

INDEX

- Allott, Phillip, 225
- Alter, Karen, 6, 84–86, 90–91
- American Convention on Human Rights, 173
- Applbaum, Arthur, 201, 203
- Arendt, Hannah, 119
- authority. *See also* sovereign authority
 - and democracy, 221
 - and legitimacy, 83–87, 96, 210–11
 - moral claims of law *per se*, 211–14
 - as consent-based, 216–17
 - and legal positivism, 211, 212, 213
 - as social mediation, 215–17
 - service conception of, 191–92, 217–21.
 - See also under* international courts, authority
 - dependence thesis, 218
 - independence condition, 219
 - normal justification thesis, 8, 191, 194, 218
 - pre-emption thesis, 218
- Bashir, Omar al-, 188, 247–48
- Benhabib, Seyla, 180, 187
- Berman, Paul Schiff, 110
- Besson, Samantha, 208n12, 225
- biotechnology, 167
- Bodansky, Daniel, 195
- Bourdieu, Pierre, 115–16, 121
- Brierly, James, 223
- Brighton Declaration, 2
- Brudner, Alan, 58, 71–74, 76, 96–99
- Brundtland World Commission on Environment and Development, 178
- Brunell, Thomas, 99–100
- Buchanan, Allen, 195
- Çalı, Başak, 206
- Capps, Patrick, 223, 224
- Cassese, Antonio, 261
- Christiano, Thomas, 210, 232
- Collingwood, R.G., 133–35
- Coşeriu, Eugeniu, 114
- Court of Justice of the European Union.
 - See under* European Union
- Cover, Robert, 110
- Danish Supreme Court, *Ajos*, 2, 90n21
- delegatus non potest delegare*, 4
- Drumbl, Mark, 251
- Dunn, John, 240, 259
- Dworkin, Ronald, 74n57, 213
- Ehrlich, Eugen, 111
- environmental law, 162, 177–79, 182–84
- Erdemović, Drazen, 260–65, 266
- European Convention on Human Rights, 44n25, 167, 173
- European Court of Human Rights, 124, 173, 175, 180
 - Brighton Declaration, 2
 - evolutive interpretation, 113
 - Nada v. Switzerland*, 79
 - noncompliance, 201, 204
 - reflexive law model, 92–93
 - state resistance to, 90n21, 188
- European Union
 - Charter on Human Rights, 176
 - citizenship of, 175, 176–77
 - Council, 64
 - Court of Justice of the European Union, 2–3, 90n21, 175–76, 177

- European Union (*cont.*)
 - European Systemic Risk
 - Board, 58, 75
 - free movement, 176
 - legal pluralism, 168
 - state consent, 177
 - supranational competences, 177
 - UK withdrawal, 1–2
 - Finnis, John, 216
 - Forestry Stewardship Council, 58, 61, 64, 67
 - Franck, Thomas, 201
 - Gardbaum, Stephen, 186
 - Geneva Conventions, 106, 172
 - German Constitutional Court, 124, 201
 - Geuss, Raymond, 253
 - Global Administrative Law, 57, 58, 63, 75, 77, 79
 - ‘Global Administrative Law’ project, 234
 - global governance. *See also* international criminal law; international law
 - accountability of administrative bodies, 186
 - entanglement with established legal forms, 61, 78–79
 - internal oversight, 61
 - rule-bound, 62
 - authority
 - compliance to, 6–7
 - conferred by urgency of international themes, 171
 - and democracy, 9, 169, 171, 185–86, 232–33
 - inadequately republican, 69–70
 - negative resistance to, 75–79
 - reinforced by cooperation over time, 171
 - reinforced by universality of human rights, 179–81, 187
 - state consent, 8–9, 230–36
 - uncertainty of, 162–63
 - coercive power, 59–61
 - development by exceeding mandates, 163
 - diverse forms of, 162, 165, 169–70
 - environmental pressures for, 162, 179, 182, 183
 - global civil society, 233
 - hierarchical relations lacking, 3
 - living international law, 4–5, 163–64
 - proliferation of, 59, 163
 - public vs. private administrative bodies, 58–61, 65
 - republican vs. positivist, 63–65, 75
 - scope increasing, 170–71
 - shaped by non-legal discourses, 165, 166–67
 - corporations, 181–82
 - expertise, 184–85
 - role of the internet, 181
 - ‘soft’ regulatory output, 231–32
 - specialisation increasing, 171
 - static conception of, 4, 5, 94–95, 165
 - transnational vs. international, 167, 181–82
 - treaty-based, 4, 64, 94–95, 104, 108, 161, 163, 165, 169, 226–27, 231
 - under-defined forms of, 162, 165
- GLOBALG.A.P., 58, 60, 64, 67, 77, 79
- Green, Les, 212, 216
- Gur, Noam, 214
- Habermas, Jürgen, 180, 184, 187
- Hart, H. L. A., 21, 62, 88, 98–99, 103, 119, 212, 216
- Hartmann, Florence, 266
- Hegel, G. W. F., 139–47
- Helfer, Laurence, 6, 84–86
- Henkin, Louis, 207
- Hobbes, Thomas, 30, 31–32, 83, 84, 216, 240–41, 242, 255–57, 258–60, 265
- human rights, 172–75, 179–81, 199
 - American Convention on Human Rights, 173
 - citizens’ role, 162
 - crimes against humanity, 174, 180
 - EU Charter on Human Rights, 176
 - European Convention on Human Rights, 44n25, 167, 173
 - Geneva Conventions, 106, 172
 - and immigration, 174

INDEX

291

- increasing efficacy of, 14, 15–16
- International Covenant on Civil and Political Rights, 34, 40
- Universal Declaration of Human Rights, 40, 172, 179, 180
- humanitarian intervention, 54–55
- Hume, David, 135–39, 142
- Hurd, Ian, 194
- Inter-American Court of Human Rights, 173, 175, 180
- International Court of Justice, 40, 130–31, 170, 180, 228
 - Article 38 of Statute, 224, 226
 - Barcelona Traction*, 132
 - evolutive interpretation, 113
 - Legality of Nuclear Weapons*, 130, 132, 148, 149–51, 154–55, 156–59
 - Nicaragua*, 228
- international courts
 - arbitral vs. judicial function, 2
 - authority, 191
 - based on constitutional democracy, 43–44
 - de jure* vs. *de facto*, 6–7, 84–85
 - service conception of, 192–95
 - compliance and free-riding, 199–200
 - justified noncompliance, 200–4
 - reasons vs. states’ objectives, 196–98
 - social vs. normative legitimacy, 195–96
 - state consent to, 84
 - and career of authority, 96–99
 - compliance
 - vs. deference, 192–93
 - domestic compliance partners, 91
 - by states, 89–91, 188–89
 - domestic courts, compared to, 88–90
 - and human rights, 199
 - political pressures, accommodation of, 91–92
 - principal–agent model, 94
 - reflexive law, 92–94
 - rise of, 81
 - subject-specific competences, 89
 - thickening of treaty law, 4–5, 95–96
 - treaty-based, 88
 - ‘trustee courts’, 99–100
- International Criminal Court. *See also* international criminal law
 - Bashir case, 188, 247–48
 - criticism of, 3, 188
 - jurisdiction
 - mass atrocities vs. lesser crimes, 50–54
 - state consent to, 47, 50
 - purpose of, 14–15
 - sovereign characteristics, 241–42
 - and Uganda, 258
- international criminal law. *See also* International Criminal Court; International Criminal Tribunal for the former Yugoslavia; International Criminal Tribunal for Rwanda
 - deterrence, 254–55
 - domestic criminal law, compared to, 244–47, 261, 262
 - duress as defence, 261–65
 - impact on vulnerable populations, 239–40, 247–48
 - interference in peace processes, 239, 248–49
 - local norms vs. establishing ‘universal’ precedents, 250–54
 - oppressive regimes, alignment with, 256–59, 267
 - peace vs. justice, 248–50, 267
 - politicisation, 238–39, 252, 262–63
 - state consent, 255–60
 - utopian demands, 238–39, 248, 260–66
- International Criminal Tribunal for Rwanda, 250–52
- International Criminal Tribunal for the former Yugoslavia, 260–65
- International Labour Organization, 173, 231
- international law. *See also* global governance
 - complexity increasing, 208–9
 - discontinuity thesis, 224
 - establishing existence of, 206
 - as evolutionary, 112–15

- international law (*cont.*)
 - and global governance, 230–36
 - impetus of actors, 109–11
 - New Haven school, 109–10, 112
 - transnational legal process theory, 110–11
 - jus dispositivum* and *jus cogens*, 127–28, *and passim* Chap. 5
 - ‘justified standard view’, 206, 207, 208, 209, 222, 229, 230, 232
 - and legal positivism, 207–8, 222
 - non liquet*, 152–53, 155, 156, 157
 - process–principle dialectic, 129, 136–37, 139, 141, 142, 143, 148–49, 151, 152, 153, 154–55, 156, 158, 159
 - semantic authority, 104–5, 117–18
 - discursively constructed, 122–25
 - dynamism, 105
 - and humanitarian law, 106–7
 - persuasive, 118–20
 - subservient, 121–22
 - and trade law, 107–8
 - sources doctrine, 103, 104, 206, 208, 222, 224–25, 226–30, 231, 234–35
 - state consent, 222–26
 - as insufficient condition, 230–36
 - as unnecessary condition, 226–30
 - static conception of, 102
 - and systems theory, 111–12
 - as two-stage system, 128–30, 138, 142, 143, 146, 147, 151, 152, 156, 159
- International Seabed Authority, 64, 65, 67
- International Tribunal for the Law of the Sea, 121
- Joerges, Christian, 184
- Kant, Immanuel, 9, 216, 222
 - and classical liberalism, 37–38
 - dialectic of authority, 58
 - ethical laws, 68
 - juridical laws, 68
 - negative resistance, 70–71, 74
 - republican governance, 64, 67
 - world confederacy, 40
- Keller, Rudi, 113–14
- Kelsen, Hans, 113
- Kiyani, Asas, 257–58
- Koskeniemi, Martti, 94, 168, 223, 238, 239
- Lauterpacht, Hersch, 223
- legal pluralism, 167–69
- living international law. *See under* global governance
- Luban, David, 267
- Luhmann, Niklas, 93, 111, 112, 122
- Madsen, Mikael Rask, 6, 84–86
- Mance, Jonathan, 204
- Martin, Margaret, 220
- Mashaw, Jerry, 57, 77–78
- McDougal, Myres, 109
- Mégret, Frédéric, 239n8, 267
- Merleau-Ponty, Maurice, 115
- Mian, Emran, 220
- Moreno-Ocampo, Luis, 238, 239
- Moyn, Samuel, 14, 15
- nationalism, 81, 88, 95n35
- Ndahimana, Grégoire, 250–52
- Ngoga, Martin, 251, 252
- Oakeshott, Michael, 257
- Permanent Court of International Justice, 118
 - Lotus*, 149, 150–51, 152–53, 155, 157
- Peter, Fabienne, 84
- Peters, Birgit, 83–84, 86
- Rawls, John, 51, 55, 202, 203–4
- Raz, Joseph, 7, 8, 67, 190–92, 194–95, 200, 201, 202–3, 204, 212–13, 214, 215–16, 217–21
- Reisman, Michael, 109–10
- Robinson, Darryl, 238–39, 249
- Rousseau, Jean-Jacques, 33, 222
- Ruggie, John, 198
- Schaffer, Johan, 83–84, 86
- Shany, Yuval, 195, 198
- Shapiro, Scott, 211
- South Africa, 188

INDEX

293

- sovereign authority. *See also* authority
career of authority, 17–20,
 71–74, 96–99
constitutional, 33–37
 communitarian, 45–48
 egalitarian, 41–45
 libertarian, 37–41
de facto, 21–24
de jure, 24–28
just authority, 48–50
legitimate, 28–33
Hobbesian, 240–41, 242,
 255–57, 258–60
internal completeness vs. internal
 finality, 15–17, 54–55
negative resistance to, 70–71, 74
republican, 67–69
sovereign immunity, 52–53, 197
Westphalian model, 15, 17, 19,
 54, 55–56
- Stewart, Richard, 69–70
- Sweet Stone, Alec, 99–100
- Teubner, Günther, 92–94, 169
- Transatlantic Trade Investment
 Partnership, 197
- Tucker, Adam, 219
- Tuori, Kaarlo, 166–68
- ultra vires* doctrine, 4
- United Kingdom
 resistance to European Court of
 Human Rights, 90n21
- Supreme Court, *A v. HM Treasury*, 78
- withdrawal from EU, 1–2
- United Nations
 Charter, 154, 169
Convention Concerning the Status
 of Refugees, 172
- Environment Programme, 231
- Framework Convention on
 Climate Change (Paris
 Agreement), 3, 178
- General Assembly, 228, 231
- High Commissioner for
 Refugees, 119
- Security Council, 67, 231
 Sanctions Committee, 61, 79
- and sustainable
 development, 178–79
- Universal Declaration of Human
 Rights, 40, 172, 179, 180
- USA
 evolution of administrative law,
 57, 77–78
- and former Yugoslavia, 266–67
- Paris Agreement, withdrawal
 from, 3, 178
- Supreme Court, *United States v. Butler*, 61
- Vienna Convention on the Law of
 Treaties, 132, 167, 226
- Weber, Max, 62–63, 66, 115, 195
- World Check, 60
- World Trade Organization, 167
 Appellate Body, 107–8, 113, 117–18,
 120, 123
 criticism of, 188, 197
 and environmental protection, 182