

## Index

- acceptance, in contract law, 331–3  
 accidents, in tort law, 358–60  
 actions  
   responsibility for, 251–2  
   in tort law, 358–60  
 activities  
   nature of law and, 51–2  
   in tort law, 358–60  
 Acts of Union, 274–5  
*actus reus*, 263–6, 320–1  
 adjudication  
   nature of law and, 49  
   social science of, 110–12  
 aesthetic values, living well and, 90  
 affirmative action, 172n.6  
 agreements, in contract law, 331n.3, 333–5  
 allocative theories of contract law, 336–46  
   economic efficiency and, 336–8  
   harm principle and, 338–46  
 altruistic behaviour, law and, 106–8  
 American Legal Realism, 110–14  
 American Restatement, contract law and,  
   331–3, 340–3  
 analogical reasoning, common law and, 64  
 analytic philosophy, 1–2  
 anarchism, political authority and, 206–7  
 Anderson, Elizabeth, 1–2, 171–2, 178–9  
 ‘An Irish Airman Foresees His Death’ (Yeats),  
   139–40  
 Annan, Kofi, 117  
 anti-harming principle, 211–13  
 Appiah, Kwame Anthony, 268–9  
 Aquinas, St Thomas  
   definitions of law and, 55n.20  
   on domains of life, 38–41  
   legal philosophy and, 1  
   natural law and, 4–5, 60–1  
   nature of law and, 51–3  
   on rights, 308–9  
 Aristotle  
   on civil rights, 292–3, 298  
   common law and, 60–1  
   constitution defined by, 271–2  
   on homonymy, 28  
   justice and ethics and, 142n.11  
   on law and political communities, 208–10  
   legal philosophy and, 1  
   nature of law and, 51–2  
   on rule of law, 117, 129–31  
   virtue ethics and, 7–8  
 Arneson, Richard, 181–7  
 Arnold, Matthew, 137–8  
 artefacts  
   domain of, 38–40  
   law as artefact of, 54–7  
   two-term rights and, 43  
 artificial intelligence, rule of law and, 131–3  
 associative obligations, consent to political  
   authority and, 202–4  
 Atiyah, Patrick, 339–40  
 Austin, John, 13–14, 97–9, 105–6, 391  
 authority  
   concepts of, 195–8  
   historical evolution of, 192–5  
   justification of, 198–207  
   in political philosophy, 191–2  
   Raz’s justification of, 88–93  
 autonomy  
   civil rights and, 301–3  
   contract law and, 336–7n.21  
   in discrimination law, 185–7  
   justice and, 147–8  
   Raz’s discussion of paternalism and,  
     218–19  
   rights and, 169  
 backward-looking obligations  
   contract law and, 340–3  
   justifications for punishment, 255–9,  
     263–6  
*Bancoult v. Secretary of State for Foreign and  
 Commonwealth Affairs* [2008] UKHL 61,  
   379  
*Baskin v. Bogan*, 766 F.3d 648 (2014), 70  
 Beccaria, Cesare, 66–8  
 behaviour, law vs morality as motivation for,  
   106–8, 112  
 behavioural economics, 95n.2

## 410 Index

- Beitz, Charles, 164–5  
 ‘benefit of the bargain’, in contract law, 340–3  
 Bennett, Christopher, 253–70  
 Bentham, Jeremy, 51, 64–70  
   on civil rights, 297–300  
   on crime, 264  
   international law and work of, 389–90  
   on judicial review, 73  
   on rights, 168–9  
   on rule of law, 121–3  
   sociology of law and, 97  
 Berman, Mitchell N., 271–90  
 ‘Between utility and rights’ (Hart), 7–8  
 Bianchi, Herman, 260  
 Bickel, Alexander, 281–4  
 Bill of Rights (United Kingdom), 274–5  
 Bingham (Lord), 123–4, 245  
 biological diversity, law and, 91–2  
 Blackstone, William, 60–1  
 blaming, alternatives to punishment and, 268–9  
 body parts, as property, 374–5  
 Bork, Robert, 288  
 ‘bottom-up’ perspective, ‘special’ legal philosophy and, 11–12  
*Bowers v. Hardwick* (478 U.S. 186), 62  
 Breivik, Anders, 251–2  
 Breyer, Stephen (Justice), 76–7, 288  
 bright-line rules, property law and, 383  
 British common law, US jurisprudence and, 76–7  
 Brownlee, Kimberley, 253–70  
*Brown v. Board of Education*, 279–80  
 Buchanan, Alan, 293, 399–400  
 Burke, Edmund, 59–61  
 but-for test, necessity and, 244–51  
  
 Calabresi, Guido, 352–3  
 ‘calculus of negligence’, tort law and, 361–2  
*Caminetti v. U.S.* 242 U.S. 470 (1917), 62–4  
 Canada, Charter of Rights and Freedoms in, 285  
 capacity, nature of law and, 51–2  
 Cardozo, Benjamin (Justice), 70–2  
*Carroll Towing* case, 361–2  
 Cassese, Antonio, 398  
 Catholicism, creativity and existence and, 88–93  
 causation  
   agent actions and, 251–2  
   complicity and, 250  
   legal philosophy and, 237–52  
   metaphysical framework for, 239–41  
   necessity and, 241–2  
   responsibility and, 238–9, 249–50  
   sufficiency and, 242–4  
   tests of necessity and, 244–51  
   in tort law, 358–60  
 ‘cause in fact’, proximate causation and, 249  
 central case analysis  
   Finnis’ discussion of, 39–40  
   foreign cases as precedents, 76–7  
   legal philosophy and, 26–30  
 Charter of Rights and Freedoms (Canada), 285  
*Chester v. Afshar*, 245  
*Chevron* deference, 74  
 childrearing, punishment and, 261–3  
 choice theory, civil rights and, 295–303, 307–8, 311  
 Christiano, Thomas, 404  
 Cicero, 1  
   natural law and, 60–1  
 citizens consent, to political authority, 198–207  
 Civil Rights Act of 1964, 292  
 civil rights and liberties. *See also* human rights; rights and duties  
   analysis of, 307–8  
   Hohfeldian incidents and, 293–5  
   justifications for, 300–3, 307–8  
   legal philosophy and, 291–312  
   plural and incommensurable interests and, 303–7, 312  
   right to do wrong and, 308–12  
   will or interest theory and, 295–300  
 civil rights movement, public reason and, 230–1  
 claim right to command, authority and legitimacy and, 197  
 Coase, Robert H., 338, 358–60  
 coercion  
   authority and legitimacy and, 195–8  
   law and, 10–11  
   legal moralism concerning, 220–4  
   moral limits on, 209–11  
   paternalism and, 213–16, 232–3  
   Raz’s discussion of, 216–20  
   in tort law, 364–6  
 Cohen, G.A.  
   legal philosophy and, 1–2  
   on Rawls’ difference principle, 8  
 Cohen, Joshua, 171–2

- Coleman, Jules, 352–3
- collective morality, law and, 81–4
- Commentary on Aristotle's Ethics* (Aquinas), 38–40
- commercial law, contract law and, 337
- common good
- civil rights and liberties and, 303–7
  - individual rights and, 156–7n.11
  - legal philosophy and, 28
  - nature of law and, 50, 52–3
- common law
- foreign cases as precedents for, 76–7
  - Holmes's view of, 70–2
  - judicial review and, 72–6
  - legal reasoning in, 59–64
  - tort law and, 352–3
  - utilitarianism and, 64–70
- common sense tests, causation and, 245–6
- comparative legal theory, 103–4
- compensation, nature of law and, 49
- complexity, ownership and, 386
- complicity, causation and, 250
- comprehensive liberalism, 146–7
- comprehensive moral doctrine, 208–10, 223–4
- public reason and, 224–32
- The Concept of Law* (Hart)
- American Legal Realism in, 110–11n.15
  - coercion discussed in, 210–11
  - individual rights in, 9
  - international law in, 13–14, 391–3
  - legal positivism in, 3–4
  - meeting human needs in, 45–7
  - publication of, 1–2
  - rules discussed in, 75–6
  - social construction of law in, 21, 97–101
  - 'special' legal philosophy in, 11
- conceptual analysis
- constitutional law, 275
  - discrimination law, 173–8
  - empirical dimensions of, 101–3
  - empiricism and, 101–3
  - folk theory and, 18–20
  - of international law, 391–7
  - legal philosophy and, 18–22
  - legal positivism/natural law debate and, 5–6
  - limitations of, 19
  - pluralism and, 19
  - of property law, 373–6
  - real and hypothetical cases and, 20–2
  - theory construction and, 22–6
- conduct, Bentham's discussion of, 65–6
- consent
- in criminal law, 214–15
  - international law and role of, 394–5, 400–1
  - to political authority, 198–207
- consideration, in contract law, 331–3
- constitutional conventions, 276–8
- constitutional law
- Bentham on, 68
  - competing concepts of, 275
  - definitions of, 271–2
  - features of, 272–4
  - human rights and, 158–60
  - instruments in, 273
  - judicial minimalism and, 74–5
  - judicial role in, 278–85
  - legal philosophy and, 271–90
  - theories of interpretation, 285–90
- consumption, ownership and, 386–7
- 'contingent pacifism', punishment and, 267
- contract law
- allocative theories of, 336–46
  - economic efficiency and, 336–8
  - harm principle and, 338–46
  - integrative theories of, 346–51
  - as law of agreements, 331n.3, 333–5
  - legal philosophy and, 331–51
  - nature of law and, 49
  - property law and, 380–2
  - rights and, 155–6
  - special legal philosophy and, 11–13
- contractual fidelity, integrative contract theory and, 347–8
- conventionalism, common law and, 60–1
- cooperation
- law and, 104
  - nature of law and, 44–54
- Cooper v. Aaron*, 279–80
- coordination perspective, tort law and, 366–9
- counterfactuals, causation and, 240–1, 247–8
- countermajoritarian difficulty, judicial review and, 281–4
- court systems
- constitutional interpretations in, 287–9
  - judicial review and constitutional law and, 278–85
- The Court and the World* (Breyer), 76–7
- creativity, existence and, 88–93
- criminalisation, harm principle and, 210n.10

## 412 Index

- criminal law. *See also* punishment  
 aims and scope of, 324–30  
 alternatives to punishment and, 267–9  
 common law theory and, 62–4  
 defined, 315–19  
 general and special parts of, 319–22  
 internal structures of, 319–22  
 legal moralism and, 220–4  
 legal philosophy and, 313–30  
 philosophical and normative issues in,  
 313–15  
 procedural law as, 315–19  
 punishment and deterrence in, 256–7  
 substantive law as, 315–19  
 trial in, 322–4  
 Utilitarianism and, 66–8  
 criminal responsibility, causation and, 246–7  
 criminogenic conditions, punishment and, 266  
*Crito* (Plato), 199  
 Crown and Parliament Recognition Act,  
 274–5  
 cultural practices  
 alternatives to punishment and, 268–9  
 central case analysis and, 26–30  
 concepts of law and, 93, 101–3  
 creativity and existence and, 88–93  
 decline of duty and, 137–8  
 empirical facts and, 96–7  
 ethics and justice and, 135, 149–50  
 interpretivist approach to law and, 30–4  
 legal philosophy and, 103–5  
 naturalism and, 36–7  
 decision-making  
 role of law in, 105–8  
 technological innovation and, 131–3  
 Declaration of Delhi, 118n.4  
 Declaration of the Rights of Man and the  
 Citizen, 291–3  
 de facto political authority, 195–8  
 defences  
 in criminal law, 319–22  
 justifications and excuses in, 321–2  
 defendants' rights, common law theory and,  
 62–4  
 de jure authority, 195–8  
 democracy, rule of law and, 127–9  
*De Officiis* (Cicero), 1  
 descriptive sociology, Hart's concept of,  
 97–101  
 desert-accommodating prioritarian  
 discrimination theories, 181–7  
*determinatio*, nature of law and, 50  
 deterrence  
 legitimacy of, 263–6  
 punishment justification and, 256–7, 261–3  
 Devlin (Lord), 211–16  
 Dicey, A.V., 276–8  
 difference principle, Rawls' discussion of, 8  
 dignity, rights and, 169  
 direct discrimination  
 defined, 174n.10, 176–7  
 moral philosophy and, 177–8  
 pluralism and, 189–90  
 theories of, 179–80  
 discrimination law. *See also* specific types of  
 discrimination  
 desert-accommodating prioritarian  
 discrimination theories, 181–7  
 expanded discrimination concepts in,  
 173–8  
 institutional policies and practices and,  
 176–7  
 legal philosophy and, 171–90  
 pluralist theory of, 185, 187–90  
 recognition-based discrimination theories,  
 178–87  
 relational equality and, 171–3  
 theories of, 12–13, 178–87  
 victims of discrimination in, 175–6  
 disparate treatment, 176–7  
 dissent, international law and, 393–4  
 distributive justice theory, 171–3  
 doctrinal discourse, international law in, 393  
 domains, Aquinas' theory of, 38–40  
 'Dover Beach' (Arnold), 137–8  
 Due Process Clause, 62  
 Duff, Anthony, 208–10  
 Duff, R.A., 313–30  
 duress, contract law and, 331n.3  
 duties, important rights and, 165–7  
 duties of justice, 135  
 rights and, 135–7, 142–4  
 duties of virtue, 135–7  
 duties to self, 136n.2  
 duty  
 decline of, 137–8  
 individual rights and, 156–8  
 logical positivism and retreat from, 140–2  
 patriotic duty, 139–40  
 rights and, 152–6  
 Dworkin, Ronald, 1–2  
 on common law, 61–2  
 on constitutional interpretation, 288–9

- on international law, 14, 389–90, 393–4
  - interpretivism of, 30–4
  - Kant's influence on, 51n.15
  - on legal doctrines, 81–4
  - on moral and political principles in law, 111–12
  - on natural law, 64
  - on political authority, 202–4
  - on political rights, 292, 309–12
  - on public reason, 229–31
  - on rights vs utility, 7–8
  - on rule of law, 119–21
- economic efficiency, contract law and, 336–8
- economics-of-law tradition
- instrumentality in, 362–9
  - legal philosophy and, 95–6n.3
  - moral philosophy criticism of, 353–5
  - tort law and, 352–3, 355–62
  - value in, 369–70
- effect-focused principle
- causation and, 239–41
  - harm principle and, 212n.19, 213n.23
- efficient breach theory, in contract law, 337–8, 346–51
- Eidelson, Ben, 178–80
- Eighth Amendment, jurisprudence and, 76–7
- empirical facts
- causation and, 242–4
  - conceptual analysis of, 101–3
  - law and, 96–7
- ends and limits of law
- harm-prevention or anti-harming principle and, 211–13
  - legal moralism and, 220–4
  - legal philosophy and, 208–33
  - paternalism and, 213–16
  - public reason and, 224–32
  - Raz's discussion of, 216–20
- Epstein, Richard, 352–3
- equality
- discrimination and, 171–90
  - rights and, 169
  - in tort law, 366
- Equality Act (United Kingdom), 174n.10
- equity, rule of law and, 129–31
- ethical duties
- defined, 135
  - patriotic duty, 139–40
  - rights and, 135–7
- ethics
- decline of duty and, 137–8
  - human rights and, 142–4
  - intuitionism and, 70–2
  - justice and, 146–7
  - justifications for, 147–8
  - law and, 5–11
  - logical positivism and, 140–2
  - 'special' legal philosophy and, 11–12
  - states' duties concerning, 143–4
  - without justice, 148–51
- European Commission for Democracy through Law, 117–18
- European Convention on Human Rights, 141–4
- European Union, international law and, 403–6
- ex ante
- in contract law, 347–51
  - in criminal law, 66–8
- exclusivity, in property law, 376–7
- excuse, in defence, 321–2
- exemptions, in defence, 321–2
- existence, creativity and, 88–93
- expectation remedy, in contract law, 337–8, 346–8
- ex post
- in contract law, 347–51
  - in criminal law, 66–8
- fair-play theory, consent to political authority and, 198–207
- Fallon, Richard, 284–5
- fault-based liability, contract law and, 340–3
- Feinberg, Joel, 210n.10, 213–16
- feminist theory, rule of law criticism of, 129
- Fichte, Johann Gottlieb, 194–5
- fiduciary law, contract law and, 346–8
- Finnis, John
- on aesthetic values, 90
  - central case analysis and, 26–30
  - on civil rights, 299–300, 302–3
  - ethical objectivism and, 6
  - on idealising of law, 86
  - legal philosophy and, 1–2
  - on morality, 89
  - natural law and, 4–5
  - on nature of law, 38–58
  - on pluralist theory, 8n.15, 305–6
  - on rule of law, 128–9
- 'first stage' law, 111–12
- Fletcher, George, 352–3

## 414 Index

- focal meaning, Finnis' discussion of, 39–40  
 'folk theory', conceptual analysis and, 18–20  
 Foot, Philippa, 7–8  
 foreseeability, proximate causation and, 249  
 Forster, E.M., 139–40, 385  
 forward-looking obligations  
   contract law and, 340–3  
   justifications for punishment, 255–9,  
     263–6  
 Fourteen Points (Wilson), 402  
 Fourteenth Amendment, 62, 175n.11  
 Franck, Thomas, 403  
 Frank, Jerome, 110–11n.15  
 fraud, contract law and, 331n.3, 340–1n.35  
 freedom, in discrimination law, 185–7  
 free speech, civil rights and, 306  
 free will. *See also* will theory  
   civil rights and, 301–3  
   conceptual analysis of, 18–19  
   punishment justification and, 263–6  
 Fried, Charles, 336–7n.21, 348–9  
 Fuller, Lon, 104–5, 111–12
- game theory, legal compliance and, 109–10  
 Gardbaum, Stephen, 285  
 Gardner, John, 12–13, 178–80, 352–70  
 Gavison, Ruth, 111–12  
 genealogical philosophy, contract law and,  
   339–40  
 George, Robert P., 291–312  
 German constitutional theory, 276  
 German criminal law, 316–17  
 Gewirth, Alan, 307  
*Gideon v. Wainwright*, 372 U.S. 335 (1963),  
   62–4  
 Gilmore, Grant, 332–3  
 Gingrich, Newt, 230  
 Ginsburg, Ruth Bader (Justice), 76–7  
 Girgis, Sherif, 291–312  
 globalisation  
   human rights and impact of, 144–5  
   international law and, 76–7, 403–6  
 Glorious Revolution of 1688, 274–5  
 governance  
   constitutionalism and, 273–4, 278–85  
   harm principle and paternalism and,  
     216–20  
   rule of law and, 133–4  
 Griffin, James, 8n.15, 167–70, 300–3  
 Grotius, Hugo, 60–1, 120, 193–4, 308–9,  
   389–90  
 groups, law and nature of, 57–8
- guilt  
   in criminal trial, 322–4  
   punishment and, 256–7
- Habermas, Jürgen, 146–7  
 Hale, Matthew (Sir), 59–60  
 Hand, Learned, 361–2  
 Harel, Alon, 284–5  
 harm principle  
   coercion and, 209–12  
   in contract law, 338–46  
   criminalisation and, 210n.10  
   criminal law and, 324–30  
   harm-prevention or anti-harming  
     discourse and, 211–13  
   homosexuality and, 68  
   legal moralism and, 220–4  
   legal philosophy and, 10–11  
   paternalism and, 213–16  
   punishment justification and, 256  
   Raz's discussion of, 216–20  
   various approaches to, 232–3
- Hart, H.L.A.  
   American Legal Realism and, 110–11n.15,  
     112–14  
   on causation, 242–4  
   on coercion, 365  
   on constitutional interpretation, 289  
   harm principle and work of, 210–11, 213–16  
   hermeneutical thesis and, 4–5  
   Humean subjectivism and, 6–7  
   on individual rights, 9  
   'internal point of view' concept and, 21,  
     35–6  
   international law and, 13–14, 391–3  
   legal philosophy and, 1–2  
   on legal positivism, 3–4  
   on meeting human needs, 45–7  
   on moral scepticism, 82–4  
   nature of law and, 51  
   on 'negative retributivism' and  
     punishment, 265–6  
   on nullity, 233  
   ordinary language philosophy and, 98–9  
   on paternalism and harm principle, 222–4  
   'puzzled man' concept of, 105–6  
   on responsibility, 249–50  
   on rights vs utility, 7–8  
   on rule of law, 9  
   on social construction of law, 21, 23–4  
   sociology of law and, 97–101  
   will theory of, 295–300, 308–9

- Hayek, F.A., 121–3  
 Hellman, Deborah, 178–80  
 hermeneutical thesis, 4–5  
   law as social practice and, 17  
 history, laws of nature and, 40–1  
 Hobbes, Thomas, 1, 194–5, 308–9  
 Hohfeld, Wesley N., 42–3, 293–5  
 Holmes, Oliver Wendell (Chief Justice), 70–2,  
   105–6, 334–5, 357–8  
 Holton, Richard, 237–52  
 homonymy, 28  
 homosexuality. *See also* sodomy  
   Bentham on, 65, 68  
   common law reasoning and, 62  
 Honoré, Tony, 3, 242–4  
   on responsibility, 249–50  
 House of Lords Act 1999, 274–5  
 humanitarian intervention, sovereignty and  
   human rights and, 164–5  
 human needs and good(s)  
   central case analysis and, 29–30  
   consent to political authority and,  
     200–2  
   human rights and, 159–61  
   law and, 28  
   living well and, 78–94  
   nature of law and pursuit of, 44–54  
   property law and, 372–3  
   punishment justifications and  
     preservation of, 258–9  
   relational equality and, 171–3  
   rule of law and, 104–5, 117–18, 125–7  
   Utilitarian perspectives on, 69  
 human responders, human rights and,  
   162  
 human rights. *See also* rights and duties  
   bearers of, 159–61  
   constitutional rights and, 158–9, 273  
   duties of justice and, 135–7  
   ethics and, 9  
   human responders and, 162  
   important rights, 165–7  
   individual rights and, 156–8  
   interest and will theories of, 9n.17  
   as moral rights, 167–70  
   prioritisation over duties, 141  
   rule of law and, 127–9  
   sovereignty limits and, 162–5  
   states as guarantors of, 144–5  
   Waldron's discussion of, 152–70  
 Human Rights Act 1998, 274–5  
 Hume, David, 120, 239–40, 336–8, 386  
 idealism, scepticism and, 81–4  
 identity, ethics and, 147–8  
 implicit bias, discrimination law and, 174  
 imprisonment  
   alternatives to, 268–9  
   legal moralism and, 220–4  
   as punishment, 261–3  
 incapacity, contract law and, 331n.3  
 incommensurable interests, civil rights and  
   liberties and, 303–7  
 indirect discrimination  
   defined, 176–7  
   moral philosophy and, 177–8  
   pluralism and, 189–90  
   theories of, 179–80  
 individual choice  
   autonomy and, 147–8  
   law and, 10–11  
 individual culpability, punishment  
   justification and, 263–6  
 individual rights, 156–8  
 insanity, causation and, 251–2  
 institutions for lawmaking, 54–7  
   international law and, 400  
   property as, 383–7  
 instrumentality  
   criminal law and, 325  
   property–tort law connections, 382–3  
   tort law and, 362–9  
 integrative theories of contract law, 346–51  
   thick theories, 346–8  
   thin theories, 348–51  
 intentionality, proximate causation and,  
   249  
 interest theory  
   civil rights and, 297–300, 311  
   rights and, 152–6  
 'internal point of view'  
   conceptual analysis of law and, 21  
   human needs and, 45–7  
   naturalism and, 35–6  
 International Commission of Jurists, 117–18  
 International Convention on the Law of the  
   Sea, 401–2  
 International Covenant on Civil and Political  
   Rights (ICCPR), 143–4, 152, 154–6,  
   158–9, 167  
 International Covenant on Economic, Social  
   and Cultural Rights (ICESCR), 143–4,  
   152, 154–6, 167  
 International Criminal Tribunal for the  
   Former Yugoslavia, 406–7

## 416 Index

- international law  
 conceptual analysis of, 391–7  
 foreign cases as precedents in, 76–7  
 legal compliance and, 109–10  
 legal philosophy and, 13–14, 389–407  
 legislation and adjudication and, 395n.22  
 morality of, 398–402  
 rule of law and, 133–4, 406–7  
 sovereignty and human rights in, 164–5, 402–6
- International Sea-Bed Authority, 401–2
- interpretation, nature of law and, 43–4
- interpretivism, legal philosophy and, 30–4
- interracial marriage, common law reasoning and, 62–4
- Introduction to the Principles of Morals and Legislation* (Bentham), 66–8
- intuitionism, 70–2
- intuitions, naturalism in legal philosophy and, 34–7
- INUS formulation, causation and, 242–6
- invisibility, discrimination law and, 174–5
- Islamic State, 139
- Jackson, Frank, 18–19, 101
- Johnson, Jack, 62–4
- joint and several liability, causation and, 246–7
- joint-surplus maximisation, contract law and, 336–8
- Judaism, creativity and existence and, 88–93
- judicial minimalism, common law and, 74–5
- judicial review  
 constitutional law and, 278–85  
 countermajoritarian difficulty and, 281–4  
 legal reasoning and, 72–6  
 selection effect and, 112–14
- jurisprudence  
 constitutional law and, 276–8  
 legal philosophy and, 95n.1  
 sociology of law and, 95–6
- jus cogens*  
 international law and, 393–4  
 nature of law and, 49–50
- jus gentium*, 49
- justice. *See also* duties of justice  
 decline of duty and, 137–8  
 ethics and, 135–51  
 justifications of principles of, 145–7  
 logical positivism and, 140–2  
 nature of law and, 49–51  
 normativity and, 142n.11, 151
- peace and, 398–9  
 property law and, 372–3  
 rights and, 135–7  
 states' duties concerning, 143–4  
 universal standards for, 140–2  
 value of, 8–9  
 without ethics, 148–51
- 'Justice as fairness: political not metaphysical' (Rawls), 146–7
- justifications, in defence, 321–2
- Justinian, 41
- Kahneman, Daniel, 95n.2
- Kaldor-Hicks efficiency conception, contract law and, 336–7n.21
- Kamm, Frances, 301
- Kant, Immanuel, 1, 51, 120, 137–8, 147–9, 162, 194–5  
 instrumentality and work of, 364–6  
 international law and work of, 389–90, 405–6  
 property law and work of, 371, 382–3
- Katz, Larissa, 371–88
- Kelsen, Hans, 13–14, 82–4, 87–9, 389–90  
 Hart's discussion of, 233
- Kennedy, Anthony (Justice), 70
- Khaitan, Tarunabh, 173, 184–5
- King, Martin Luther, Jr, 230–1
- Kletzner, Christoph, 191–207  
 on legitimacy of law, 9–10
- Kramer, Matthew, on civil rights, 297–300
- Lacey, Nicola, 100–1
- Lamond, Grant  
 legal positivism/natural law debate and, 5–6  
 on methodological issues, 17–37
- land ownership, property law and, 377–80
- language, ordinary language philosophy and, 98–9
- Laslett, Peter, 145
- law, definitions of, 18–22, 39–40, 55n.20
- Lawrence v. Texas*, 539 U.S. 558 (2003), 62
- Laws* (Plato), 1
- The Law of Peoples* (Rawls), 159n.17, 163–4
- lay concept of discrimination, 173
- legal compliance  
 philosophy of, 109–10  
 in tort law, 364–6
- legal moralism  
 coercion and, 220–4  
 criminal law and, 328–30



- legal obligation
  - consent to political authority and, 198–207
  - in contract law, 333–5
  - responsibility and, 237–8
  - theory of, 24n.22
- legal philosophy. *See also* 'special' legal philosophy
  - adjudication and, 110–12
  - authority in, 192–5
  - behaviour and, 106–8
  - causation and, 239–41
  - civil rights and liberties and, 291–312
  - conceptual analysis in, 18–22
  - contemporary ideas in, 1–2
  - contract law and, 331–51
  - criminal law and, 313–30
  - current issues and, 2
  - decision-making and, 105–8
  - discrimination law and, 177–8
  - ends and limits of law in, 208–33
  - equality and discrimination and, 171–90
  - ethical values and politics and, 5–11
  - international law and, 13–14, 389–407
  - justice and ethics in, 148–51
  - legal pluralism and, 103–5
  - legal positivism vs natural law and, 3–6
  - methodological issues in, 17–37
  - nature of law and, 38–58
  - property law in, 371–88
  - public reason concept and, 210–11
  - punishment in, 253–70
  - rule of law and, 117–23
  - social science and, 95–114
  - tort law in, 352–70
- legal pluralism
  - conceptual analysis and, 19
  - discrimination law and, 12–13
  - rule of law and, 119
  - social science and, 103–5
  - of values, legal philosophy and, 7–8, 10–11
- legal positivism, natural law vs, 3–6
- legal realism, tort law and, 357–8
- legal reasoning
  - common law and, 59–64
  - concepts of law and, 93
  - foreign cases as precedents for, 76–7
  - judicial review and, 72–6
  - limits of moral guidance and, 84–8
  - living well and, 78–94
  - mixed views in, 70–2
  - Nussbaum's discussion of, 59–77
  - utilitarianism and, 64–70
- 'Legal responsibility and excuses' (Hart), 265–6
- legal rules
  - instrumentality and, 362–9
  - international law and, 395–7
  - in tort law, 357–8
- legal systems
  - laws within, 41
  - in non-state communities, 48n.11
  - property law in, 380–7
  - propositions of law in, 41–4
  - public reason and, 228–9
  - wealth maximisation and, 69
- legislation
  - constitutional law and, 278–85
  - countermajoritarian difficulty and, 281–4
  - international law and, 395n.22
  - judicial review vs, 73, 278–85
- legitimacy
  - ambiguity concerning, 9–10
  - concepts of, 195–8
  - historical evolution of, 192–5
  - in international law, 398–402
  - nature of law and, 53–4
  - in political philosophy, 191–2
  - of punishment, 263–6
  - rule of law and, 119
- Levi, Edward, 62–4
- Leviathan* (Hobbes), 1
- Lewis, David, 240–1
- liability, punishment and, 263–6
- liberty
  - civil rights and, 301–3
  - in discrimination law, 185–7
  - property law and, 375n.10
  - right to, 142–3
  - rule of law and, 125–7
- 'Liberty and trust' (Raz), 216–20
- licensing, property law and, 377–80
- Lippert-Rasmussen, Kasper, 181–7
- living well
  - concepts of law and, 93
  - legal philosophy and, 78–94
- Llewellyn, Karl, 110–11n.15, 112–14, 357–8
- Locke, John, 117, 371, 383–4n.24
- logic
  - domain of, 38–40
  - in nature of law, 41–4
- logical positivism, retreat from duty and, 140–2

## 418 Index

- MacCormick, N., 26  
 MacIntyre, Alasdair, 7–8  
 Mack, Eric, 302–3  
 Mackie, J.L., 242–6  
 Macklem, Timothy, 78–94  
 Macpherson, C.B., 386–7  
 Madison, James, 65–6  
 Magna Carta 1297, 274–5  
*mala in se*, 317  
*mala prohibita*, 317  
 Malthus, Thomas, 68  
 Mance (Lord), 379–80  
 ‘manifesto rights’, 141  
 Mann Act, 62–4  
*Marbury v. Madison*, 279–80  
 Markovitz, David, 331–51  
 Marmor, A., 23–4  
 marriage laws, nature of law and, 49  
 Marshall, John (Chief Justice), 279–80  
 martyrdom, patriotic duty and, 139–40  
 Marxism, rule of law criticism of, 129  
 materiality, property law and, 375–6  
 matter, domain of, 38–40  
 McGinn, Colin, 101  
*mens rea*  
   in criminal law, 320–1  
   punishment for, 263–6  
 metaphysics, causation and, 239–41  
*The Metaphysics of Morals* (Kant), 1  
 meta-theoretic principles, theory  
   construction and, 25–6  
 methodological approaches  
   central case analysis, 26–30  
   conceptual analysis, 18–22  
   interpretivism and, 30–4  
   naturalism in legal philosophy and,  
   34–7  
   theory construction, 22–6  
 Mill, John Stuart  
   criminal law and harm principle of,  
   324–30  
   harm-prevention and independence and,  
   232–3  
   harm principle of, 10–11, 209–13  
   paternalism and harm principle of, 213–16  
   Raz on harm principle and paternalism,  
   216–20  
   on rule of law, 120  
   utilitarianism and, 64–70  
 Miller, David, 164–5  
 mitigation doctrine, in contract law, 347–8  
 monism, discrimination theory and, 187–90  
 Moore, G.E., 138  
 Moore, Michael, 208–10, 222–4, 328–30  
 Moore, Underhill, 112  
*The Morality of Freedom* (Raz), 216–20  
 moral philosophy  
   authority and legitimacy and, 197–8  
   behaviour and, 106–8  
   civil rights and liberties and, 303–7  
   comprehensive moral doctrine and, 208  
   in contract law, 331n.3  
   contract law as law of agreements and,  
   333–5  
   discrimination law and, 177–8, 181–7  
   domain of rationality and, 38–40  
   economics-of-law tradition vs, 353–5  
   harm principle and, 232–3  
   instrumentality and, 362–9  
   international law and, 398–402  
   interpretivist approach to law and, 30–4  
   law and, 5–11  
   legal moralism and, 208–10  
   limits of moral guidance and, 84–8  
   living well and, 79–81  
   nature of law and, 51–2  
   punishment and, 258–9, 261–3  
   rights and, 167–70  
   right to do wrong and, 308–12  
   rule of law and, 123–31  
   ‘special’ legal philosophy and, 11–13  
   theory construction and, 25–6  
   tort law and, 352–3, 355–62  
   value and, 369–70  
 Moreau, Sophia, 12–13, 171–90  
 municipal legal systems, international law  
   and, 13–14  
 nation states. *See also* legislation; states  
   authority and legitimacy of, 195–8  
   civil rights and, 305–6  
   constitutional models for, 271–2, 275–6  
   criminal law and, 324–30  
   duties of ethics and justice and, 143–4  
   globalisation and, 403–6  
   as human rights guarantors, 144–5  
   justification of authority in, 198–207  
   legal compliance and, 109–10  
   legitimacy of punishment by, 263–6  
   non-constitutional structure in, 276–8  
   as paradigm of law, 19  
   property law and, 377–80  
   right to punish in, 259–63  
 naturalism, in legal philosophy, 34–7

- natural law  
 biological diversity and, 91–2  
 common law and, 60–1  
 domains of, 38–40  
 legal positivism vs, 3–6  
 principles of, 48  
 nature of law  
 as artefact of artefacts, 54–7  
 Finnis' discussion of, 38–58  
 history and, 40–1  
 human needs and good(s), pursuit of, 44–54  
 logic of propositions in, 41–4  
 persons and groups and, 57–8  
*The Nature of the Judicial Process* (Cardozo), 70–2  
 necessity  
 but-for test and, 244–51  
 causation and, 241–2  
 omissions and, 250–1  
 'negative' duties, 142–3  
 'negative retributivism', 265–6  
 negligence, in tort law, 359–61  
 NESS (Necessary Element of a Sufficient Set)  
 formulation, 245–6  
 Neuman, Gerald, 167–70  
 Newnham College, 65  
*Nicomachean Ethics* (Aristotle), 1  
 Nietzsche, Friedrich, 138, 145n.15  
 non-discrimination, legal right to, 183  
 non-interference, punishment and, 256–7  
 non-moral evaluations, human needs and, 45–7  
 non-state communities, legal systems in, 48n.11  
 non-voluntaristic punishment theory, 259–63  
 normative ethics  
 civil rights and liberties and, 291–3  
 constitutional law and, 276  
 creativity and existence and, 88–93  
 criminal law and, 313–15  
 human rights and, 142–4  
 international law and, 395–7  
 justice and, 142n.11, 151  
 law and, 5–11, 82–4  
 legitimacy and, 398–402  
 property law and, 383–7  
 proximate causation and, 249  
 tort law and, 353–5  
*Not Paul, But Jesus* (Bentham), 68, 70  
 Nozick, Robert, 1–2, 146–7  
 nudging discourse  
 alternatives to punishment and, 268–9  
 harm principle and paternalism and, 218  
 nullity, Hart's discussion of, 233  
 Nussbaum, Martha C.  
 on legal reasoning, 59–77  
 utilitarianism and common law and, 7–8  
 obedience to law  
 ethics and, 10–11  
 legal compliance and, 109–10  
*Obergefell v. Hodges* 576 U.S. (2015), 70  
 'Ode to Duty' (Wordsworth), 137–8  
 offences, in criminal law, 319–22  
 office, ownership as, 377–80, 386–7  
 Okin, Susan Moller, 1–2  
 Oliphant, Herman, 110–11n.52  
 omissions, causation and, 250–1  
*On Crimes and Punishments* (Beccaria), 66–8  
*On Death Punishment* (Bentham), 66–8  
 O'Neill, Onora, 135–51  
 on value of justice, 8–9  
*On Human Rights* (Griffin), 167–70  
*On Liberty* (Mill), 212–13  
 ordinary language philosophy, 98–9  
 originalism, 289  
 common law and, 75–6  
 overdetermination  
 causation and, 241–2, 245–6  
 in tort and criminal law, 246–7  
 ownership  
 conceptual analysis of, 373–6  
 internal domain of, 383–7  
 as office, 377–80  
 property and, 372–3  
 Parfit, Derek, 215  
 participant observation theory, 99–100  
 party choice, contract law and, 336–7n.21  
 paternalism  
 harm principle and, 213–16  
 legal moralism and, 222–4  
 Raz's discussion of, 216–20  
 patriotic duty, 139–40  
 peace, justice and, 398–9  
*Perpetual Peace* (Kant), 405–6  
 Perry, Stephen, 24n.22, 352–3  
 personhood values, civil rights and, 301–3  
 persons, law and nature of, 57–8  
*The Philosophy of Right* (Hegel), 1  
 physical force case law, causation and, 246–7

## 420 Index

- Pildes, Eric, 178–9  
 planning, nature of law and, 47–8  
 Plato  
   justification of political authority in, 199  
   legal philosophy and, 1  
   nature of law and, 51–2  
   virtue ethics and, 7–8  
 pleasure, Utilitarian perspectives on, 65–6, 68–9  
 pluralism. *See* legal pluralism  
   civil rights and liberties and, 303–7  
   in discrimination law, 185, 187–90  
 policy preferences, countermajoritarian difficulty and, 281–4  
 political liberalism, 146–7  
   justice and, 151  
*Political Liberalism* (Rawls), 146–7  
 political philosophy, 1–2  
   authority in, 191–2, 195–8  
   civil rights and, 291–3  
   collective morality and, 81–4  
   criminal law and, 324–30  
   international law and, 389–90  
   judicial review and, 72–6  
   justice and, 145–7  
   justification of authority in, 198–207  
   law and, 5–11  
   legitimacy in, 195–8  
   property law and, 380–7  
   public reason and, 227–8  
   punishment justifications in, 258–9  
*Politics* (Aristotle), 1  
 pollution litigation, causation and, 246–7  
 populism, globalisation and, 403–6  
 positive (posited) law, 47–8  
   adjudication and, 110–12  
   moral rights and, 167–8  
 positivism  
   law as artefact and, 54–7  
   logical positivism, 140–2  
   theory construction and, 26  
 Posner, Richard, 70, 352–3  
 practical right reason, nature of law and, 51  
 pre-emption  
   causation and, 241–2, 245–6  
   punishment justification and, 256  
*Principia Ethica* (Moore), 138  
 Principle EF (Scanlon), 343–6  
 Principle F (Scanlon), 343–6  
 prioritarianism, discrimination law and, 181–7  
 private law  
   individual rights and, 157  
   ownership and, 377–80, 386–7  
 private obligations, nature of law and, 47  
 private ordering, property law and, 381–2  
 private property, justification of, 383–7  
 probabilities, causation and, 247–8  
 promissory estoppel  
   contract law and, 332–3, 342–3  
   harm principle and, 343–6  
 promissory fidelity, 346–8  
 property law  
   central case analysis and, 29  
   conceptual analysis of, 373–6  
   contract law and, 380–2  
   definitions of property and, 373–6  
   exclusivity in, 376–7  
   internal domain of, 383–7  
   legal order and place of, 380–7  
   legal philosophy and, 371–88  
   nature of law and, 49  
   ownership as office in, 377–80  
   rights and, 155–6  
   tort and, 376, 380–3  
 propositions of law, 41–4  
*Prosecutor v. Tadić* (Jurisdiction), Appeals Chamber, 2 October 1995, 406–7  
 proximity, causation and, 248–50  
 public commitment, nature of law and, 47  
 public ownership, property law and, 377–80  
 public power and authority, two-term rights and, 43  
 public reason  
   ends and limits of law and, 224–32  
   Rawls's concept of, 210–11  
 public wrongs, in criminal law, 324–30  
 punishment. *See also* criminal law  
   alternatives to, 267–9  
   criminal trial and, 322–4  
   ethics and, 10–11  
   justifications for, 255–9  
   in legal philosophy, 253–70  
   legitimacy of, 263–6  
   nature of law and, 49  
   right to punish and, 259–63  
   Utilitarianism and, 66–8  
 Quong, Jonathan, 227–8  
 Radin, Margaret Jane, 339–40  
 rational autonomy, rule of law and, 125–7  
 rational construction, criminal law and, 313–15

- Rationale of Punishment* (Bentham), 66–8  
 rationality, domain of, 38–40  
 Rawls, John, 1–2  
   comprehensive moral doctrine of, 208, 223–4  
   on constitutional vs human rights, 159n.17  
   difference principle of, 8  
   distributive justice theory and, 171  
   Dworkin's criticism of, 229–31  
   on international law, 389–90  
   on justice, 146–7, 151  
   plurality of values and, 7–8  
   on political justification, 6–7  
   on property, 371n.1  
   on public reason, 210–11, 224–32  
   on sovereignty and human rights, 163–4  
 Raz, Joseph  
   on authority and legitimacy, 196, 204–7, 400–1  
   on civil rights, 297–300, 302–3  
   on common good and human rights, 156–7n.11, 162  
   on constitutional interpretation, 288  
   on contract law, 334  
   on creativity and existence, 88–93  
   on empirical facts and law, 96–7n.4, 101–3  
   ethical objectivism and, 6  
   on harm principle and paternalism, 216–20, 232–3  
   on important rights, 165–7  
   international law and work of, 400–1  
   on legal moralism and anti-paternalism, 220–4  
   on legal norms, 23–4  
   legal philosophy and, 1–2  
   legal positivism/natural law debate and, 5–6  
   on legal reasoning vs law, 110n.14  
   on moral guidance and legal reasoning, 86–8, 208–10  
   on positivist perspective, 56n.21  
   property law and authority concept of, 383  
   on rights, 152–6, 295n.13  
   on sociology of law, 95–6  
 realist perspective, international law and, 13–14  
 reasons for action, nature of law and, 45–7, 51–2  
 recognition-based discrimination theories, 178–87  
 reconstructive theory, in contract law, 340–3  
 reductionism, discrimination theory and, 187–90  
 regulatory legislation. *See also* governance; states  
   harm principle and paternalism and, 216–20, 232n.87  
   judicial review vs, 73  
   nature of law and, 49  
 relational equality, development of, 171–3  
 relativism, in human rights, 160–1  
 religious freedoms, civil rights and liberties and, 305–6  
 remoteness, causation and, 248–50  
 Renzo, Massimo, 191–207  
   on legitimacy of law, 9–10  
 repentance, punishment and, 265–6  
*Republic* (Plato), 1  
 Resolution on the Rule of Law (UN General Assembly), 406–7  
 responsibility  
   for actions, 251–2  
   causation and, 238–9, 249–50  
   legal philosophy and, 237–52  
 retributive justice, punishment and, 256, 258–63  
 rights and duties. *See also* civil rights; human rights; individual rights  
   definitions of, 152–6  
   important rights, 165–7  
   justification for, 152–6  
   in legal philosophy, 152–70, 295n.13  
   mirroring view of, 167  
   moral rights, 167–70  
   property law and, 381–2  
   propositions of laws and, 42–3  
   right to punish and, 259–63  
 rights-forfeiture, punishment and, 261–3  
 Ripstein, Arthur, 210, 223–4, 364–6  
 Rodrik, Dani, 404  
 Roman law, 41  
*Roper v. Simmons*, 76–7  
 Rousseau, Jean-Jacques, 389–90  
 rule of law  
   challenges and limits of, 129–34  
   defined, 117–18  
   international governance and, 133–4, 406–7  
   multiple interpretations of, 117–23  
   procedural and formal requirements for, 121–3  
   production of good and, 104–5

## 422 Index

- rule of law (cont.)  
 Scalia's discussion of, 75–6  
 technological innovation and, 131–3  
 thick and thin concepts of, 9, 119–21,  
 123–9  
 virtue of, 123–9  
 rule-utilitarians, tort law and, 363–4, 367–8
- same-sex marriage, Utilitarian philosophy  
 and, 70
- Scalia, Antonin (Justice), 75–6, 288–9
- Scanlon, T.C., 339–40, 343–6
- scarcity, ownership and, 386
- Schauer, Frederick, 95–114
- Scheffler, Samuel, 171–2
- security, deterrence and punishment and,  
 256–7
- selection effect, sociology of law and,  
 112–14
- self-defence, punishment and, 256–7
- self-determination, right to, 157–8  
 international law and, 402  
 punishment and, 256–7
- self-interest, harm principle and, 215
- Sen, Amartya, 1–2, 171–2  
 on pluralist theory, 8n.15
- separability criterion, property law and,  
 373–6
- service conception of authority, 204–7  
 international law and, 401–2
- sexual offence laws, public reason and,  
 228–9
- Shapiro, Scott, 22–4, 106
- Sidgwick, Henry, 65, 70–2
- Simmons, John, 108, 207
- situationism, alternatives to punishment  
 and, 268–9
- scepticism, idealism and, 81–4
- slavery, property law and, 375–6
- Smart, J.J.C., 356n.13
- Social Contract* (Rousseau), 389–90
- social practices  
 alternatives to punishment and, 268–9  
 central case analysis and, 26–30  
 conceptual analysis and, 18–22, 93  
 decline of duty and, 137–8  
 discrimination law and, 181  
 interpretivist approach to law and, 30–4  
 law as, 17  
 living well and, 91  
 morality and, 82–4  
 naturalism and, 36–7  
 punishment and, 261–3  
 theory construction and, 22–6
- social science  
 adjudication and, 110–12  
 discrimination concepts in, 174  
 human behaviour and, 106–8  
 legal philosophy and, 95–114  
 sociology of law, Raz's discussion of, 95–6
- Socrates, 108
- sodomy. *See also* homosexuality  
 Bentham on decriminalisation of, 65, 68  
 common law reasoning and, 62
- sovereignty  
 human rights and limits of, 162–5  
 international law and, 402–6  
 property law and, 377–80  
 Ripstein's sovereignty principle, 210,  
 223–4
- Spanish Scholastics, 389–90
- 'special' legal philosophy, evolution of,  
 11–13
- Spring-Rice, Cecil, 139n.7
- Stanton-Ife, John, 208–33
- states. *See also* legislation; nation states  
 authority and legitimacy of, 195–8  
 constitutional models for, 271–2, 275–6  
 duties of ethics and justice and, 143–4  
 as human rights guarantors, 144–5  
 justification of authority in, 198–207  
 legal compliance and, 109–10  
 legitimacy of punishment by, 263–6  
 as paradigm of law, 19  
 rights of, 279–80  
 right to punish in, 259–63
- status  
 alternatives to punishment and, 268–9  
 civil rights justification based on, 300–3  
 in discrimination law, 178–9
- Statute of the International Court of Justice,  
 Article 38, 396
- stewardship, property law and, 383–7
- stigmatisation, punishment and, 261–3
- Strauss, David, 60–4, 75–6
- strict liability  
 contract law and, 340  
 punishment justification and, 263–6
- Suarez, Francisco, 308–9
- subordination, in discrimination law, 181
- sufficiency  
 causation and, 242–4  
 legal scholarship on, 245–6  
 omissions and, 250–1

- sufficientarianism, discrimination law and, 184–5  
*Summa Theologiae* (Aquinas), 1  
 Summers, Robert, 233  
 Sunstein, Cass, 74–5  
 survival, nature of law and, 45–7
- Tadros, Victor, 228–9  
 Tasioulas, John, 117–34, 301–3, 394–5  
 technological innovation, rule of law and, 131–3  
 texts of law, nature of law and, 43–4  
 textualism, common law and, 75–6  
 Thayer, James Bradley, 283  
*A Theory of Discrimination Law* (Khaitan), 184–5  
*A Theory of Justice* (Rawls)  
   distributive justice theory and, 171  
   plurality of values in, 7–8  
   political liberalism and, 146–7  
   publication of, 1–2  
 theory construction, legal philosophy and, 22–6  
 thingness, in property law, 375–6  
 third parties, civil rights theory and, 297–300  
 top-down perspective, special legal philosophy and, 11–13  
 tort law  
   causation and, 246–7  
   contract law and, 339–46  
   criminal law and, 317–19  
   economic vs moral approaches to, 352–3  
   instrumentality in, 362–9  
   justifications for, 355–62  
   legal philosophy and, 352–70  
   normativity perspective in, 353–5  
   property law and, 376, 380–3  
   special legal philosophy and, 12–13  
   value in, 369–70  
 traditionalism, common law and, 60–1  
 treaties, international law and role of, 393–7  
 trial  
   in criminal law, 322–4  
   nature of law and, 45  
 ‘truisms’ about law, 22–6  
 Tsarist Russia, legal system of, 41  
*tu quoque* arguments, right to punish and, 259–63  
 two-term rights, propositions of law and, 43  
 Tyler, Tom, 107–8  
 unfairness, discrimination law and concepts of, 174–5, 187–90  
 United Kingdom  
   legislative supremacy in, 285  
   unwritten constitution in, 274–5  
 United Nations, 117–18  
 United Nations Charter, 402  
 United States  
   caution regarding foreign cases in, 76–7  
   constitutional models for, 271–2  
   tort law in, 352–3  
 Universal Declaration of Human Rights (UDHR), 141–4, 163–4, 167, 291–3  
 US Bill of Rights, 159–60, 291–3  
 US Constitution, 159–60, 275–6  
 US Supreme Court, 279–80  
 utilitarianism  
   civil rights and, 297–300  
   instrumentality and, 362–9  
   legal reasoning and, 64–70  
   property law and, 383  
   tort law and, 356–7
- validity, nature of law and, 43  
 value  
   ethical principles and, 147–8  
   in tort law, 369–70  
 verdicts  
   economics-of-law emphasis on, 357–8  
   moral philosophy and, 361–2  
 Verdirame, Guglielmo, 389–407  
   international law debate and, 13–14  
 Vermeule, Adrian, 73  
 victims  
   of discrimination, 175–6, 181–7  
   punishment as vengeance for, 256, 258–9  
 Vienna Convention on the Law of Treaties, 393–4, 396  
 virtue ethics, 7–8  
   duties of virtue and, 135–7  
   rule of law and, 123–9  
 voluntarism  
   international law and, 393–4  
   punishment theory and, 259–63  
 voting, consent to political authority with, 200
- Waldron, Jeremy, 72–3, 152–70  
   on civil rights, 297–300  
   on constitutional law, 283  
   on personal integrity, 310–11  
   on public reason, 231–2  
   on rights and obligations, 9, 295n.13

424 Index

- Walzer, Michael, 1–2  
wealth maximisation, Utilitarianism and, 69  
Weber, Max, 194–5  
Weinrib, Ernest, 352–3, 364–6  
welfare maximisation, law and, 104  
Wenar, Leif, 300  
white slavery panic, common law reasoning and, 62–4  
Williams, Bernard, 8n.15, 160–1  
Williston's tramp, 332n.5  
will theory. *See also* free will  
    civil rights and liberties and, 295–300  
    Wittgenstein, Ludwig, 149  
    Wolf, Susan, 8n.15  
    Wolff, Christian, 389–90  
    women's rights, utilitarianism and, 64–70  
    Wooton, Barbara, 386–7  
    Wordsworth, William, 137–8  
    worthiness, in discrimination law, 183–4  
    wounding with intent, 319–22  
    Wright, Richard, 245–6  
    wrongfulness constraint, criminal law and, 326–7  
    Yeats, W.B., 139–40