

## Index

abstraction away, 210-15 Bloche, Gregg, 154 abstracted environments, 212-15 bodily health and integrity, 175, 178 abstracted persons, 211-12 Boorse, Christopher, 14, 15 Braithwaite, John, 80 accountability for reasonableness, 169, 174, 229 British Medical Association (BMA), 235, affiliation, capability of, 176, 178 agency Brownsword, Roger, 190 Buchanan, Allen, 161 capacity for, 134 legal capacity and, 216, 219 liberalism and, 260 Callahan, Daniel, 17, 246 agnostic liberalism, 144, 152, 233, 263 capabilities approach, 170-83, 198 alcohol regulation, 235, 236 charity, principle of, 107 anarchism, 121-6 children, agency and autonomy of, 134, Anderson, Benedict, 26, 27, 213 136, 164 Annas, George, 188, 189, 192 Childress, James, 167, 174 anti-ideal type theory, 5, 106 civic republicanism, 119, 183, 184, 185, assisted suicide, 33, 217 186 coercion and control, 53, 54, 126-32, autonomy abstracted persons and, 211 232 ethics and, 92 coercive altruism, 157 liberalism and, 238 coercive healthism, 157 libertarianism and, 158 coherence problems, 84, 85 paternalism and, 143, 144 collateral paternalism, 5, 142-4, 236, privacy rights and, 33 254 common good, 68, 150, 228, 237 the State and the individual, 135, 137, 138 communication, capability of, 177 Ayres, Ian, 80 communitarianism, 106, 119, 147, 183-8 community Baldwin, Robert, 81 libertarianism and, 151-3, 162-3 basic rights, 118 and the public realm, 27 Bayer, Ronald, 68, 91 the State and, 132-7 Beauchamp, Dan, 183, 184, 185 consequentialism, 106 benefit principle, 140, 230, 233, 237, coordination problems, 120, 126, 216 246 - 54Berlin, Isaiah, 34, 110, 187, 237, 246 Dan-Cohen, Meir, 130-4, 136 Beyleveld, Deryck, 190 Daniels, Norman bioethics, 83, 88, 189 accountability for reasonableness, 169, "Bioethics as Politics" (Powers), 110 229 on justice, 171, 179, 180, 181, 182, 200 biomedical definition of health, 13, 17, 18, 19, 195 on naturalism/normativism and health, Black, Julia, 81 16, 48 blind benefit/harm, 66-7 Dawson, Angus, 25, 41-3, 44, 142, 146

283



## 284 Index

decisional privacy, 33, 34, 251 decision-making. See rational decisionmaking deontology, 106, 118 descriptive anarchists, 121, 138, 146 de-Shalit, Avner, 171, 174-8 Disadvantage (Wolff & de-Shalit), 171, disease normal functional abilities impaired by, 15 social concept of, 242 disincentives to guide choice, 79 distribution of health, 41 Donnelly, Peter, 64 Durkheim, Emile, 36 Dworkin, Gerald, 142 Dworkin, Ronald, 36 ECHR (European Convention on Human Rights), 32, 33, 34, 59, 251, 252 Edwards, Geoff, 76 emotion, capability of, 176 enforcement pyramid, 80 Engelhardt, H. Tristram, 158, 159, 160, 238 environments abstracted, 212-15 control over, 176, 178 social, 212, 213 Epstein, Richard and libertarianism, 153, 154, 155, 163 on State intervention, 53, 54 equality, 170-83 ethics, 91-3 applied ethics, 104 capabilities approach and, 170-83 of communitarianism, 183-8 equality and, 170-83 human rights and, 188-92 justice and, 170-83 legal capacity and, 217 political framework and, 104 principles of, 165-70 European Convention on Human Rights (ECHR), 32, 33, 34, 59, 251, 252 expertise external conceptions of health and, 20 in health, 14 liberalism and, 243 positive/negative conceptions of health and, 18 public health as government business

public health as professional enterprise and, 62, 65 welfare rights and, 249 external measurements of health, 19-20, 215, 249 Faculty of Public Health (UK), 64 Faden, Ruth, 209 on social justice, 171, 173, 174 on WHO's definition of health, 199 Fairchild, Amy, 68 fairness, 182 false paradigms, 211 feminist theory, 110 fraternity, 27 freedom. See liberty free riders, 238 Geuss, Raymond on coercion and control, 128 methodology of, 210 on morality and politics, 104, 105, 107, 108, 124, 229 on political theory, 102 on public/private distinction, 31, 32 on scope of community, 136 Goldberg, Daniel, 60, 146 good governance, 230, 262 Gostin, Lawrence on human rights, 191 on libertarianism, 154 on public health as subject of study, 84 on public health law, 59, 87, 88, 113 on scope of public health, 66 government good governance, 230, 262 public health as business of, 52-9 stewardship model of, 50, 52 Gray, John on harm principle, 226, 230 on liberalism, 120, 121, 209 on morality and politics, 102, 103, 108 on moral pluralism, 225, 226, 246 on political theory, 102 Griffin, James, 190, 211 Griffiths, Sian, 64 Gunn, Lewis, 76, 77 Hall, Mark, 58 hard law, 78, 88 hard paternalism, 142, 143, 152, 237

Hare, Richard, 240

common good and, 145, 150, 237

harm principle

and, 56



Index 285

liberty and, 226, 230 disincentives to guide choice, 79 moral pluralism and, 233 elimination of choice, 79 paternalism and, 250 enabling choice, 80 in public health ethics, 169 incentives to guide choice, 79 welfare and, 246-54 information provision, 80 Harris, John, 134 monitoring, 80 Hart, Herbert, 127, 131 restriction of choice, 79 Häyry, Matti, 51 IOM (Institute of Medicine, US), 48 health. See also public health internal vs. external measurements of, Jennings, Bruce on communitarianism, 185, 186, 187, 3, 19-20, 215, 249 normative analyses and, 11-20 212 normative vs. natural conceptions of, 3, on definition of public, 3, 26, 28 12-17, 241on healthism, 193, 194 politics and, 20-2, 197-9 on overlapping vs. shared concerns, 100 positive vs. negative accounts of, 3, 17-19, 241 Jewell, Tony, 64 healthism, 20, 157, 193-4, 261 Just Health (Daniels), 179 health theocracy, 193-200, 244 justice, 170-83 health totalitarianism, 194-7 as fairness, 182 Herring, Jonathan, 90 legal capacity and, 219 Hervey, Tamara, 90 procedural, 182 Hesslow, Germund, 15 Hill, Michael, 76, 77 'Kantian approach', 101, 102, 111, 211 Hogwood, Brian, 76, 77 Kass, Nancy, 166-8, 174 Holland, Stephen, 18 Klosko, George, 139, 141 Holm, Søren, 159, 160 Lamond, Grant, 128, 129 homo economicus, 259 human functioning, theory of, 49 Laurie, Graeme, 89 See also capabilities approach least restrictive means principle, 169 human rights, 188-92 legal capacity, 216-18 legal framework, 86-91 basic rights, 118 ECHR, 32, 33, 34, 59, 251, 252 liberalism and legal rights in, 220-3 legal framework for, 113 politics and, 112-14 UDHR, 189, 190 public/private distinction in, 31-41 Hupe, Peter, 76, 77 sharing responsibility and, 255 Husak, Douglas, 143 social infrastructure and, 59 State coercion and, 128, 130 Illich, Ivan, 155, 156, 161, 163 study vs. practice of public health law illness, 15. See also disease and, 91 imagination, capability of, 176, 178 understanding of, 177 Imagined Communities (Anderson), 26 legal persons, 134, 207, 220-4 incentives to guide choice, 79 legal rights individualism and, 222 individualism liberalism and, 220-3 anarchism and, 117, 122 civic republicanism and, 186 moral pluralism and, 221 legal rights and, 222 society and, 29 moral pluralism and, 226 sovereignty and, 223-4 political, 113, 130, 135, 137, 138, 159, Institute of Medicine (IOM, US), 48 160 interest-theories of rights, 220, 221 liberalism, 6, 207-34 internal measurements of health, 19-20, abstraction away and, 210-15 215, 249 individual and society and, 139, 225-8 intervention ladder, 79, 80 legal rights and, 220-3 default policy changes, 79 liberty and, 7



## 286 Index liberalism (cont.)

mental and legal capacity and, 208-18 moral inertia, 109 moral framework and, 101, 102, 103, moral pluralism, 6 115, 120, 228-33 decision-making capacity and, 222 moral pluralism and, 103, 115, 166, legal rights and, 221 167, 169, 253 liberalism and, 103, 115, 166, 167, 169, persons, conceptions of, and, 218-20 253 privacy rights and, 35, 36 libertarianism and, 159 regulatory framework and, 78 political framework and, 7, 108 shape of, 224-33 public/private distinction and, 38 libertarianism welfare rights and, 248 community and, 151-3, 162-3 Morris, Christopher, 135 expertise and, 160-2 liberty and, 152, 158 Naffine, Ngaire, 218, 219 moral pluralism and, 159 National Health Service (UK), 64 population perspective and, 147 nationalism, 26, 27 public health and, 153-60 naturalist concept of health, 12-17, 241 public realm and, 28 natural law theory, 109 liberty negative liberty, 187 benefit and harm principles and, 230 negative rights, 186, 191 liberalism and, 7 negative vs. positive concepts of health, 17-19, 241 libertarianism and, 152, 158 positive vs. negative, 187 Nordenfelt, Lennart, 244 normative analyses relational, 187 of health, 11-20, 241 welfare rights and, 263 liberty bias, 6, 117, 150 of politics, 100-16 lifestyle diseases, 14 normative anarchists, 122, 126, 131, 140 Martin, Robyn, 86 Nozick, Robert, 101, 123, 124, 136, 152, Mason, J. K., 89 238 McHale, Jean, 90 nudge paternalism, 127, 256, 265 McMahon, Christopher, 101, 120 Nuffield Council on Bioethics, 50, 61, 74, McPherson, Thomas, 101, 119, 138 79, 80, 81, 116, 142, 149 medicalisation, 161 Nussbaum, Martha, 173, 175, 186 mental capacity, 134, 144, 216-18, 222, Nutt, David, 69 224 mental health, 14 Ogus, Anthony, 80 Mill, John Stuart, 127, 136, 169, 187, 198 'old public health', 53, 153 Millian liberalism, 51, 145, 152, 226, 237 O'Neill, Onora, 192, 195, 196 Mnookin, Robert, 36 On Liberty (Mill), 169, 198 modus vivendi, 102, 104, 105, 159, 163, opportunity and justice, 170-83 224, 228 overlapping concerns, 25, 100 Mohr, Richard, 70 monitoring as intervention, 80 Parmet, Wendy, 30, 68, 146 Montgomery, Jonathan, 88 paternalism moral frameworks. See also moral collateral, 5, 142-4, 236, 254 pluralism liberalism and, 230, 232 human rights and, 190 nudge, 127, 256, 265 liberalism and, 101, 102, 103, 115, 120, the State and, 142-4 228 - 33personhood theory, 190 libertarianism and, 152 Philosophy and Real Politics (Geuss), 102 normative analysis and, 110-12 play, capability of, 176 policy and, 107 plural goods, 237 politics distinguished from, 22, 100-6 pluralism. See moral pluralism State coercion and, 126, 130 pluralist ideal type theory, 5, 106

moral imperialism, 20, 258



Index 287

policy, 74–82 default policy changes, 79 defined, 76	legal framework for, 37 liberalism and, 35, 36 public realm and, 32, 33
moral framework and, 107	relational, 34
nature of, 74–8	smoking ban and, 33, 251
political framework and, 107	zonal, 34
population perspective and, 203	private realm. See public/private
public/private distinction and, 39	distinction
regulatory framework for, 4, 78–81	procedural justice, 182
political frameworks, 4, 99-148	protect, obligation to, 197
analysis under combined approach,	public goods, 68, 139, 237
and 106–10	public health. See also health
anarchism, and 121–6	as blind benefit/harm, 47, 66–7
coercion and control, and 126–32	as conjoined beneficiaries, 47, 68–70
contextual development for, 116–18	'faces' of, 3, 45–73
legal framework and, 112–14	as government business, 46, 52–9
moral pluralism and, 7, 108, 110–12	libertarianism and, 153–60
normative discourse and, 100–16	middle ground models and, 164–93
paternalism and, 142–4	'old public health', 53, 153
policy and, 107	as political tool, 46, 48–52
population perspective and, 146–8	as population's health, 47, 70–2
public health as political tool, 20–2,	as professional enterprise, 47, 62–6
48–52, 197–9, 261–3	as social infrastructure, 47, 59–61
public/private distinction and, 145–6	Public Health–Ethical Issues (Nuffield
sharing of responsibility in, 254–63	Council on Bioethics), 50, 116
scope of community in, 132–7	public policy. See policy
start point of politics in, 137–42	public/private distinction
political imagination, 26, 27	communitarianism and, 184
political theory, 118–21	defining 'public' and, 31–41
=	·
population perspective, 218–20	libertarianism and, 154
abstracted persons and, 211–12	policy and, 39
blind benefit/harm and, 66, 67	shared concerns and, 100
causation investigations and, 63	public realm, 25–31
ethics and, 92	defining, 24–44
libertarianism and, 147	people and populations in, 41–3
policy and, 203	the public in, 25–31
political frameworks and, 5, 146–8	public/private distinction in, 3, 31–41
public health and, 70–2	Daildea July 242 242
public health as professional enterprise	Räikkä, Juha, 242, 243
and, 63	Rampton smokers' case, 33, 251, 252
public realm, and 41–3	rational desision models, 108
sovereignty of individuals and, 223–4	rational decision-making
positive liberty, 187	capacity for, 20, 134
positive rights, 166, 186, 191	justice and, 180
positive vs. negative accounts of health, 17–19, 241	legal capacity and, 216 paternalism and, 144
Powers, Madison,	privacy rights and, 34
on bioethics, 111	Rawls, John, 101, 107, 136, 171, 179, 180
on moral pluralism, 110, 111, 121	reciprocity principle, 169
on social justice, 171, 173, 174	regulatory framework
on WHO's definition of health, 199	alcohol regulation, 235, 236
Pretty, Dianne, 33, 34	benefit and harm principles in, 254
privacy rights	libertarianism and, 153
assisted suicide and, 33	liberty bias and, 6
decision-making and, 34	nudge paternalism in, 127, 256, 265



## 288 Index

regulatory framework (cont.) for policy, 4, 78-81 responsive regulation, 81 risk-based approach, 81, 178 smart regulation, 81 welfare rights and, 249 relational liberty, 187 relational privacy rights, 34 respect, obligation to, 197 responsibility sharing, 12, 254-64 responsive regulation, 81 retributive justice, 87 rights. See also human rights; legal rights; privacy rights; welfare rights basic rights, 118 interest-theories of, 220, 221 negative rights, 186, 191 positive rights, 166, 186, 191 will-theories of, 220 risk-based regulatory approach, 81, 178 Rose, Geoffrey, 41, 62, 63, 67, 146 Rothstein, Mark on defining public health, 65 on State intervention, 53, 54, 55, 56, 57, 58, 60 Ruger, Theodore, 85 Sabin, James, 182, 229 samaritanism, 140, 141 Sedgwick, Peter, 243 Seedhouse, David, 197, 198 self-perception, 215 Sen, Amartya capabilities approach of, 173, 186, 198 on internal vs. external evaluations of health, 19, 20, 215, 250, 253 senses as central human capabilities, 176, shared benefits, 68, 187 shared community, 25 shared concerns, 30, 72, 100, 115, 236 shared imagination, 214 "Sick Individuals and Sick Populations" (Rose), 62 Simmons, A. John, 137, 152 Skrabanek, Petr on definition of health, 253 on expertise, 161, 162, 163 on healthism, 157, 158, 193, 261 on health totalitarianism, 85, 195 libertarian viewpoint of, 63 small State models. See libertarianism smart regulation, 81 smoking ban, 33, 250, 251. See also Rampton smokers' case

social concept of disease, 242 social concept of health, 243 social determinants of health, 60, 148, 181, 182, 259-61 social environments, 59-61, 212, 213 soft law, 78 soft paternalism, 142, 143, 152 soft perfectionism, 253 sovereignty of individuals, 223-4 species-typical functioning, 14, 16 the State, 126-46 coercion and control, 126-32 paternalism and, 142-4 public/private distinction and, 145-6 scope of community and, 132-7 start point of politics, 137-42 subjects of, 132-7 State intervention, 52-9 enforcement pyramid, 80 intervention ladder, 79, 80 status-based legal capacity, 216 stewardship model of government, 50, 52 Stone, Lesley, 49 Sunstein, Cass, 127, 163, 259 Sypnowich, Christine, 38 teleology, 106

Thaler, Richard, 127, 163, 259
Thomas, Kendall, 35
thought, capability of, 176, 178.

See also rational decision-making transparency principle, 169
Two Faces of Liberalism (Gray), 102, 209

UDHR (Universal Declaration of Human Rights), 189, 190 Universal Declaration of Human Rights (UDHR), 189, 190 universalist ideal type theory, 4, 106, 189 Upshur, Ross, 169, 170 utilitarianism, 106

values in health conceptions, 13, 16, 22 Verweij, Marcel, 25, 41–3, 44, 142, 146 Vincent, Andrew, 229

welfare, 7, 50, 240–6, 263 welfare rights expertise and, 249 liberty and, 263 moral pluralism and, 248 regulatory framework and, 249



Index

289

well-being, 18, 172 Wellman, Christopher, 121, 122, 140, 141 WHO (World Health Organization), 17, 157, 172, 194, 196, 240 Williams, Bernard, 99, 124, 125 will-theories of rights, 220 Wolf, Susan, 39

Wolff, Jonathan, 171, 174–8, 209, 210 Wolff, Robert Paul, 122–5, 127, 136, 138, 216 World Health Organization (WHO), 17, 157, 172, 194, 196, 240 wrongs in themselves, 120

zonal privacy rights, 34