CONTENTS

I Introduction: The Law and Courts	3
The Nature of Law	4
Positive and Natural Law	- (
Common Law and Statutory Law	9
Common Law	9
Equity	10
Statutory Law	18
"Mixing" Common and Statutory Law	19
Some Additional Legal Definitions and Concepts	20
Civil and Criminal Law	24
II STAFFING THE COURTS	26
Selection	26
The Two Chief Methods	27
A Compromise?	35
Tenure of Office	41
The United States	41
Britain	47
France	49
Qualifications and Motivations: The United States	50
Basic Prerequisites?	50
Judicial Experience and Its Absence	52
The Justices in Composite	62
Motivations Underlying Appointments	62
"Packing the Court" and the Nominees' "Real Politics"	75
On the Role of the United States Senate	78

хii

Qualifications and Experience: The Special Cases of England and France England France 92 III COURTS, COURTROOMS, AND JURIES 95 Types of Courts: Trial and Appellate 95 Trial Courts Appellate Courts 96 Courtroom Procedure: General "Innocent-Until-Proved-Guilty": the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure 101 "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 105 The Trial or Petit Jury 111
France 92 III COURTS, COURTROOMS, AND JURIES 95 Types of Courts: Trial and Appellate 95 Trial Courts 96 Appellate Courts 96 Courtroom Procedure: General 98 "Innocent-Until-Proved-Guilty": the Accusatorial Procedure 98 "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure 101 "Vox Dei" or "Vox Populi" in Action: The Juries 103 The Grand Jury 105
III COURTS, COURTROOMS, AND JURIES Types of Courts: Trial and Appellate 95 Trial Courts Appellate Courts 96 Courtroom Procedure: General "Innocent-Until-Proved-Guilty": the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 95 The Grand Jury 96 97 98 98 98 98 98 99 99 90 90 90 90 90 90 90 90 90 90 90
Types of Courts: Trial and Appellate 95 Trial Courts 96 Appellate Courts 96 Courtroom Procedure: General 98 "Innocent-Until-Proved-Guilty": the Accusatorial Procedure 98 "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure 101 "Vox Dei" or "Vox Populi" in Action: The Juries 103 The Grand Jury 105
Trial Courts Appellate Courts 96 Courtroom Procedure: General "Innocent-Until-Proved-Guilty": the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 98 103
Appellate Courts Courtroom Procedure: General "Innocent-Until-Proved-Guilty": the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 98 101 103
Courtroom Procedure: General "Innocent-Until-Proved-Guilty": the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 98 101 103
"Innocent-Until-Proved-Guilty": the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 105
the Accusatorial Procedure "Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 105
"Guilty-Until-Proved-Innocent": the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 105
the Inquisitorial Procedure "Vox Dei" or "Vox Populi" in Action: The Juries The Grand Jury 101 103
"Vox Dei" or "Vox Populi" in Action: The Juries 103 The Grand Jury 105
The Grand Jury 105
The Triel or Detit Iver 111
Selection and Impaneling of Juries 114
The Trial Jury at Work 121
Instructing the Jury: The Judge's Charge 123
Juries: Blessing or Evil?
From Offense to Trial: A Procedural Note 133
Procedure in Civil Cases 134
Procedure in Criminal Cases 135
IV COURTS AT HOME: I THE LESSER TRIBUNALS 138
A Dual System of Courts 138
The State Courts
The Justice of the Peace 139
The Municipal Court 14:
The County Court 142
The Intermediate of Appeals 143
The Final Court of Appeals 144
The Federal Courts 145
The Federal Legislative Courts 146
Ex-Legislative "Special" Constitutional Courts 15:
The Federal Constitutional Courts 153
Administering the Federal Judiciary 168

V	1	1	1
-			

V Courts at Home: II THE SUPREME COURT	171
At the Zenith: The United States Supreme Court	171
Original Jurisdiction	172
Appellate Jurisdiction	174
Writs of Review Generally	174
Work Load	181
The United States Supreme Court at Work	190
Oral Argument	192
Behind Closed Doors	196
Assigning and Writing Opinions	200
Opinion Day	219
Compliance	225
Outside Influences on Court Personnel	232
Legal Periodicals	233
Test Cases	235
The Brief Amicus Curiae	236
The Law Clerks	240
VI COURTS ABROAD	245
The Courts of England and Wales	245
The Criminal Courts' Hierarchy	246
The Civil Courts' Hierarchy	251
The Courts of France	257
Two Major Divisions	258
The Ordinary or Regular Courts' Hierarchy	259
Administrative Tribunals Generally	264
The French Administrative Courts	268
A Note on the Judiciary of the Soviet Union	273
The Absence of an Independent Judiciary	274
The Court Hierarchy	274
The Procurator-General	279
VII JUDICIAL REVIEW: I THE SUPREME POWER	283
Defining Judicial Review	283
Judicial Review Abroad	294
Britain	294
France	295
Some Other Special Constitutional Tribunals	299

v	1	1	7	

.

Ar	n Historical Note	303
Judio	cial Review at Home	304
Fu	orther Historical Roots	306
Sp	pelling It Out: Marbury v. Madison	307
	VIII JUDICIAL REVIEW: II CONTROVERSY AND	
	Limitations	316
Judi	cial Review in a Democratic State: Saint or Sinner?	316
In	woking Authority	317
Drav	wing the Line—or Attempting To Do So	321
	idicial Legislating	321
_	ges Limited: The Taught Tradition of the Law	329
	tare Decisis	330
	er Limitations on Judicial Power and Effectiveness	333
	Reversing the Court	333
	Policy Formulations and Considerations	337
	Compliance and Enforcement	338
	chtkampf: The Supreme Court the Political Power Struggle	340
11	i die Folitical Fower Struggle	100 to 100 to
	IX CODA: A REALISTIC BULWARK	354
The	Sixteen Great Maxims of Judicial Self-Restraint	355
The	Bulwark	377
Fot	JR SELECTED BIBLIOGRAPHIES	381
I	Classified General Works	381
II	Biographies, Autobiographies, and Related Works of	and
	by Justices of the Supreme Court of the United States	414
Ш	Comparative Law	420
IV	Classified Works on Civil Rights and Liberties	429
	Indexes	
I	General Subject Index	473
п	Name Index	481
Ш	Court Case Index	489