

Index

- Ackerman, Bruce
 and entrenchment of constitutional rights, 227–228
 on informal amendment process, 226–227
 on the New Deal, 67, 70–72, 180–181
- Amar, Akhil
 on civil, political, and social rights, 128, 154–159, 169–171
 on the Fourth Amendment, 57, 209–210
 and incorporation of the Bill of Rights, 67–70
- Annapolis, rights of, 120–123
- anti-Catholicism
 and freedom of religion, 111–115
 as political rhetoric, 142
- Arendt, Hannah, 177, 182, 190, 192, 239
- Bailyn, Bernard, 86, 89–90, 121
- Bass, Gary, 215
- benefit theories *see* interest theories
- Bentham, Jeremy, 33, 39
- Black, Hugo, 68, 69, 201–202, 211–212
- Bodenheimer, Edgar, 215–218
- Boston Port Bill, 83–84, 121–123, 209
- Brown v. Board of Education*, 194, 221–222
- choice theories *see* will theories
- “civil rights,” 128, 152, 153–160, 169–174
- Civil Rights Cases*, 148–149, 156, 171, 172–173
- conscientious objection, right of, 104–105
- counsel, right to, 211–212
- critical legal studies, 1, 3–5, 12
- critical race theory, 5
- cultural adjacency, 63, 91, 99, 199
- Dennis v. United States*, 207–208
- Dworkin, Ronald
 on abstract and concrete intentions, 84
 interpretive theory of, 11, 15–16, 21, 239–240
 and reasons as justifications, 56
 and the right to equal concern and respect, 232–233
- on the right to know, 13–15
 on rights of corporate groups, 88
 and rights as trumps, 11–12, 18–19, 41, 95
- Eighth Amendment, 82–83
- Elster, Jon, 59, 137–138
- Feinberg, Joseph, 17, 20–22, 193
- Finnis, John, 192, 194
- flag-salute cases, 197–199, 203, 207, 230
- Frankfurter, Felix, 68, 211, 221–222
- free speech, right of
 as right of legislators, 73–74
 and slavery, 138–141, 143, 145, 146
 as twentieth-century innovation, 73–74
 after World War II, 207–209
- Freeden, Michael, 63, 91
- Fuller, Lon, 218–220
- Gadamer, Hans-Georg, 64, 81
- Gag Rule controversy, 138–141, 209
- Geertz, Clifford, 8–9
- Glendon, Mary Ann, 12, 27, 41
- Goodman, Nelson, 23, 52
- Griswold v. Connecticut*, 222–224
- Harlan, John Marshall, 149, 172–174
- Hart, H. L. A., 17, 33, 218–220
- Hirabayashi v. United States*, 200–201
- history in political theory
 as development, 45–46, 57–58
 as past behavior, 45, 57
- Hohfeld, Wesley N., 17, 34–38
- “human rights,” 132, 191–197
- instruction, right of, 96–97
- interest theories, 16–17
- Jackson, Robert, 198, 207–208, 210, 214, 215, 230
- James, William, 24, 33
- Japan, constitution of, 195–196

262

Japanese, internment of, 200–204
 jury trial
 as a “civil right,” 169–171
 early American practices, 116
 as a natural right, 118
 as a non-natural right, 89
 as a “political right,” 169–170
 right to challenge jurors, 116
 right to local trial, 117, 119–120
 selection of jurors by sheriff *ex officio*, 118
 and the Stamp Act, 116–117

Kant, Immanuel, 12, 49
 Kantian thought
 in America after World War II, 182–183
 imputed to Reconstruction Republicans,
 132

King, Martin Luther, Jr., 65, 221
Korematsu v. United States, 201–203
 Kuhn, Thomas, 62, 63

legal realism, 12, 183–184
 Lovejoy, Elijah, 142–43

MacCormick, Neil, 17
 MacIntyre, Alisdair, 29, 230
 McCarthyism, 208–209
 Mill, John Stuart, 12, 95, 234–235
Minersville School District v. Gobitis *see* flag-salute
 cases

natural law, 184–185
 natural rights, 88–89, 191–193
 neutrality, 46–47, 229–232
 Ninth Amendment, 223–224, 244–245
 nonviolent hermeneutics, 33
 Nozick, Robert, 49, 231
 Nuremberg, 213–215

option theories *see* will theories

participation, right of, 95–96
 petition, right of, 138–141
Plessy v. Ferguson, 173–174
 “political rights,” 128, 153–160, 169–174
 positivism, 14, 214–224
 Posner, Richard, 228–229
 privacy, right of, 178, 210–212, 222–224
 practice *see* social practice
 Purcell, Edward, 183

quartering, 105–107
 Quebec Act, 111–115
 Quine, W. V. O., 24, 33

Index

Rakove, Jack, 79, 80, 94
 Rawls, John, 12, 23, 49, 131–132, 229–232
 Raz, Joseph, 12, 17, 22, 88, 230
reductio ad Hitlerum, 189, 219, 229
 reflective equilibrium, 6, 23, 24, 25–26, 92
 religion, right to freedom of, 107–115, 198
 Richards, David A. J., 131–134
 Roosevelt, Franklin, 181–182, 195
 Rorty, Richard, 50–54, 176, 246

Sandel, Michael
 as critic of liberalism, 12, 230
 as critic of rights, 5, 18–19, 47, 85
 and Founding-era conceptions of rights, 87
 and human rights, 88
 on the “procedural republic,” 178

Searle, John, 28
 secession, right of, 140–141
 Shapiro, Ian, 48–51, 231
Shelley v. Kraemer, 205–207
 skepticism, 241
 Skinner, Quentin, 21, 93, 133
Slaughterhouse Cases, 150–151
 Slave Power, 137, 144–146, 148, 159
 social practice, 28–34
 “social rights,” 128, 153–160, 169–174
 standing armies, 101–105
Strauder v. West Virginia, 169–171
 Strauss, Leo, 189–190
 suffrage, right of
 for blacks during Reconstruction, 160–168
 for Chinese in California, 151
 as a “civil right,” 167–168
 failed attempts to broaden, 151–152
 as a “political right,” 155, 161
 as “a privilege,” 160

Sunstein, Cass, 46–48, 96–97, 130–131,
 229–230
 symmetry, method of, 58–59
 synthesis, 64–65, 79–84, 130–136, 175–176

Taylor, Charles, 28, 31
 turtles, 9, 44, 51, 235, 245–247

Walzer, Michael, 225–226
 welfare theories *see* interest theories
 West, Cornel, 53–54
West Virginia State Board of Education v. Barnette
 see flag-salute cases
 white primary, 204–205
 will theories, 16–17
 Wittgenstein, Ludwig, 23, 31, 55

Tick Wo v. Hopkins, 152–153