancellor) 15n., 18
Staples v. Stone 226n.
 Statham, Nicholas 15–16, 23, 30n.
 St. German, Christopher 11, 44ff., 74, 119, 141, 150, 159n., 233n.
 conscience
 common law and 8, 44, 46, 149, 270
 concept of 51, 52–6, 75, 89, 121
 emphasis on 46
 errors in 55
 law as basis of 56–8, 69–70, 114–15, 146,
 law, human as basis for 57, 58–62, 96, 103, 146, 214, 254
 private 61, 64–6, 91, 128
 equity
 Chancery, in 49–50, 62–4, 66–7, 71, 100, 120
 key figure in development of 1, 4, 44, 94
 law, intrinsic to, *see* equity,
 intrinsic to law
 medieval influences on 31, 33, 44n., 51–2
 reason, on 53–4, 65, 69
 synderesis 54–6, 58
 Stillingfleet, Edward 242n., 245n.
 Stillington, Robert 23n., 29
Stone v. Withepoole 80n.
 Stone, M.W.F. 77n.
 Story, J. 1n., 3, 6, 9, 39
Stowbard v. Wingfield 248n.
 Stratford, Nicholas 249
 Suarez, Francisco 245n.
subpoena 49, 57, 60, 61, 63, 67, 71, 94
suggestio falsi 252
summæ confessorum (summæ de casibus conscientiae) 25, 28, 29, 31, 36, 40, 51, 52
summum jus summa injuria 47, 142, 153
suppressio veri 252
 surprise (factor in equity) 222n., 178, 252
 Swale, Richard 89n.
syneidesis 126, 127, 188, 190n., 194n., 197
synderesis (synteresis) 32–5, 37n., 40, 55, 56, 78, 95, 97, 101, 122–3, 126, 137n., 151, 154, 155–6, 171–2, 188, 190n., 196, 197, 203, 206, 230, 231, 260
 affective or dispositional faculty 32–3, 53–4, 55
 double 33, 54n.
 'Golden Rule' as basic precept given by 34, 83, 135n., 249
 habit (disposition), as 32–3, 122–3, 193, 196
 inerrancy of 35, 54, 55, 78, 101n., 127, 198
 intellectual faculty 32, 53–4, 75, 185
 remorse of conscience, as 33n.
 satirized 122n.
Tabor v. Tabor 254n.
tabula rasa, mind as 203
 Taylor, Jeremy 107n., 112, 176, 183, 186–8, 189, 192, 193, 196, 198, 199, 200, 202, 233–4, 235–7, 245n., 264
 Ten Commandments 132, 133, 134
 Tentler, T. 25, 27n., 28, 29, 31, 38

- theology, 'ascetic' versus 'moral' 267
 Thomas, G.W. 173, 174, 175, 179n. 181
 Thomas, K. 5–6, 108, 188n.
 Thomas, Michael 249
Thornborough v. Baker 248, 251n., 254n.,
 257–8
 Thorne, S.E. 89
Tilly v. Egerton 258n.
 Tillotson, John 38, 110n., 184n., 185–6,
 203, 249, 250, 260, 272
 Traver, Hope 33n.
True Magistrate, The 210, 240
 trust (or 'confidence') 16, 21, 24, 42, 81,
 83, 86, 87–8, 96, 99n., 105, 160,
 164, 232, 233, 239, 243
 Tucker, P. 14
Tufton v. Waller 82
 Tully, J. 112, 184n., 186, 201, 202, 203–4,
 208, 212–13
Tuphorne v. Gilbie 286 n. 210
 'two kingdoms' 65n., 75

 Ullmann, W. 29n.
 Underhill, N. 2
 understanding 54
 conscience and 32n., 33n., 53n., 114n.,
 121–3n., 133n., 194–5, 198
 contemplative or theoretical 75, 122
 practical 76, 122, 123
 unjust enrichment 28, 105, 147, 179
 uses 7, 15, 16, 28, 50, 79, 166, 167, 175
 charitable 271
 fraudulent *versus* innocent 65
 usury 81, 271
 charity, may be consistent with 271
 justice and 271
 natural law and 271

Vanbrough v. Cock 233
 Van Leeuwen 184–5
 Vaughan, John (Chief Justice) 255–6
Vendal v. Harvey 179n.
 villeinage, conscience and 61–2
 Vincent, Nathanael 172n., 194n., 197n.,
 199, 207n.
 Vinogradoff, P. 26n., 44
 voluntarism 112, 201–3
voluntatem bene placiti 191

voluntatem signi 191

 Walsham, A. 5, 70, 77n.
 Warburton, William (Bishop) 184n.
Ward v. Fulwood 158n.
 Warham, William (Chancellor) 43n.
 Warr, John 223–4, 240n., 249
Weaver v. Woodyear 258
 Wentworth, Thomas (Earl of Strafford)
 176, 228
 West, William 47n., 73, 74, 75, 88, 89,
 93–100, 103n., 141, 150, 219, 273
Whitchcott v. Mekins 243
 Whitelocke, Bulstrode 3
 Whitfield, Thomas 209n.
 Wilde, Robert 190n.
 Wigmore, Michael 110n.
 Wilkins, John 185–6, 203
 will, conscience and 33, 115, 121, 122,
 137, 200, 214
 affective 121n., 205
 corrupt 75
 God's, as rule of conscience 92, 115,
 116, 190–91, 205, 265
 judgment, contrasted with 212–13
 obedient 196, 200, 212
 sincere 217
 'truly moral' 204, 216
 understanding, contrasted with 121,
 196, 200–204, 208
 willing 200, 212
 will (testament), formally invalid,
 conscience and 147
 Williams, John (Lord Keeper) 109, 110,
 141, 157, 172–7, 257n.
 confessor, as 177
 Ellesmere, tutelage by 173
 Perkins, disciple of 173
 personal conscience of 172–3
 private *versus* public conscience
 175–7, 228
 Williams, Walter 220n., 223, 224, 255
Williams v. Day 227n., 255
Willoughby v. Paramore 84n.
Winchcomb v. Hall 178
Whitchcott v. Mekins 243
Witham v. Waterhouse 80
 Witte, John Jr. 5n., 25, 95–6

- Wolseley, Charles 208, 209
Wolsey, Thomas 14, 41–2, 43
Wood, T. 107n., 108, 113, 121n., 142n.,
187n., 264–5, 267, 268, 271
Woolton, John 75–6
Worship, William 109, 121, 172n.
Wright, Nathan (Lord Keeper) 220n.
Wriostheley, Thomas (Chancellor) 43n.,
56n.
- Wyld[e], William (Justice) 221
Wyvell v. Beckwith 226n., 227n.
- Yale, D.E.C. 1n., 5, 26, 74, 101n., 107,
225n., 227–8, 229, 233, 241n., 254,
258n., 261
Yate v. Southby 180
Yelverton, William (Justice) 22n.
Yorke, Philip (Lord Hardwicke) 79n.