

Index

- abortion, 4
 air chair, 163, 172–3
 Alexy, Robert, 137, 143–4, 150
 hybrid natural law view, 154
 anticompetitive conduct, 85–7
 apologies, 103–4
 appreciation (basic good), 50–1
 Aquinas, Thomas, 2, 16–18, 148, 151
 determinations, 93
 doctrine of double effect, 73
 Aristotle, 2, 26, 170
 artifact theory of law, 11, 180–1, 243
 artifacts, 11, 243
 acceptance theory of, 167
 authorship of, 157–63
 as cluster concepts, 162
 essential properties of, 156–60
 functions of, 11, 157, 170–3, 217–19
 institutional, 11, 165, 204
 intention-acceptance theory of, 168, 173
 intention theory of, 158, 160–3
 social, 165
 success conditions for, 11, 170–3
 artistic creation, 50
 Augustine, 2, 146
 Austin, John, 1, 127, 159, 174, 181
 Australian Constitution, 197, 200
 s. 41, 213, 217
 s. 51(xxi), 216
 authority, 11, 184–92, 244
 definition of, 182

 Bacon, Francis, 50
 baseline allocation of entitlements, 85–8
 basic commitments, 46, 53–5
 and doctrine of double effect, 79
 and practical reasoning, 68, 83
 basic goods, 3, 9, 16, 203, 241
 and community, 45
 evolution of, 27–30

 and harm, 63
 and human nature, 15, 30–3
 and intelligibility, 23, 36–9
 list of, 35, 56
 and normative reasons, 63–6
 participation in, 63
 plurality of, 43, 56–7
 as pre-moral, 22–4
 as self-evident, 16, 23
 theories of, 35–9
 unity of, 9, 41, 56–7, 241
 beauty, 50–1
 Berlin, Isaiah, 107
 Boyle, Joseph, 56
 Buchanan, James, 132

 Cage, John, 50
 Carrara, Massimiliano, 161
Carrie (film), 50
 cartels, 85–7, 94
 Catholicism, 4
 causation, 151
 Chappell, Sophie Grace, 27–30, 43, 56
 Chartier, Gary, 43
 children, 39, 42
 Chopin, Frédéric, 66
 cognitive bias
 in-group bias, 124
 and practical reasoning, 61
 coherence, 12, 26; *see also* integrity
 common good, 2, 10, 46–7, 83, 138, 188, 225
 aggregative conception of, 89–90
 definition of, 88
 distinctive conception of, 89–90
 duties, 10, 91–3, 242
 instrumental conception of, 88, 90
 multidimensional account of, 10, 88–93
 narrow and wide, 38, 88, 95–8
 theories of, 88–90
 thick and thin, 38, 88

- common law method, 122
 conscience, 26
 consensual law, 10, 118–20
 contextual meaning, 12, 197–202, 205–7, 244
 contextualism, 12, 209–13, 244
 narrow and wide, 213–17
 objections to, 219–23
 and practical reason, 225–7
 contraception, 4
 contracts, 112, 118, 120
 coordination problem(s), 94, 187–92
 cosmopolitanism, 38, 95–8
 counterfactuals, 31, 151, 217, 222
 craniotomy, 81
- Dahl, Robert, 132
 Daniels, Norman, 62
 Derrida, Jacques, 205–6
 determinations
 and common good, 83, 93–5
 and cosmopolitanism, 97
 definition of, 94
 and practical reasoning, 83–4
 Detmold, Michael, 137
 Di Stéfano, Alfredo, 53
 dialectical equilibrium, 59–63
 direct theory of reference, 140
 dispositional theory of value, 9, 16
 dispositions, 18–20
 first- and second-order, 21, 44
 learned and innate, 18
 resistibility of, 18
 dispute resolution, 119–20, 122, 125,
 128–9
 doctrine of double effect, 5, 73–9
 and basic goods, 78
 definition of, 74
 and pro tanto reasons, 77
 problem of closeness, 76–9
 reformulation of, 77
 Dworkin, Ronald, 183, 224
 chain novel, 229–30, 235, 238
 integrity, 227–34, 238–40
 dynamic thesis, 27–30
- Eagleton, Terry, 205
 economic coordination, 121
 education, 114, 130
 efficiency, 71
 Ehrenberg, Kenneth, 173
Eldest Child Act, 176, 178–9, 181
 emergent law, 10, 120–3
 etiquette, 120
 excellence in agency. *See* practical
 reasonableness
- fact–value distinction, 16, 124
 Ferguson, Adam, 120
 fetishism about goods, 43–4, 56
 fiction, 234–8
 Finnis, John, 2–5, 7–8, 11, 15–16, 22–4, 26,
 30–3, 36, 44, 56, 80, 118, 137, 139, 142–3,
 147, 154, 181, 183, 244
 common good, 89, 97
 focal meaning methodology, 148–9
 legal authority, 187–92
 marital good, 47–8
 salient coordinator account, 94
 state authority, 117, 133
 value of knowledge, 51–2
 weak natural law view, 146, 150–2
 first principle of practical reason, 56
 Fish, Stanley, 233
 free riders, 128
 freedom, 10, 242
 economic, 113
 of expression, 112
 negative and positive, 107–11
 normative, 110
 and political discourse, 111–14
 and rights, 111
 Freud, Lucien, 50
Friends (television show), 67–8
 friendship (basic good), 7, 29, 39, 45–8, 52, 67,
 97, 123, 237
 and common good, 90, 92
 and duties to others, 65
 Fuller, Lon L., 131, 137, 149
 hybrid natural law view, 154
 internal morality of law, 154
- Gadamer, Hans-Georg, 206–7
 game theory, 188
 games, 48–9
 globalisation, 97
 God, 3, 16, 31, 33
 agency of, 3, 244–6
 Kingdom of, 245
 Golden Rule, 68–9
 Goldsworthy, Jeffrey, 209–11
 good simpliciter, 33, 53, 246
 Graber, Mark, 133
 Grisez, Germain, 2–3, 22–4, 30–3, 56
 grounding thesis, 30–3
- Haidt, Jonathan, 61
 harm
 definition of, 63, 70
 economic, 85–7, 94
 and normative reasons, 63–6
 seriousness of, 70

- Hart, H. L. A., 1, 126, 139
 core and penumbra, 220
 critical reflective attitude, 127
 legal obligation, 174, 182
 Hayek, Friedrich A., 120–3, 128, 131–2
 health (basic good), 24, 41–2, 237
 health care, 114, 130
 hedonism, 43
 Heidegger, Martin, 198–200, 202
 heuristics, 61, 77
 Hilpinen, Risto, 158
 Hittinger, Russell, 15, 34
 hobbies, 48
 Hohfeld, Wesley Newcomb, 105, 109–11
 holistic judgments, 61
 Holmes, Oliver Wendell, 3
 Holmes, Sherlock, 235–7
 human nature, 7, 38, 123
 and basic goods, 15, 30–3
 and normative inclinations, 17
 Hume, David, 7, 16, 124
- imaginative immersion, 9, 17, 22, 25–6, 59,
 124–5
 inclinations, 19; *see also* normative inclinations
 incommensurability thesis, 66–8
 weak and strong, 66
 incommensurability of values. *See*
 incommensurability thesis
 instincts, 18–19, 44
 integrity, 12, 227–34
 in adjudication, 228–30
 in legislation, 228–9
 value of, 238–40, 244
 intelligibility, 23, 36–9, 64, 203
 and duties to others, 65
 intentionalism, 209–13
 interests, 99
 international law, 159
 interpretation, 12, 197–202, 205–7
 invisible hand, 121
 is-ought gap. *See* fact–value distinction
- Jackson, Frank, 140
 Jesus, 245
 judicial role, 12, 207–9, 213–17, 238–40,
 244
 jurisprudence
 analytical, 1–2
 descriptive and normative, 1–2, 9, 12
- Kahneman, Daniel, 61
kawaii, 50
 Kelsen, Hans, 186
King v. Jones, 213, 217
- knowledge, value of, 5, 51–3
 Kripke, Saul, 140
- language, 19, 120
 law
 artifact theory of, 11, 180–1, 243
 authority of, 11, 184–92, 244
 authorship of, 156–63
 claims of, 11, 183–7, 208
 and coercion, 126–8
 common, 122
 concept of, 2, 139, 173
 consensual, 118–20
 customary, 120–3, 156–63, 166
 defectiveness of, 11, 142–4, 177–80, 243–4
 duty to obey, 182, 192–5, 207–9
 efficacy of, 126–8, 176–80
 emergent, 120–3
 error theory of, 187
 function of, 8, 11, 138, 150, 154, 173–7, 204,
 217–19, 243
 as institutional artifact, 165–6, 168
 international, 119, 175
 interpretation of, 12, 197–202, 205–7
 meaning of, 140
 nature of, 1, 10, 139, 243
 popular view of, 182
 and social coordination, 187–92
 validity of, 11, 142–4, 173–7, 180, 243
 legal officials, 118, 120, 138–9, 159, 175, 184,
 196, 240
 legal positivism, 1–2, 8, 137
 inclusive and exclusive, 145–6
 social thesis, 145
 Leiter, Brian, 158
 Lewis, David, 151, 189–90, 222, 235–6
lex iniusta non est lex, 146, 150–2
 life (basic good), 9, 39–41, 56, 241
 and doctrine of double effect, 78
 and duties to others, 64
 Lindley, Nathaniel (Baron Lindley), 110
 love, 56
- MacCallum, Gerald, 107–9
 MacCormick, Neil, 146
 MacIntyre, Alasdair, 37–9, 54
 marital good, 47–8
 marriage, 47–8, 119
 McMahan, Jeff, 77
 meaning (basic good), 53–5
 and doctrine of double effect, 79
 and political discourse, 112
 money, 164–5, 168, 174, 204
 Moore, Michael S., 137, 139–40, 142–3, 149,
 154

- moral absolutism, 9, 72–5, 242
 critique of, 79–82
 definition of, 73
 moral outlook, 46
 moral residue, 103–4
 Murphy, Mark C., 40, 42–3, 137, 142–3, 146,
 149–50, 154, 186
 common good, 88–9, 92, 95–8
 determinations, 94
 weak natural law view, 152–3
- natural law
 biblical, 244–6
 definition of, 2
 evolution of, 6, 8, 27–30, 244–6
 history of, 3, 6, 244–6
 as historically extended, 6, 241
 and human nature, 7, 30–3, 241
 jurisprudence, 137–8, 146–8, 243
 as legal order, 10, 123–6
 objectivity of, 7, 25–6
 precepts of, 6–7
 as socially embodied, 6, 123–6, 241
 natural law thesis, 11, 134, 146–8, 180, 243
 arguments for, 145–50
 definition of, 137
 narrow and wide, 141–2
 weak and strong, 142–4, 146, 150–5
 naturalism (meta-ethics), 16
 new natural law theory, 2, 8, 15, 43, 117,
 133
 non-naturalism (meta-ethics), 16
 normative inclinations, 9, 20–1, 123, 241
 evolution of, 27–30
 and human nature, 17
 Nozick, Robert, 32
- Old Fashioned (cocktail), 55
 ordinary meaning, 12, 197–200, 220, 244
 originalism, 205, 212
 outlaws, 129
- parenting, 39, 42, 64
 Plato, 2
 play (basic good), 5, 48–50
 pleasure (basic good), 42–5, 67
 police, 130
 political discourse, 10, 100, 111–14
 Porter, Jean, 16
 poststructuralism, 205
 practical rationality, 2, 9, 11, 15, 203
 theories of, 16, 24–6
 practical reasonableness, 3, 5, 23–6, 59–63; *see*
also reasonableness (basic good)
 practices, 37, 48, 54, 204
- precedent, 122
 premarital sex, 4
 pre-moral thesis, 22–4
 price system, 121
 problem of closeness. *See* doctrine of double
 effect
 property, 112–14
 public choice theory, 132
 Putnam, Hilary, 140
- rational defectiveness, 141–2
 Rawls, John, 26
 original position, 62
 reflective equilibrium, 59–63
 Raz, Joseph, 11, 137, 140, 181, 183, 191
 claims of law, 175, 183–7
 service conception, 184–7
 reasonableness (basic good), 55–6, 204
 reasons
 and basic goods, 63–6
 and common good, 83
 decisive, 58, 82
 exclusionary, 185
 motivating, 58
 normative, 9, 58, 82
 pro tanto, 9, 58, 63–6, 69, 82, 242
 and rights, 99–102
 weighing, 68–72
 reflective equilibrium, 59–63
 wide and narrow, 62
 reflexes, 19
 restitution, 103–4
 rights, 10, 242
 absolute, 101
 definition of, 99
 and duties, 100, 105
 economic and social, 112–14, 130
 everyday, 102
 human, 100
 natural, 100
 not to be harmed, 100
 and political discourse, 101, 111–14
 and practical reasoning, 102–5
 prima facie, 101, 103, 106
 pro tanto, 101
 property, 112–14
 and reasons, 99–102, 105–7
 specificationism about, 102–5
 strict equivalence view of, 105
 supervenience view of, 106
 to support, 100
 types of, 99–102
 Rilke, Rainer Maria, 66
 Ross, W. D., 101
 rule of law, 131–3

Index

263

- same-sex marriage, 4, 47–8, 216
 sanctions, 126–8
 Saussure, Ferdinand de, 201–3, 205–6
 Schoenberg, Arnold, 50
 Searle, John, 163–7, 174, 176
 self-ownership, 113
 side effects. *See* doctrine of double effect
 Smith, Adam, 121–2
 Smith, Patti, 53
 social connectedness. *See* friendship (basic good)
 social coordination, 10, 120–3, 187–92, 242
 social facts, 206
 social thesis, 145
 Socrates, 51
 specificationism, 102–5
 speech acts, 150, 184
 spontaneous order, 120–3
 sports, 48
stare decisis. *See* precedent
 state, 10, 242
 role of, 117, 128–31, 133
 rule of law and, 131–3
 status function, 163–7
 Stoljar, Natalie, 222
 structured engagement, 48–50
 supervenience view of rights, 106
 Taylor, Charles, 70
 Ten Commandments, 245
 traditions, 38, 125
 tree bench, 160, 164, 166, 177
 Tullock, Gordon, 132
 Tversky, Amos, 61
 understanding (basic good), 51–3
 United States Constitution, Eighth Amendment,
 145
 unity of the good, 9, 41, 56–7, 241
 utilitarianism, 43, 56, 62
 Vermaas, Pieter, 161
 Walton, Kendall, 236
 weighing lives, 71
 wide contextualism, 12, 213–17, 244
 work, 49
 Wright, Orville, 173
 Wright, Wilbur, 173