THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY

STANLEY N. KATZ
EDITOR IN CHIEF

VOLUME 6

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Training–Zivilgesetzbuch
Topical Outline of Contents
Directory of Contributors
Index of Legal Cases
Index

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COMMON ABBREVIATIONS USED IN THIS WORK

ABGB	Allgemeines Bürgerliches Gesetzbuch Österreich, Austrian General Civil Code
A.D.	*anno Domini,* in the year of the Lord
ADHGB	Allgemeines Deutsches Handelsgesetzbuch, General German Commercial Code
A.H.	*anno Hegirae,* in the year of the Hajj
ALR	Allgemeines Landrecht für die Preussischen Staaten, Prussian Civil Code or General Territorial Law for the Prussian States
A.M.	*Artium magister,* Master of Arts
b.	born; ibn (in Arab names)
B.C.	before Christ
B.C.E.	before the common era (= BC)
BGB	Bürgerliches Gesetzbuch, German Civil Code
c.	*circa,* about, approximately
C	Codex (of Justinian)
C.E.	common era (= AD)
cf	*confer,* compare
CIC	Codex Iuris Canonici, Code of Canon Law
CMBC	Codex Maximilianeus Bavaricus Civilis, Civil Code of Bavaria
d.	died
D	Digest (of Justinian)
diss.	dissertation
EC	European Community
ed.	editor (pl., eds), edition
EEC	European Economic Community
EU	European Union
f.	and following (pl., ff.)
fl.	*floruit,* flourished
GG	Grundgesetz, Basic Law for the Federal Republic of Germany
HRE	Holy Roman Empire
I	*Institutes* (of Justinian)
IPL	International Private Law
l	line (pl., ll.)
LL.D.	*Legum doctor,* Doctor of Laws
n.	note
NBW	Nieuw Burgerlijk Wetboek, Dutch New Civil Code
n.d.	no date
no.	number
n.p.	no place
n.s.	new series
p.	page (pl., pp.)
pt.	part
rev.	revised
ser.	series
supp.	supplement
UCC	Uniform Commercial Code
USSR	Union of Soviet Socialist Republics
vol.	volume (pl., vols.)
ZGB	Zivilgesetzbuch, Swiss Civil Code

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T

TRAINING. *See* Education and Training.

TREASON. This article deals with "high" treason—treason against the sovereign—as distinct from "petty" treason—the killing of a husband by his wife (though not the reverse), of a master by his servant, or of a prelate by a person in holy orders—which no longer forms part of English law, having become subsumed in the offense of murder.

High treason was historically regarded as a crime of peculiar gravity. It remained a capital offense until the Crime and Disorder Act of 1998 substituted life imprisonment for death by hanging, and for many years was tried under procedures separate from those of the ordinary criminal courts and which greatly restricted the accused's ability to mount an effective defense. Treason involves the principle that one person may automatically owe loyalty to another by virtue of the relationship between them; certain acts become criminal offenses, or assume much greater gravity, where such a relationship exists. In high treason, that relationship arises when a person owes *allegiance* to the sovereign.

Beginnings. The English law of treason emerged during the late-twelfth and early-thirteenth centuries and was first given statutory definition—a definition that remains in force today—by the parliament of 1351–1352. Its roots, however, are much older. In his seminal work in this area, J. G. Bellamy sees the concept as an amalgam of ancient Germanic ideals of loyalty from a man to his lord, seen, inter alia, in the *Germania* of Tacitus, and the Roman legal principle of *maiestas*, which first emerged in the third century B.C.E. In the Roman Republic, offenses that fell within the concept of *maiestas* involved disloyalty to the state but were mainly military in nature: desertion, giving up fortresses or standards to the enemy, and communicating with the enemy. Gradually thereafter, *maiestas* came to encompass a number of offenses against the emperor and the emperor's government. Again, many of these were military, including the raising of armies or making war without the command of the emperor, and the failure of a provincial governor to leave his province at the end of his term or to deliver his army to his successor. Others involved political challenge to the regime: questioning the emperor's choice of successor, occupation of public places, and incitement to sedition. From the reign of Tiberius (14–37 C.E.), convicted traitors were punished not only by death, but by forfeiture of all property and the imposition of complete civil disability, so that before his execution the traitor was unable to make a will or to manumit his slaves—both matters of vital importance in that day.

Although the English law of treason in medieval times has many similarities to the law of *maiestas*, and though the Roman concept seems to have been transmitted into medieval thought via Justinian's sixth-century *Institutes*, the one is not simply an evolved version of the other. From the time of Alfred the Great (r. 871–899), apparently independently of *maiestas*, Anglo-Saxon law codes began to distinguish explicitly between plotting against the life of the king and the more general offense of plotting against the life of one's lord. The laws of Aethelred "the Unready" (978–1016) imposed special penalties for desertion from an army when the king was present and the same penalties for false coining as for plotting against the king's life—coinage was of great political and symbolic significance, since it was produced by official moneyers and bore an image of the king.

Much the most frequent form of treason found in medieval times was armed rebellion against the king. However, the feudal system that took effect in England after the Norman Conquest did not initially make any distinction between the king as sovereign and the king as feudal lord. A point often neglected is that the feudal relationship was reciprocal; lord and vassal each owed the other a duty of faith. If the lord failed to keep faith, his vassal had recourse to *diffidatio*—formal defiance—and could then make war against him without penalty, although he thus deprived himself of lands he held from that lord. In twelfth-century feudal law the position of the king was no different from that of any other lord; indeed, it was argued by some writers that a vassal wronged by his king was not merely entitled but duty bound to seek justice through rebellion: God would judge the rightness of his cause on the battlefield. As late as 1266, the surviving adherents of Simon de Montfort—who had not only been in armed rebellion against Henry III (r. 1216–1272), but after the Battle of Lewes (1264) had held the king; his heir apparent the future Edward I; and Henry's brother, Richard, Earl of Cornwall and King of the Romans, prisoner for some months—were not tried for any offense. Instead, under the Dictum of Kenilworth (October 31, 1266) they were allowed to regain their lands on payment of a fee calculated

according to the degree of their personal involvement in the rebellion.

Before the end of the twelfth century, however, it was recognized that the position of the king was unique; faith between subjects was always qualified by the faith each subject owed to the king, and by the mid-thirteenth century a concept of treason had emerged that encompassed the procuring of the king's death, the betrayal of armies, and the giving of aid to the king's enemies. When Dafydd ap Gruffydd, the last native Prince of Wales, was convicted of treason by a specially summoned parliament in the autumn of 1283, the ambit of treason was extended to armed rebellion against the king. In English eyes Edward was feudal overlord of Wales. There was also a personal relationship between the king and Dafydd: Edward had earlier knighted Dafydd and had given him refuge during his disputes with his elder brother, Llywelyn (killed 1282). Dafydd ap Gruffydd also became the first man known to have suffered the gruesome penalty specifically ordained for treason until 1814—hanging, drawing, and quartering. In a similar fashion, the Scottish patriot William Wallace was executed in 1305 as a traitor to Edward I, who had declared himself the feudal overlord of Scotland.

The Statute of Treasons. The law of treason was invoked on a number of occasions in the later years of the reign (1307–1327) of Edward II and the minority of his son Edward III (r. 1327–1377) to deal not only with armed rebellion but with matters falling well short. In the course of events leading to Edward II's deposition and murder the Despensers, who had made themselves virtual rulers of the country by dominating the king, were condemned by their enemies on charges of accroaching (usurping) royal power; in 1330, Edward III's mother, Queen Isabella, and her lover, Roger de Mortimer, secured the execution of the king's uncle Edmund, Earl of Kent, younger son of Edward I by his second marriage, on charges that he was plotting to restore Edward II to the throne.

The Statute of Treasons, passed by the parliament of 1351–1352 and still in force, was theoretically declaratory of the existing common law, as were all medieval statutes, but seems in fact to have narrowed the scope of treason. It has been linked to the political events of the 1340s and to a petition of 1348 requesting the king to provide a definition of the offense of accroaching royal power; it seems ultimately to have represented a concession made by Edward III in return for a grant of extraordinary revenues to enable continued prosecution of war against France. It provides (in translation from the Norman French):

> When a man doth compass or imagine the death of our lord the King, or of our lady his Queen, or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir; or if a man do levy war against our lord the King in his realm, giving to them aid and comfort in the realm, or elsewhere, and . . . if a man slay the chancellor or the treasurer, or the King's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear or determine, being in their places, doing their offices..., that ought to be judged treason which extends to our lord the King, and his royal majesty. . . .

High treason therefore takes four forms: (a) conspiring to kill the sovereign, his queen, or the heir apparent; (b) compromising the royal succession by sexual intercourse with the queen, the wife of the heir apparent, or the sovereign's eldest daughter while unmarried; (c) levying war against the sovereign within the sovereign's realms, or adhering to or giving aid and comfort to the sovereign's enemies; and (d) the killing of the Lord Chancellor, Lord High Treasurer, or certain judges, when they are carrying out the functions of their office.

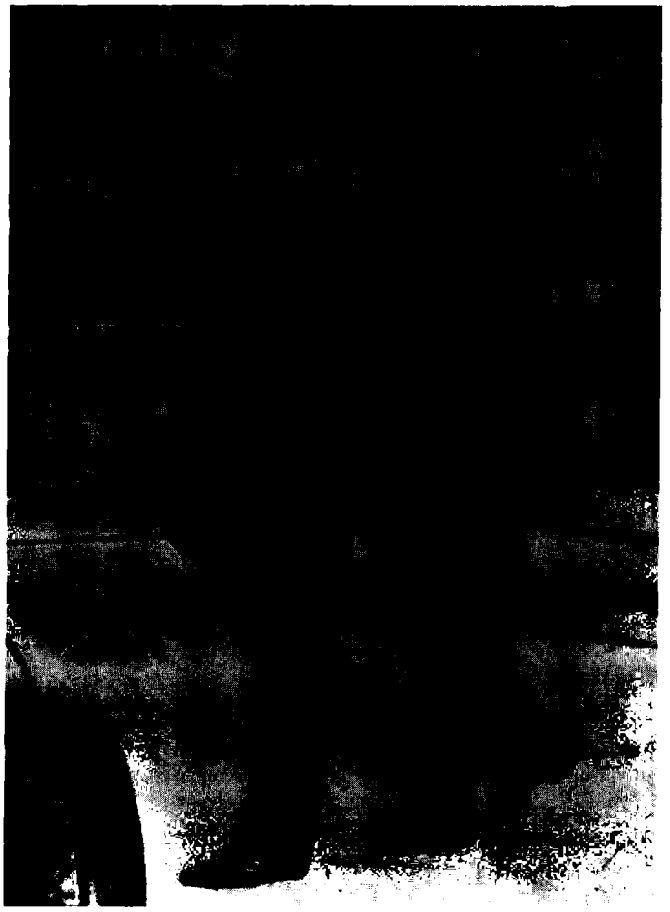
Although it is accepted that under the normal principles of statutory interpretation the use of the word "king" in historic statutes encompasses a queen regnant, there has been doubt as to whether there is any liability under the Statute of Treasons for compassing the death of the husband of a queen regnant. In his *Pleas of the Crown*, Sir Matthew Hale stated explicitly that liability did not arise, but he seemed to have based this view entirely on the Treason Act of 1555, which declared that compassing the death of Philip II of Spain, husband of Mary I (r. 1553–1558), was treasonable. However, when this provision is placed in the context of the 1555 act as a whole, it becomes clear that it cannot be relied on as evidence of any general principle. The act's purpose was to make provision for a regency should Mary, then in the later stages of what proved to be a phantom pregnancy, die in childbirth leaving an infant heir. Philip was the obvious regent, but he was a foreign king with a claim by blood to the English throne in his own right (through Catherine of Lancaster, daughter of John of Gaunt and wife of Henry III of Castile), and the English strongly suspected him of seeking to use the resources of England for his own purposes elsewhere in his domains. It was thus essential that Parliament set strict limitations on Philip's powers as regent, but also proper to give him the same legal protection against insurrection as if he had been sovereign in his own right.

Violating royal chastity. No prosecutions have ever taken place under the second category.

Levying war. Levying war against the sovereign encompasses not only armed rebellion against the sovereign or his forces or government but also, according to seventeenth-century authorities, a rising "for some general public purpose," such as to effect an alteration of the law, to open all prisons, or to alter the religion established by law. Convictions under this head include those of the Cato

Street Conspirators, who plotted to murder the cabinet at dinner on February 23, 1820—the plan was betrayed and the conspirators arrested in flagrante delicto as had been the 1605 Gunpowder Plotters—and the leaders of an 1839 insurrection at Newport, Monmouthshire, North Wales, when extreme Chartists attempted to take over the town. In 1781 Lord George Gordon was tried but acquitted on charges of levying war after members of his Protestant Association had rioted in London for several days against a bill for Catholic relief.

Adhering to the enemy and giving aid and comfort to the enemy. This head brought all the treason charges of the twentieth century, including the two most famous, those against Sir Roger Casement in 1916 and William Joyce in 1945. "Adhering" and "giving aid and comfort" are broad concepts, though it seems from *R v Casement* (1917) 1 K.B. 98 that the latter is simply a gloss on the former. According to Chief Justice the Marquess of Reading, whose definition was upheld by Justice Darling on appeal, a person is adherent to the sovereign's enemies when he commits an act that strengthens or tends to strengthen them in the conduct of a war against the sovereign or that weakens or tends to weaken the power of the sovereign to resist or attack his enemies or those of the country, although there must be an overt act with intent to assist the enemy. "Enemy" means a foreign state in actual hostility against the sovereign, with or without a formal declaration of war. Early cases (*R v Preston*, 1691; *R v Crosby*, 1695) involved communicating military information to the French when they were at war with William III (r. 1688–1714). It is not necessary that the communication actually reach the enemy; a communication that is intercepted is sufficient (*R v Hensey* [1758] 19 State Tr 1341). Serving in the armed forces of an enemy clearly constitutes adherence (*R v DeJager* [1907] A.C.), as does becoming naturalized in an enemy country in time of war (*R v Lynch* [1903] 1 K.B. 444). When the German consul in Sunderland, who had been naturalized as a British subject in 1905, acted on instructions from Berlin and provided money and train and ferry tickets to Germans of military age to enable them to return to Germany on the outbreak of World War I, he was held to have been giving aid and comfort to the enemy, provided he intended to assist the enemy rather than to simply do part of what he believed was his duty as consul (*R v Ahlers* [1915] 1 K.B. 616). The central issue in *Casement* was whether a person could be liable under this head where the actions forming the basis of the indictment were committed outside the sovereign's realms. Sir Roger Casement had enjoyed a distinguished career in the British Consular Service and as an opponent of slavery, but after retirement became an extreme Irish nationalist. After World War I broke out, he went to Germany, and with the active support of the Kaiser's government sought to persuade Irish prisoners of war to join an Irish brigade equipped and maintained by the Germans. The purpose of this brigade was "to fight solely for the cause of Ireland," and evidence given at the trial of Irish POWs repatriated to the United Kingdom was that there was no intention it should fight under German command or for German objectives; the original plan was presumably that it would at some stage make an armed landing in Ireland—though clearly this would be of considerable indirect benefit to the German war effort.



The Trial of Roger Casement. Roger Casement (*left*) with a police officer, c. 1916. Photograph from *Trial of Roger Casement* by H. Montgomery Hyde, 1960. PRINTS AND PHOTOGRAPHS DIVISION, LIBRARY OF CONGRESS

Casement's efforts garnered few recruits, and the Germans turned to supporting the Irish nationalists themselves. They agreed to provide a shipment of arms for what became the Easter Rising, timed to begin on April 24, 1916. British Naval Intelligence became aware of the plan, and Casement was arrested as he came ashore from a U-boat near Tralee on the morning of April 21. One of the two men who landed with him was arrested a few hours later. The same day HMS *Bluebell* intercepted the

ship carrying German rifles and ammunition some ninety miles off the Irish coast.

Perhaps surprisingly, the Law Officers of the Crown chose not to proceed on the basis that landing from an enemy vessel with equipment provided by the enemy—a map, codes, and ammunition—constituted an overt act of adhering to the enemy, and charged Casement only in respect of acts carried out in Germany. One charge was based on his "setting out from Germany as a member of a warlike and hostile expedition undertaken and equipped by the enemy with a view to landing arms and ammunition on the coast of Ireland for use in the prosecution of the war by the enemy"; the remainder addressed his attempts to subvert prisoners of war from their allegiance to the British Crown.

The Crown's case was that the relevant wording of the Statute of Treasons defining liability should be read as, "If a man be adherent to the King's enemies in his realm (giving to them aid and comfort in the realm) or elsewhere"; the words in parentheses were simply a glossing of the main provision, and it was irrelevant whether the acts constituting adherence to the enemy took place within the realm or elsewhere. In any case, acts constituting adherence to a foreign enemy were far more likely than not to be committed outside the realm, and it was inconceivable that Parliament could have intended to exclude a person committing such acts from liability. For their part the defense contended that the words "or elsewhere" also formed part of the gloss, so that treason in this form was possible only when the overt acts constituting adherence were committed within the realm. They also argued that the ordinary criminal courts—the trial had taken place at the Royal Courts of Justice—had no jurisdiction, since trials for treason, other than those taking place via bill of attainder or impeachment, were the sole province of the constable and marshal under the law of arms.

The prosecution produced precedents demonstrating that numerous convictions had been based on overt acts outside the realm, and that trial before the constable and marshal had been the practice only in dealing with those taken in armed rebellion against the Crown—the best example that following the Battle of Tewksbury in May 1471. These were accepted by the jury, who found Casement guilty after only fifty-five minutes.

Casement's legal team, headed by Serjeant Sullivan of the Irish bar, appealed to the Court of Criminal Appeal on the grounds that the offense of adhering to the enemy could not be committed abroad, and that Chief Justice Lord Reading had misdirected the jury in defining acts that constituted adherence. But Casement's junior counsel, Artemus Jones, was unable to cite a single case in support of a definition of "giving aid and comfort to the enemy" that was limited to espionage and serving in the armed forces of an enemy, rather than Reading's broad definition. It is fair to say, however, that the issue had not previously been considered, as all cases of adherence since 1688 had involved espionage or service in enemy forces. Justice Darling, giving the judgment of the court, upheld Reading's definition and dismissed the appeal. After a request for a further appeal to the House of Lords had been rejected (and the government had used Casement's "black" diaries, which detailed homosexual encounters, to bolster public opinion against him), he was hanged at Pentonville Prison on August 3.

Murder of specific officeholders. This category is obsolete, as any such killing would be dealt with as murder or manslaughter under the ordinary criminal law.

The Requirement of Allegiance. No person may be liable for high treason who does not owe allegiance to the sovereign. This requirement, not stated in the Statute of Treasons, had emerged by the time Hale (1609–1676) was writing, and he saw it as the quid pro quo of the protection a subject was entitled to from the sovereign. At common law, indeed, a subject could never divest himself of the duty of allegiance, even by becoming the naturalized subject of another state—a difficulty not resolved until the Aliens Act of 1870. The circumstances in which this concept emerged are not entirely clear, since the defendant's allegiance was not raised expressly as an issue in treason trials until much later. However, the idea of allegiance as a subject's duty seems to have emerged as a consequence of the development of a concept of nationality and thus of a legal distinction between the English subject and the alien, which dates from the fourteenth and fifteenth centuries. Under English law an alien, whether or not resident in England, was at a considerable disadvantage as compared with a subject; but as no man could owe allegiance to a king not his own, prima facie an alien could not be a traitor, as case law arising from the Perkin Warbeck insurrection in the 1490s makes clear. Though Warbeck had claimed to be Richard, Duke of York, the younger of the "Princes in the Tower," he admitted following his capture to being an impostor born at Tournai, in Flanders. Though his actions were clearly overt acts of treason, as an alien he owed no allegiance to Henry VII (r. 1485–1509), and thus could not be liable; as a foreign enemy taken in arms, though, he might be put to death.

Though an alien did not owe allegiance automatically—as did an English subject—if resident in England in time of peace he enjoyed a degree of protection from the sovereign, since he then came within the king's peace; on this basis he owed a duty of allegiance. This form of allegiance, first enunciated by Hale, was the central issue in the trial of William Joyce, known as "Lord Haw-Haw."

Joyce (1906–1946) spent World War II broadcasting propaganda from Berlin, being employed as an announcer on German radio from September 20, 1939. At times he encouraged British prisoners of war to join a "British Free

Corps" under German command. Though reviled as a British renegade, he had in fact been born in New York of an Irish father and an English mother. As an alien he owed no automatic duty of allegiance to George VI (r. 1936–1952) and, his defense argued at trial, any duty he owed as a resident alien had lapsed on his departure from the United Kingdom for Germany in August 1939. But the formulation that allegiance was the quid pro quo of protection accorded by the British Crown was applied here. In 1933, Joyce had obtained a British passport, stating that he had been born in Galway, Ireland, which, if true, would have made him a natural-born British subject. This passport was renewed twice, and only expired finally on July 2, 1940, by which time he had been working to promote the German war effort for over nine months. Though Joyce was not in fact entitled to the protection of the Crown, the jury accepted the prosecution case that by producing his improperly obtained passport he could have obtained the protection of the British Crown in a foreign country—even after the outbreak of war—until its expiry, although no evidence was produced that he had actually made use of it after August 1939. On this basis, the jury convicted Joyce on two charges predicated on his not being a British subject but one who nevertheless owed a duty of allegiance at the time of overt acts of adhering to the enemy between September 20, 1939 and July 2, 1940. He was hanged in January 1946.

Attainder. The penalties imposed under the Statute of Treasons included not only death by hanging, drawing, and quartering (sentences on peers and other men of rank were customarily commuted to beheading) but forfeiture to the Crown of all property and any titles of honor. The law of attainder that developed from the late fourteenth century added the "corrupting" of blood, so that the traitor's heirs could not inherit property or titles from or through him. Since this provided the king with a valuable source of lands and honors with which to reward those whose loyalty he wished to secure, those killed while in armed rebellion were customarily attainted posthumously; there are many examples dating from the Wars of the Roses (1455–1485). An act of attainder might be reversed by a second act, following a petition by the traitor's heirs, restoring lands and honors to those heirs, but this was by no means inevitable (the attainder against James, Duke of Monmouth, passed in 1685, is still in force), and the delay might be lengthy—that against the 11th Lord Lovat was reversed in 1857 after 110 years—32 years after his heir's petition.

Attainder, a procedure in which Parliament passed an act of attainder against a named person or persons at the request of the king, also enabled the Crown to secure the condemnation of enemies for actions falling outside the normal scope of treason, as a particular act or omission could be designated high treason in respect only of the persons named. During the fifteenth and sixteenth century acts of attainder were used extensively against peers who had committed a variety of acts that aroused the king's wrath. The attainder passed in February 1478 against George, Duke of Clarence, younger brother of Edward IV, refers, inter alia, to Clarence's intending to send his heir abroad, issuing indentures to his retainers that did not reserve allegiance to the king, and claiming that the king was a bastard. Henry Howard, Earl of Surrey, was attainted in January 1547 on charges that included his adopting the attributed arms of Edward the Confessor, thus in the eyes of the increasingly paranoid Henry VIII proclaiming his own right to the crown; he was beheaded. His father, the third Duke of Norfolk, was also attainted, on January 27, but escaped execution when the king died the next day. Surrey's son, Thomas Howard, 4th Duke of Norfolk, was attainted in January 1572 after being drawn into the Ridolfi Plot, which was designed to replace Elizabeth I with the captive Mary Queen of Scots, with Norfolk as her husband. The charges against Norfolk were that he had:

> conspired and imagined to deprive the queen of her crown and dignity, and compassed to excite sedition, to cause great slaughter amongst the queen's lieges, to levy war and rebellion against the queen, to subvert the government, to change and alter the pure religion established in the kingdom, and to bring in strangers and aliens to invade the realm, and to carry on a bitter war against the queen (Cooper, *Athenae Cantabrigienses*).

Most of these charges fell within the scope of the Statute of Treasons, but by no means all.

Acts of attainder were also passed at the behest of Henry VIII against two of his queens, Anne Boleyn (1536, on charges of adultery) and Catherine Howard (1542, not only of adultery during, but sexual relations before, the marriage).

The last acts of attainder were passed in 1746, following the failure of the Jacobite rising known as "the Forty Five." The last peer beheaded for treason, on Tower Hill on April 9, 1747, was Simon Fraser, 11th Lord Lovat, who had been impeached by the House of Commons after a long career of walking a tightrope between Hanoverians and Jacobites, which had brought a previous attainder as far back as 1697.

Other Treason Legislation. Not only was attainder used extensively by the Tudor monarchs, but the scope of treason under the Statute of Treasons was considerably extended by a series of acts, although a concession was made by Henry VII in 1495, specifically declaring service in war under a "king for the time being" not to be treason. This is somewhat ironic given that Henry had earlier dated the commencement of his reign to the day before the Battle of Bosworth Field (August 22, 1485) so that those who had fought in that battle for Richard III could be attainted. There was a further flurry of legislation in

the 1790s as a result of fears of violent insurrection inspired by the French Revolution, but all this has since been repealed, so that the scope of treason is once more defined by the original statute. Two other acts, however, remain in force imposing liability for actions outside the statute. After a series of incidents in 1842 when Queen Victoria was shot at with pistols that may or may not have been loaded with "ball" as distinct from powder alone, the Treason Act of 1842 made it an offense to discharge a firearm in the vicinity of the sovereign. This act has been applied once in recent years, after Marcus Simon Serjeant fired a starting pistol as Elizabeth II rode down the Mall in London after the 1981 Trooping of the Colour ceremony. The Treason Felony Act of 1848, passed during a wave of revolutionary risings on the Continent and the abdications of two kings (Louis Philippe of France and Ludwig I of Bavaria), made it an offense, punishable by imprisonment for life, to publicly advocate the establishment of a republican government in the United Kingdom. Though there have been no prosecutions under this act since the 1880s, an attempt was made in 2002 to secure a "declaration of incompatibility"—under the Human Rights Act of 1998—between the 1848 act and Article 10 of the European Convention on Human Rights. The Divisional Court declined the application, and its decision was upheld by the House of Lords.

[*See also* Nationality in English Common Law.]

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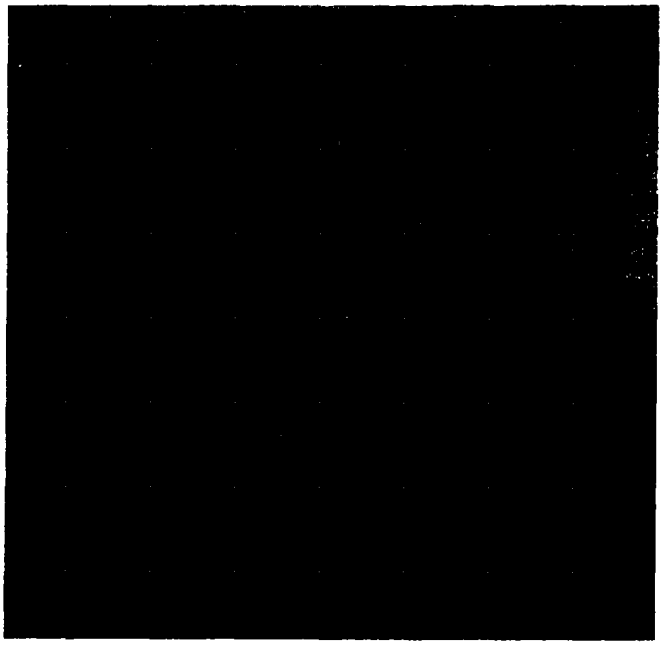
ANN E. LYON

TRIAL. *See* Judges; Jury; *and* Procedure.

TRIAL BY BATTLE. Introduced into England by William the Conqueror, trial by battle was used in two types of lawsuit at common law: actions on the writs of right and appeals of felony. It was also used in England in the courts of the Constable and Marshal.

Battle and the Writs of Right. The writs of right were original writs issued by the king's chancery to initiate actions asserting claims to land. They were of two main forms: patent and praecipe. The patent writ was addressed from the king to the lord from whom the plaintiff—sometimes known as the "demandant"—claimed to hold the land, ordering the lord to "do right" or else let the local sheriff do it. The matter could be handled in the lord's court or, if not resolved there, transferred to the sheriff's court by a procedure called tolt and then to the king's court by a writ of *pone*. The three-step process of patent writ, tolt, and *pone* became a regular method by which demandants obtained access to the king's court to litigate claims to land. The second type of writ of right, the praecipe writ, was addressed from the king to the local sheriff, ordering him to command the defendant either to render the land the demandant claimed or to come before the king's justices and explain why he had not done so. The praecipe writ was used in place of the patent writ when the lord had waived jurisdiction or when the demandant claimed to hold from the king.

Trial on the writs of right was by battle between the two parties' champions. Details of the proceedings from the eleventh and twelfth centuries do not survive. Over time there developed an elaborate procedure of pledges, gloves, oaths, and batons, with battle lasting until surrender, death, or sunset, whichever came first. The party whose champion was victorious—the victor being the defendant if the battle remained unresolved at sunset—won the litigation.



Trial by Battle. Hamo Stare (*right*) claiming the right to prove his innocence by trial by combat, 1249. THE NATIONAL ARCHIVES

Almost from the outset there were concerns about the use of trial by battle to determine claims to land. From 1179, Henry II provided an alternative: the "grand assize" in which four knights from the neighborhood of the land in question would elect from the same neighborhood twelve knights, who would then declare on oath which party had the better right to the land. Henry II also created procedures other than the writs of right for litigating claims to land: the petty assizes of mort d'ancestor and novel disseisin, neither of which permitted trial by battle.

The use of battle on the writs of right soon fell into decline. The last fight on a writ of right seems to have occurred around the year 1300. The last attempt to use battle in civil litigation came in *Claxton v. Lilburn* (1638), a case that dragged on for years to avoid any fighting. By statute, Parliament abolished trial by battle in 1819.

Battle and the Appeal of Felony. The appeal of felony was a procedure for the private prosecution of a serious criminal offense. The appeal began with an oral accusation against the suspected felon, the "appellee." The accusation was made by the "appellor": normally the victim but in the event of homicide the victim's surviving spouse or heir. The appeal could also be brought by an "approver"—an accomplice of the accused felon—in exchange for leniency.

In an appeal brought by the victim or the victim's spouse or heir, the appellee was permitted to elect trial by battle, though not against a woman or a man elderly or infirm. In an appeal brought by an approver, the approver was required to prove the accusation by battle. Battle on an appeal was fought in person, not by champion. If the appellee lost, he was drawn and hanged, and his estate was forfeited. If the appellor lost, he could be fined or imprisoned.

As with battle on a writ of right, battle on an appeal raised concerns nearly from the outset. Judges and appellors distrusted it, and by the early thirteenth century most appeals were tried by jury. But the theoretical possibility of trial by battle was one factor leading to the replacement of the appeal by the writ of trespass.

Battle on an appeal fell into total disuse, but it remained technically available until the nineteenth century. An inventive litigant sought to resurrect trial by battle in the Court of King's Bench in *Ashford v. Thornton* (1818). Parliament responded by abolishing it the following year.

Battle in the Courts of the Constable and Marshal. Trial by battle was also available in England in the Court of the Lord High Constable and Earl Marshal, later the Court of the Earl Marshal also known as the Court of Chivalry. The constable and marshal were senior officers of state; their courts were conciliar courts outside the common law. Among other matters, these courts handled disputes over honors and coats of arms; they also heard complaints of treason. The last attempt at battle, averted by a letter from the king, was in *Lord Rea v. Ramsey* (1631).

[*See also* Anglo-Saxon Law; Evidence, *subentry on* English Common Law; Ordeal in English Common Law; *and* Petty Assizes.]

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THOMAS P. GALLANIS

TRIBONIAN (c. 470–541/543? C.E.) The jurist and statesman Tribonian was the most substantial collaborator with the emperor Justinian in the editing of the Codex, the *Institutes*, and the Digest. Born in Pamphylia (now in southwestern Turkey), perhaps educated at the law school of Beirut, he began practice as an attorney before the praetorian prefect of the East, whose court was the most important after that of the emperor. He entered into the circle of the court in 528 as one of seven functionaries and three legal experts commissioned to reorganize the imperial constitutions under John of Cappadocia. Having completed the Codex Iustinianus quickly and successfully (in April 529), Tribonian was nominated *quaestor sacri palatii* (quaestor of the sacred palace), no later than November 17, 529. This office had been created in the fourth century by Constantine, perhaps to parallel the *quaestor Augusti*, who spoke for the emperor in the Senate; its principal duty was drafting and compiling "beneficial laws" for his subjects. The quaestor was therefore defined as the "voice of the emperor," "privy to his thoughts," and "treasure of the good reputation of the state." In translating the will of the emperor into persuasive legal form, the quaestor needed skill in technical rhetoric as well as knowledge of laws and jurisprudence; this ideal—sketched by Cassiodorus, who was active in the same period in Rome—was met in Tribonian, who had a reputation for culture and peerless knowledge of juristic writing.

In his new position (possibly as late as August 1, 530, until perhaps April 30, 531), he issued fifty constitutions to repeal obsolete institutions and to settle controversial issues—the *Quinquaginta decisiones* (perhaps circulated in a compilation). This paved the way for consolidating the writings of jurists. Charged with forming a commission for the Digest, he enlisted four professors, eleven

attorneys, and a lone bureaucrat, Constantinus, master of petitions. He also took on many assistants, five of whom are mentioned in *Novel* 35.

While work was in full swing, accompanied by the introduction of numerous constitutions intended to handle emerging issues, a revolt began in January 532 in Constantinople. This continued even after the resignation of the praetorian prefect, John; of the prefect of Constantinople, Eudaimon; and of Tribonian himself. In the end, the generals Belisarius and Narses quelled the revolt.

Despite his resignation as quaestor, Tribonian remained chairman of the commission for the Digest, and was quickly promoted to *magister officiorum*. With this post he received the duty of preparing a didactic guide, the *Institutes*, which he completed in November 533 with the collaboration of two professors, Theophilus, from the school in Constantinople, and Dorotheus, from Beirut. The Digest (or Pandects) an anthology of the writings of jurists, was published that December. Perhaps in the interval between the two projects, he was named an honorary consul.

He was still *magister officiorum* when he presided over a modest commission (comprising Dorotheus and three attorneys) for the second edition of the Codex. Completed in November 534, this added constitutions subsequent to the first edition that rectified dated law (making up the *Quinquaginta decisiones* and *Extravagantes*) and several others of contemporary significance, such as two laws of 534 that established civil and military order in Roman Africa, recently reconquered from the Vandals. The Digest now superseded the Law of Citations (*lex citationum*), which had from 426 regulated judicial use of legal works. Having completed this enterprise, Tribonian was in 535 renamed quaestor of the sacred palace (a post he perhaps briefly combined with that of *magister officiorum*). As quaestor, he drew up numerous laws (called *Novels* because they were new compared with those compiled in the Codex), reforming public administration and several institutions of private law. The constitutions of this period were mostly in Greek, or bilingual; this interruption of the Latinate tradition has been ascribed to John of Cappadocia, but Tribonian himself was aware that, in reality, Greek promoted the promulgation of imperial norms. His intense legislative activity brought him a reputation for corruption—for repealing laws and creating others for personal benefit; this seems confirmed by the hostility of the insurgents of January 532 and by the confiscation of part of Tribonian's patrimony, ordered by Justinian upon his death, which came between the end of 541 and 543 and perhaps owing to a wave of plague that killed a third of the population in Constantinople.

Methods of Compilation. It is probable (if disputed) that Justinian planned his reorganization of constitutions and jurisprudence from the beginning, and that Tribonian was a determining factor in its formulation. It is certain that Justinian credited him most for its actualization (probably also for the first Codex, created under the direction of John of Cappadocia). The Justinianic stamp appears in several forms: elimination of the superfluous, and of outdated, redundant, and contradictory regulations; modification of texts; and distribution of texts within pertinent titles. It is most evident, however, in the compilation's divergences from the original order of its models; one clue is the transfer of religious and ecclesiastical laws from the final book of Theodosius's compilation to the first book of Justinian's.

The loss of the first edition of the Codex (with the exception of the index to Titles 11–16 of the first book and another fragment) hinders evaluation of the modifications introduced in its revision. But beside the inclusion of constitutions introduced between 529 and 534 and several retouches, it is probable that Tribonian left the structure virtually unaltered.

The *Institutes* (or *Elements*), issued in 530 and quickly compiled while the Digest was being finalized, were mainly used as a first-year manual for a reformed legal-studies curriculum (as prescribed in the constitution Omnem). The principal sources of the *Institutes* were two brilliant second-century manuals by Gaius, compiled from the *Institutes* of Florentinus, Ulpian, Paul, and Marcianus, which had consulted different models than those used in compiling the Digest. For the most part, only excerpts not of an introductory nature were used in the Digest, patched together and modified so that the narrating voice was that of the emperor. The editor Philip E. Huschke (1868) held that Dorotheus had drawn up books I and II and Theophilus the remainder, Tribonian limiting himself to supervision. Tony Honoré and others argued that Tribonian personally added the "emperor's" amendments in an early draft prepared by Dorotheus and Theophilus.

The Digest reduces a library that would have included 1,528 volumes, by thirty-eight or thirty-nine jurists writing from the first century B.C.E. to the fourth century C.E., to about one-twentieth its size; it was compiled with the utmost generosity by Tribonian, as the restoration of even annotations by Ulpian, Paul, and Marcianus to the writings of Papinian—which had been eliminated by Constantine—demonstrates. The hypothesis that the compilers utilized preceding compilations is not substantiated by sources. What allowed Tribonian to carry out, in just three years, an undertaking that had been deemed impossible was discovered in 1820 by Friedrich Bluhme (1797–1874), who noted that the order of the fragments within the titles is constant. Bluhme understood this to be the order in which the commission members read the works. More precisely, Tribonian had divided the works into three groups ("Bluhmian masses"), the Sabinian (which begins with comments *ad Sabinum*), the edictal (opening with

comments on the edict), and the Papinian (opening with works on Papinian). Each mass was assigned a subcommittee that worked simultaneously with the others. In the end, the fragments selected by each subcommittee under specific rubrics were united with those compiled by the others, giving way to the titles of the Digest (the internal order of which, therefore, is owed to the order in which they were read).

Later Evaluation of Tribonian's Work. In the sixteenth century Tribonian became the lightning rod for critics of the defects of common law, the legal system based on Justinianic texts. The influential pamphlet *Anti-Tribonian* by François Hotman (published in 1603), an anthem to the liberation of France from the "domination" of the law of Rome, especially attacks the Digest (the "Tribonian reliquary"), chiding its defective arrangement, the selection of jurists of Eastern origin who did not command the Latin language, and inept modifications (*emblemata Triboniani*) to the original texts. As to the first accusation, the order of titles follows the perpetual edict and other traditional models (there is however, some basis regarding the order of fragments within the titles). The accusation of impure Latin should be contrasted with the high praise the great humanist Lorenzo Valla had bestowed on the elegance of the same jurists Hotman criticized. The hypothesis of widespread interpolation appeared to have been confirmed by studies at the end of the nineteenth century, but these also were based on preconceptions. Anti-Tribonianism wrongly presupposed that classical jurists were isolated from contemporary culture (above all philosophical and rhetorical) and that their Latin followed an abstract, puristic model. The "hunt for interpolation" also indulged in conjecture and in oversimplification of the historical and cultural background of the various phases of Roman law. After having dominated the first half of the twentieth century (and having progressively shifted the responsibility for interpolations from Tribonian to presumed reissues of the legal texts in the fourth and fifth centuries), Anti-Tribonianism died out. Comparisons with texts surviving from outside the Digest demonstrate that the compilers rarely modified contents (especially eliminating obsolete matter like the *formulae*); more often, they trimmed tedious disagreements between jurists, faithful to the goal of reducing ambiguity and conflict. It is clear that the Digest and the *Institutes* transformed a legally uncertain set of regulations into a normative system. Historical evaluation must nonetheless refer to the conditions of late antiquity. Judicial use of the writings of jurists had continued even after the dying away of original legal literature in the third century; legal training is striking, as well, for the importance it assigned to classical jurists. Thus, the attempt to guarantee the authenticity of texts, to render them accessible at reasonable cost and to reduce their bulk, to simplify the variety of opinions, and especially to coordinate ancient law with the innovations introduced by specific imperial initiatives (an aspect not yet adequately analyzed) was a reform that was not only rational but sensational, given the conditions of its time.

[*See also* Humanism; Jurists; Justinian; Praetorian Edict; *and* Roman Law, *subentry on* The Age of Justinian.]

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DARIO MANTOVANI
Translated from the Italian by Joe Jackson

TRINIDAD AND TOBAGO. The Republic of Trinidad and Tobago consists of two main and twenty-one smaller islands. Trinidad was first claimed by Christopher Columbus for Spain on July 31, 1498. Early Spanish colonizers wiped out most original inhabitants, Arawaks and Carib Indians. While Trinidad remained under Spanish rule until the British captured it on February 18, 1797, Tobago changed hands twenty-two times between the British, French, and Dutch, until Britain consolidated the two islands into one colony in 1889.

Population. The ethnic composition reflects a history of conquest and immigration. Between 1783 and 1797, 10,000 slaves were imported from Africa; there were twice as many by 1806. The Abolition Act of 1834, proclaimed in Trinidad in 1838 while Africans were a majority population, led to a system of apprenticeship until August 1, 1838. Between 1845 and 1917, approximately 145,000 Indians were introduced into Trinidad to save the British sugar industry. These technically free Indian laborers

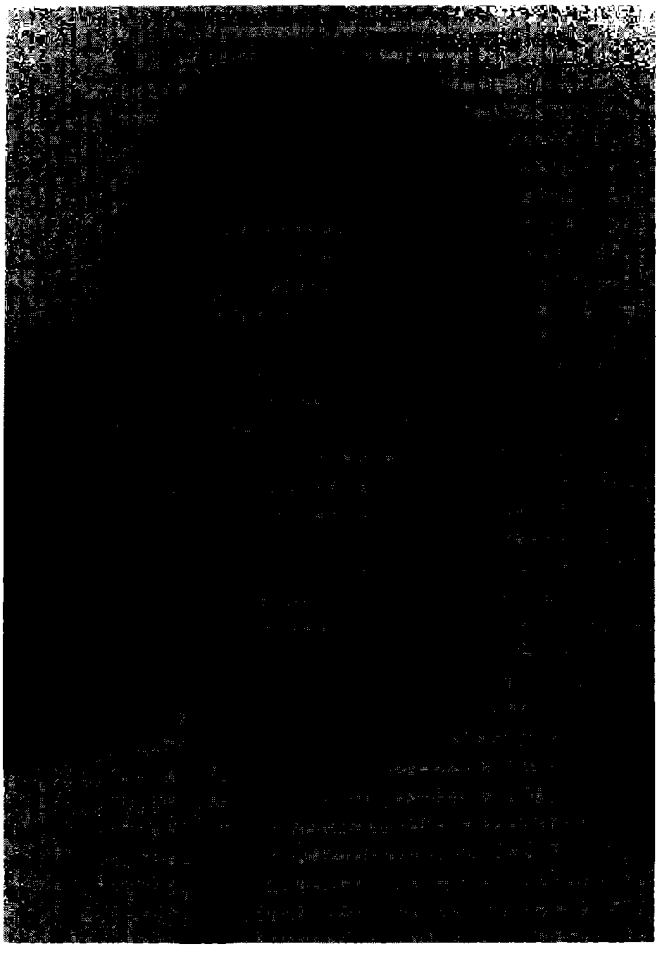
could return to India when their contract ended, but were offered land grants as inducements and about 110,000 Indians remained. Today, the dense population of Trinbagonians (2006 estimate 1,297,944) comprises about 40.3 percent descendents of Indians, about 39.5 percent people of African origin, 18.4 percent of mixed race, 0.6 percent Europeans, with the remaining 1.2 percent mainly Chinese and Syrians. Major religious groups are Roman Catholics (26 percent), Hindus (22 percent), Anglicans (8 percent), Muslims (6 percent) and Seventh-day Adventists (4 percent).

Plural Legal Structure. Over time, the people developed a marked legal pluralism to validate religio-cultural practices, reflected in today's hybrid legal system. Faced with social diversity and racial and religious tensions, Britain devised a form of colonial constitution under a Crown Colony government in which control was exercised by an appointed governor without the assistance of an elected Assembly, subject to directions from the Colonial Office in London. Local legislatures were presided over by the governor and consisted at first entirely of officials who took their instructions from him.

Indian settlers evolved a "creolized" lifestyle, mixing elements of the local culture with uniquely Indian characteristics, including important sociocultural differences between North and South Indians. Since the post-indenture period, there has been an increasingly well-organized reconstruction of Indian identity within the islands' multicultural setting.

In 1890 a consolidated Indian Marriage Law was passed by the Trinidad Legislative Council, providing for the recovery by immigrants of any presents given in connection with marriage, but this law proved ineffective. Most Indian marriages remained outside the law and the Colony did not consider them legal. The Immigrants' Marriage and Divorce Ordinances 6/1881 and 23/1891 attempted to place Indian marriages on a legal basis, provided certain registration requirements were fulfilled, but both ordinances proved ineffective. To the Indians it seemed unfair that customary Hindu marriages were recognised in India but not in Trinidad, though both countries were ruled by the British. Conflicts over minimum marriage ages and age of consent brought many Indians before the courts. Not registering marriages had a huge impact on property law, as illegitimate children could not inherit property and much land reverted to state ownership. This unsatisfactory state of affairs continued until May 13, 1946, when Hindu marriages received legal recognition under the Hindu Marriage Act of 1945. The Muslim Marriage and Divorce Act of December 1, 1964 recognized Muslim practices, while Orisa marriages of traditional Africans have only been accepted since August 16, 1999.

Hindus had protested since 1938 that they were unable to dispose legally of their dead in accordance with religious customs. By 1948 the debate had escalated, the government was prepared to approve cremation by modern methods, but Hindus wanted approval for burning dead bodies on pyres and disposing the ashes in flowing water. A Cremation Committee, created in 1950, reached an agreement with the government, and after much debate Ordinance 16/1953 for the Regulation of Burning of Human Remains in Crematoria or Otherwise legalized both systems. To cremate a person, one must first obtain a licence under these Regulations.



First Prime Minister of Trinidad. Eric Williams, 1962. *New York World-Telegram* and the *Sun* Newspaper Photograph Collection/Prints and Photographs Division, Library of Congress

Independence. Trinidad and Tobago became independent in 1962, but retained allegiance to the British monarch. On August 1, 1976, the country became a Republic under the Constitution of September 24, 1976, with a president and a prime minister. Section 4 of the 1976 Constitution contains nondiscrimination guarantees, but politics in Trinidad remain deeply divided by racial distinctions. The People's National Movement (PNM) draws support mostly from Africans, while

the United National Congress (UNC) has mostly Indian supporters. Various moves to bridge the divide resulted in the formation of the Organisation of National Reconstruction party (September 1981) and more recently the creation of a new Congress of the People (September 2006) to include citizens of all colors, ethnic groups, and creeds. Both parties sought to include a greater mix of the ethnic groups but their attempts ended in failure at the polls.

Dr. Eric Williams was prime minister from 1962 until his death in 1981. In 1986, A. N. R. Robinson of the National Alliance for Reconstruction became prime minister. Patrick Manning then served as prime minister from 1991 to 1995, was again appointed after inconclusive elections in December 2001, and returned to power after elections in October 2002, the third poll in three years. The first Indo-Trinbagonian prime minister, Basdeo Panday, served from November 10, 1995 until December 23, 2001. Sir Ellis Clarke the first president of the Republic was appointed on August 1, 1976 and served in that capacity until 1987. The first Indo-Trinbagonian president, Justice Noor Hassanali, was elected on March 19, 1987 and served until March 19, 1997.

The bicameral Parliament has thirty-six members in the House of Representatives (to be increased in 2007 to forty-one), elected for five years. The Senate's thirty-one members are appointed by the president for up to five years, sixteen on the advice of the prime minister, six on advice of the opposition leader, with nine independent members of the community selected by the president. The country's judicial system consists of a Supreme Court, composed of the High Court of Justice and the Court of Appeal, whose Chief Justice is appointed by the president. The Judicial Committee of the Privy Council in London still decides final appeals on some matters. Member states of the Caribbean Community (CARICOM) selected Trinidad as the headquarters for the new Caribbean Court of Justice, which heard its first case in August 2005 and is intended to replace the Privy Council for all CARICOM states.

[*See also* British Commonwealth.]

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ARSHA GOSINE

TRUSTS AND ESTATES. *See* Inheritance *and* Succession.

TRUSTS IN ENGLISH COMMON LAW. The law of trusts is perhaps English law's most distinctive contribution to jurisprudence. Its origins lie in conscience, and, later, in equity: common-law attribution of ownership would not suffice where property had been acquired on the understanding that it would be held for the benefit of another (the beneficiary), and a court of conscience, or equity, would intervene to prevent unconscientious exploitation of the legal position by the trustee who would be required to exercise his common-law ownership of the trust property for the beneficiary's benefit.

Origins in conscience suggest obligation, but regular enforcement against both trustees and strangers, the beneficiary's capacity to assign his interest and pass it by will, and its protection from external claims on the trust property, led to a strong proprietary aspect to the beneficial interest, the nature and limits of which continue to be debated. This has been accompanied by a movement from emphasis upon personal trust and confidence, from vernacular "trust," toward an institutional understanding of trusts, in which, despite judicial reassertion of its relevance, emphasis upon conscience, of the court or of the trustee, has been seen as tending to an undue width of discretion. The movement from personal trust and confidence has seen also the rise of trusts constructed by the courts, or supplied by statute.

While the core of trusts lies in conscience, or in equity, their boundaries have never been simple. The action of account, for example, may be regarded as a common-law action for breach of trust, while distinctions between trusts and such transactions as contracts, conditional transfers, or bailments, when drawn, are not straightforward.

While their flexibility and versatility are well known, trusts have tended to be concentrated in particular contexts, the balance between them shifting over time: the handling of family wealth, finance and commerce, and charity. The historical development of trusts may be divided into three: the period before the Statute of Uses (1536), in which uses originated and developed; the period after 1536, in which the statute's effects were worked out and the groundwork of the modern law was laid; and the period from the earlier nineteenth century in which trusts law was adapted to a new economic and social climate.

Uses before 1536. Modern trusts have their roots in medieval "uses," land being transferred by feoffment with livery of seisin from a settlor ("feoffor to uses") to a trustee ("feoffee to uses"), to the use of (that is, *ad opus*, for the benefit of) a beneficiary (*cestui que use*)—either the feoffor or a third party.

Origins. Uses' remoter origins have been variously sought, in Roman *fideicommissa*, in canonical conceptions of stewardship, in the Germanic *Salman* (or *Treuhand*), or in the Islamic waqf. In thirteenth-century England temporary uses were encountered in transfer of land by substitution. Enduring uses appeared from the 1220s in the case of Franciscan friars, living in hostels held to their use. Use-like arrangements were also made in the thirteenth century by landowners going abroad, or for management of land for an infant, though frequently the "settlor" retained ownership: these were custody arrangements.

Development and enforcement. Following the statute *Quia Emptores* (1290) freehold land (not held immediately of the king) was freely transferable between the living, and the concept of various times or estates in the land was emerging. These developments encouraged landowners to change their estates: a tenant in fee simple might become a tenant for life jointly with his wife, with remainder in fee tail to a younger son (in consequence of primogeniture otherwise unprovided for). This necessitated a grant in fee simple to another, and regrant as required. This was a transaction, not a lasting relationship, but during the fourteenth century testamentary executors were becoming common. If a grant might be made for regrant, it might be made for longer, even until after the grantor's death, the feoffees to uses behaving as executors. The devolution of land might thus be directed across generations, and provision made for the payment of debts from landed wealth, despite the common-law prohibition upon wills of freehold land.

As uses became more common in the later fourteenth century, court interpretation and enforcement became available. The consistory courts of Rochester and Canterbury (and perhaps elsewhere) enforced uses of land, after the feoffor's death, from the 1370s until the mid-fifteenth century. The court of Chancery also began to enforce uses at this time, perhaps as early as the 1370s, with a settled jurisdiction in the first decades of the fifteenth century.

Rules began to develop. If the feoffees died the use was enforceable against the last surviving feoffee's heir, and the feoffees' grantee was bound by the use unless he acquired the land for value, without notice. Uses could arise by implication: a bargain and sale for pecuniary consideration raised an implied use for the purchaser, while a conveyance for no consideration with no use expressed raised a resulting use for the grantor. The beneficiary acquired a kind of ownership, but tension remained between property and the role of the feoffee's conscience: a corporation, having no conscience, could not be a feoffee to uses, and notice of the use would not bind those, such as feudal lords taking by escheat, who did not come to the land through the feoffees.

The sub-plot: Uses and the feudal revenue. The evasion of the feudal revenue was not the primary aim of creating feoffments to uses, but uses' capacity to deprive feudal lords, and particularly the king, of feudal revenue played a significant role in the development of the law.

Of particular importance here were wardship and *primer seisin*. Wardship applied to land, held by a military tenure (i.e., in return for the provision of feudal military service) that descended to an infant heir upon the ancestor's death, giving the lord custody of the heir's lands or body, or both, until majority, with no obligation to account for the income. *Primer seisin* was a royal prerogative, giving the king the profits of the land of an adult heir for a defined period upon inheritance. Where a tenant died having made a feoffment to the uses of his last will of land held in fee simple or fee tail, no wardship or *primer seisin* would arise since nothing descended to the heir. Some protection against the consequent loss of revenue was provided by the Statute of Marlborough (1267), but legislative activity concerning uses began again in the later fifteenth century. A statute of 1484, concerned to protect purchasers, gave beneficiaries of uses power to convey a legal title, thus bringing uses before the common-law judges; and a statute of 1490 plugged a gap in the Statute of Marlborough, where a feoffor to uses of land held by military tenure died leaving an infant heir and no will.

In the context of renewed emphasis on the royal feudal revenue in the early decades of the sixteenth century two lines of thinking developed concerning uses. One, supported by the statute of 1484, saw uses as "at common law"; the other saw them as fraudulent and uncertain. The latter was more obviously a Crown line of argument, but if uses were "at common law" should they not obey the common-law prohibition on wills of freehold land? Limited revenue-protection legislation having failed in parliament in 1532, royal attention turned to changing the common law. In 1535 in a test case over the will of Thomas Fiennes, Lord Dacre of the South, the judges were persuaded to hold that a use of freehold land, following the nature of the land, could not be devised (i.e., passed by will). This startling decision cast into doubt most titles in England, giving the Crown the leverage to push through the Statute of Uses (1536), which included a clause removing any retrospective effect of *Lord Dacre's Case*, (1535) 105 B. & M. 109.

The Statute of Uses (1536) and Its Aftermath. The Statute of Uses' mechanism completed the assimilation of the position of the beneficiary of a use to that of a legal owner begun by the statute of 1484. Now the beneficiary was not merely empowered to convey a legal title, but was the legal owner, the statute "executing" the use and passing legal title from the feoffees to the beneficiary. Wills of freehold land now seemed impossible, as the uses which had enabled them in effect to be made would be executed