

CONTENTS

ABBREVIATIONS

PART ONE

| | |
|---|----|
| I. EVALUATION AND THE DESCRIPTION OF LAW | 3 |
| 1. The formation of concepts for descriptive social science | 3 |
| 2. Attention to practical point | 6 |
| 3. Selection of central case and focal meaning | 9 |
| 4. Selection of viewpoint | 11 |
| 5. The theory of natural law | 18 |
| <i>Notes</i> | 19 |
| II. IMAGES AND OBJECTIONS | 23 |
| 1. Natural law and theories of natural law | 23 |
| 2. Legal validity and morality | 25 |
| 3. The variety of human opinions and practices | 29 |
| 4. The illicit inference from facts to norms | 33 |
| 5. Hume and Clarke on 'is' and 'ought' | 36 |
| 6. Clarke's antecedents | 42 |
| 7. The 'perverted faculty' argument | 49 |
| 8. Natural law and the existence and will of God | 49 |
| <i>Notes</i> | 50 |

PART TWO

| | |
|--|----|
| III. A BASIC FORM OF GOOD: KNOWLEDGE | 59 |
| 1. An example | 59 |
| 2. From inclination to grasp of value | 60 |
| 3. Practical principle and participation in value | 63 |
| 4. The self-evidence of the good of knowledge | 64 |
| 5. 'Object of desire' and objectivity | 69 |
| 6. Scepticism about this basic value is indefensible | 73 |
| <i>Notes</i> | 75 |
| IV. THE OTHER BASIC VALUES | 81 |
| 1. Theoretical studies of 'universal' values | 81 |

| | |
|---|-----|
| 2. The basic forms of human good: a practical reflection | 85 |
| A. Life | 86 |
| B. Knowledge | 87 |
| C. Play | 87 |
| D. Aesthetic experience | 87 |
| E. Sociability (friendship) | 88 |
| F. Practical reasonableness | 88 |
| G. 'Religion' | 89 |
| 3. An exhaustive list? | 90 |
| 4. All equally fundamental | 92 |
| 5. Is pleasure the point of it all? | 95 |
| <i>Notes</i> | 97 |
| | |
| V. THE BASIC REQUIREMENTS OF PRACTICAL REASONABLENESS | 100 |
| 1. The good of practical reasonableness structures our pursuit of goods | 100 |
| 2. A coherent plan of life | 103 |
| 3. No arbitrary preferences amongst values | 105 |
| 4. No arbitrary preferences amongst persons | 106 |
| 5. Detachment and commitment | 109 |
| 6. The (limited) relevance of consequences: efficiency, within reason | 111 |
| 7. Respect for every basic value in every act | 118 |
| 8. The requirements of the common good | 125 |
| 9. Following one's conscience | 125 |
| 10. The product of these requirements: morality | 126 |
| <i>Notes</i> | 127 |
| | |
| VI. COMMUNITY, COMMUNITIES, AND COMMON GOOD | 134 |
| 1. Reasonableness and self-interest | 134 |
| 2. Types of unifying relationship | 135 |
| 3. 'Business' community and 'play' community | 139 |
| 4. Friendship | 141 |
| 5. 'Communism' and 'subsidiarity' | 144 |
| 6. Complete community | 147 |
| 7. The existence of a community | 150 |
| 8. The common good | 154 |
| <i>Notes</i> | 156 |

| | |
|--|-----|
| VII. JUSTICE | 161 |
| 1. Elements of justice | 161 |
| 2. General Justice | 164 |
| 3. Distributive Justice | 165 |
| 4. Criteria of distributive justice | 173 |
| 5. Commutative Justice | 177 |
| 6. Justice and the State | 184 |
| 7. An example of justice: bankruptcy | 188 |
| <i>Notes</i> | 193 |
| VIII. RIGHTS | 198 |
| 1. 'Natural', 'human', or 'moral' rights | 198 |
| 2. An analysis of rights-talk | 199 |
| 3. Are duties 'prior to' rights? | 205 |
| 4. Rights and the common good | 210 |
| 5. The specification of rights | 218 |
| 6. Rights and equality of concern and respect | 221 |
| 7. Absolute human rights | 223 |
| <i>Notes</i> | 226 |
| IX. AUTHORITY | 231 |
| 1. The need for authority | 231 |
| 2. The meanings of 'authority' | 233 |
| 3. Formation of conventions or customary rules | 238 |
| 4. The authority of rulers | 245 |
| 5. 'Bound by their own rules'? | 252 |
| <i>Notes</i> | 254 |
| X. LAW | 260 |
| 1. Law and coercion | 260 |
| 2. Unjust punishment | 265 |
| 3. The main features of legal order | 266 |
| 4. The Rule of Law | 270 |
| 5. Limits of the Rule of Law | 273 |
| 6. A definition of law | 276 |
| 7. Derivation of 'positive' from 'natural' law | 281 |
| <i>Notes</i> | 291 |
| XI. OBLIGATION | 297 |
| 1. 'Obligation', 'ought', and rational necessity | 297 |
| 2. Promissory obligation | 298 |

| | |
|---|-----|
| 3. Variable and invariant obligatory force | 308 |
| 4. 'Legally obligatory': the legal sense and the moral sense | 314 |
| 5. Contractual obligation in law: performance or compensation? | 320 |
| 6. Legal obligation in the moral sense: performance or submission to penalty? | 325 |
| 7. Obligation and legislative will | 330 |
| 8. 'Reason' and 'will' in decision, legislation, and compliance with law | 337 |
| 9. Moral obligation and God's will | 342 |
| <i>Notes</i> | 343 |
| XII. UNJUST LAWS | 351 |
| 1. A subordinate concern of natural law theory | 351 |
| 2. Types of injustice in law | 352 |
| 3. Effects of injustice on obligation | 354 |
| 4. 'Lex injusta non est lex' | 363 |
| <i>Notes</i> | 367 |
| PART THREE | |
| XIII. NATURE, REASON, GOD | 371 |
| 1. Further questions about the point of human existence | 371 |
| 2. Orders, disorders, and the explanation of existence | 378 |
| 3. Divine nature and 'Eternal Law': speculation and revelation | 388 |
| 4. Natural law as 'participation of Eternal Law' | 398 |
| 5. Concluding reflections on the point and force of practical reasonableness | 403 |
| <i>Notes</i> | 411 |
| INDEX | 415 |

INDEX

- Abortion, 117, 124, 133
 Abril, V., 54
 Ackrill, J. L., 77
 Acts, action(s), 60–4, 100, 122–3, 152, 338–41
 — and omissions, 195
 Acts, action(s), 60–4, 100, 122–3, 152, 338–41
 — and omissions, 195–6
 Acts-in-the-law, *see* Juridical acts
 Adler, Mortimer J., 294
 Aesthetic experience, 87–8, 98
 Albania, 170
 Almond, G. A., 8
 Alphonsus de Liguori, 331
 Altruism, 116, 158, *see also* Love
 Ambrose, 76
 America(n), 60, 183, 248, 253, 258, 272, 293–4, 347, 356
 Amin, Idi, 11
 Analogy, 10, 20, 35, 158, 162–3, 279–80, 294, 389, 392–3, 403, 409, *see also*
 Focal meaning
 Angelo de Clavasio, 346
 Animals, 194–5
 Anscombe, G. E. M., 77, 132, 195, 230, 343
 Anthropology, 34, 81–5, 97, 209, 278
 Aquinas, Thomas
 — on conscience, 125, 133
 — on *convenientia*, 45, 55, 403
 — on definition in philosophy of human affairs, 365–6
 — on derivation of positive from natural law, 27–8, 281–9, 291, 295, 334, 360
 — on distinction between ‘natural’ and ‘reasonable’, 35–6
 — on essence and existence, 410–11
 — on Eternal Law, 389, 391, 398–403, 412
 — on folly and corruption, 30, 128, 225
 — on freedom, 127, 130, 401
 — on friendship, 158
 — on God, 32, 46, 48, 52, 95, 130, 391, 396, 404, 411–13
 — on good, 75–6, 78–9, 367–8
 — on human goods and ends, 31, 52, 94–5, 98, 130, 398, 401–3
 — on inclinations, 34, 401–3
 — on ‘innate ideas’, 32, 401
 — on intelligence, 399–400
 — on ‘is’ and ‘ought’, 33, 36, 47, 55
 — on *jus gentium*, 296
 — on justice, 179, 185, 186, 193–4, 196, 360, 367
 — on law (positive, human), 28, 194, 257, 259, 292, 294, 342, 360–1, 363–5, 367–8
 — on legal validity, 27–8, 360, 363–5
 — on natural law, 29–30, 33–4, 45–46, 47–8, 51, 52, 53, 76–8, 101, 128, 129, 225, 296, 334, 361, 396, 398–403
 — on obligation, 45–6, 48, 55, 193, 334, 340–1, 345, 360–1
 — on order, 157
 — on participation, 399–403, 413
 — on ‘practical’, 20
 — on practical reason(ing), 34, 36, 45, 52, 53, 77–8, 98
 — on property, 171, 186
 — on *prudencia*, 51, 52, 102, 128, 398
 — on reason and will, 46, 54–5, 337–342, 347, 413
 — on right (*jus*), 206–8, 228, 360–1, 364
 — on rulership, 257–9
 — on self-evidence, 32, 51, 67, 78, 101
 — on self-love, 131
 — on social contract, 257
 — other references, iv, 55, 160, 254
 Arendt, Hannah, 77
 Aristotle (and Aristotelian)
 — on chance, 130
 — on citizenship, 253–4, 259, 366

Aristotle—*cont.*

- on coercion in law, 29, 260, 291
- on community and common good, 145–6, 148, 156, 157, 160
- on doing *v.* making, 197
- on ethics, 31, 101–3, 128–9, 176, 343, 365–6, 392
- on focal meaning and central cases, 9–11, 20, 129, 253, 363, 365–6
- on friendship, 144–5, 157, 158, 397–8
- on God, 392–3, 394–6, 397, 401, 402, 413
- on indemonstrable principles, 32, 67, 78
- on 'innate ideas', 32, 76, 401
- on 'is' and 'ought', 47, 55
- on integrating good(s), (end(s)), 31, 103, 129, 130, 197, 395
- on justice, 161, 163, 165, 178–80, 185, 193–4, 196
- on meanings of 'good', 76, 78–9, 157
- on method in social science, 9, 16, 129, 259, 365–6
- on natural and positive law, 28, 291, 294–5
- on necessity, 35
- on obligation, 55, 343
- on *physis* (nature), 103, 129, 394–5
- on practical reasoning, 77, 347
- on practical reasonableness, 101–103, 176, 197
- on 'practical' *v.* 'theoretical', 20, 35, 36, 59
- on property, 171
- on Rule of Law, 267, 363
- on self-love, 131, 158
- on social contract, 149, 159–60
- on teleology, 52, 70, 78–9, 393, 397
- on the 'mean', 102, 128
- on the state (*polis*), 148, 159, 193, 257–9
- on understanding (*nous*), 394–5, 397, 401
- on variety of moral opinions, 29
- other references, iv, 45, 47, 376

Arnold, Morris, 50

Arrian, 131

Atiyah, P. S., 196

Aubert, J.-M., 228

Augustine of Hippo, 156, 157, 258, 360, 363, 378, 389, 393, 411–12

Austin, John, 4–6, 13, 18, 20, 253, 259, 344, 354–5, 357

Authenticity, 88–90, 146–7, 168, 220, 223, 230

Authority

- defined, 233–4
- legal, 260, 289–90, 352–5
- need for, 23, 220, 231–3, 246, 248, 255, 267, 289, 318, 335
- of conventions and other rules, 238–45, 359
- of rulers (government), 153, 244–54, 258–9, 263, 272–3, 275, 289, 351–3, 359–60
- of usurpers, 251, 258, 359
- in morals, 125
- 'speculative', iv, 234

Autonomy, 169, 192, 261, 308, *see also* Freedom: Subsidiarity

Bankruptcy, 188–92, 197

Barker, Ernest, 159

Barotse, 209–10, 297

Barry, Brian, 118

Basu, Durga Das, 229

Bayne, D. C., 346

Beckerman, Wilfred, 118

Beis, Richard H., 97

Bellarmino, Robert, 248, 257

Benedict, Ruth, 98

Bentham, Jeremy, 4–5, 18, 19, 116, 132, 289, 296, 348

Bible

- Exodus (20:2; 34:5), 392
- Deuteronomy (5:29; 5:33–6:6), 392
- II Samuel (12:7), 108
- Psalms (4:7), 400, 402
- Proverbs (8:30–1), 409, 413
- Tobit (4:16), 131
- Ecclesiasticus (7:36), 104
- Matthew (7:12), 131
- Luke (6:13), 131, (10:32), 131, (12:20), 105
- Romans (1:19–20), 393, (3:8), 132
- I Corinthians (1:22–4), 396
- II Thessalonians (3:10), 170

Blackstone, Sir William, 50, 254, 258, 259, 292–3, 295, 329, 346, 364

Bobbio, Norberto, 33

Bonaventure, Saint, 345

Boyle, Joseph M. Jr., 78, 80, 127

- Bracton, Henry de, 259
 Brecht, Arnold, 51-2, 53, 411
 Brock, Dan W., 131
 Broiles, R. David, 53
 Brownlie, I., 229
 Buckland, W. W., 228
 Burke, Edmund, 256-7
 Butler, Joseph, 38, 53
- Cajetan (Thomas de Vio), 185, 187, 196
 Carrió, Genaro R., 295
- Cases
- *Ahmed Angullia v. Estate and Trust Agencies (1927) Ltd.*, 323
 - *Australia v. France*, 344
 - *Australian Communist Party v. Commonwealth*, 294
 - *Beswick v. Beswick*, 203, 227
 - *Cooper v. Jarman*, 323
 - *Dennis v. United States*, 294
 - *Ethiopia v. South Africa*, 256
 - *Hadley v. Baxendale*, 182
 - *Madzimbamuto v. Lardner-Burke, N. O.*, 275
 - *North Sea Continental Shelf*, 239, 256
 - *North Sea Fisheries (G.B. v. Iceland)*, 256
 - *Rookes v. Barnard*, 324
 - *United States v. La Franca*, 347
 - *Wilson, re. ex parte Vine*, 189
- Castro, Alphonsus de, 326-8, 330-2, 346
 Casuistry, 123-4, 225-6, 230
 Catholic(ism), iv, 107-8, 124, 130, 133, 158, 159, 194, 195, 196, 206, 215-16, 291, 396, 409
 Causation, 383-93, 397, 399, 402, 404-6, 412
 Central cases, analysis of and by reference to, 9-16, 20, 26-7, 158, 260, 265-6, 276-81, *see also* Ideal-types; Focal meaning
 Chisholm, Roderick M., 343
 China, 170
 Chroust, A.-H., 54
 Chrysippus, 411
 Cicero, 40, 55, 76, 89, 98, 132, 193, 197, 258, 292, 294, 363, 374-7, 411-12
 Clarke, Samuel, 36-44, 47-8
 Cleanthes, 411
 Cohen, Jonathan, 292
 Coercion (compulsion) in law, 5, 29, 261-267, 270, *see also* Sanctions
 - non-punitive, 187
 - *vis coactiva*, 254, 259, 291
- Collaboration, *see* Co-operation
 Commitment(s), 64, 93, 96, 100, 104, 105, 109-10, 115, 117-18, 120, 129, 131, 144, 175, 192, 303, 397
 - meanings of, 144
- Common good, 23, 83, 125, 139-40, 141-143, 160-6, 171-2, 193-4, 214, 217-18, 221, 230, 233, 240, 244, 250, 260-4, 270, 274, 276, 303-7, 309, 316-19, 324, 335, 337, 341, 359, 371
 - defined, 153, 154-6, 160, 164, 165, 168, 210, 303, 372
- Common Prayer, Book of, 309
 Community, *see also* Friendship, Common Good; Sociability; Society
 - as ongoing state of affairs, 135-60, 380
 - as entity (group), 135, 150-3, 160, 372-3
 - 'complete', 147-50, 192, 276
- Comte, Auguste, 158
 Conflicts, of legal rules, 270-1, 311, 344, 349-50
 Conscience, 84, 125-6, 133, 261, 291, 329-30, 348, 355, 360-2
 Consent, of the governed, 247-8, 250-2, 257-8
 Consequentialism, 112-19, 121, 131-2, 221, 226, *see also* Cost-benefit; End-state; Utilitarianism
 Constitutional government, 11, 250, 272, 274-6, 290, 293-4, 352-3, 363, *see also* Rule of Law
 Contingency, 130, 379; cf. 386, 390
 Contraception, 55, 124, 133
 Contract, 139-40, 187, 284, 288, 299, *see also* Social Contract; Promises
 - law of, 181-3, 196, 286, 299, 307, 311, 320-5, 343-6
 - as institution, 268
 - obligation of, 311, 320-5, 344-6
 - rights created by, 201-3, 227
- convenientia*, *see* Fitness
 Convention(s), 153, 238-45, 267
 Cooper, John M., 129, 132, 157, 197, 343
 Co-operation (collaboration), 83, 138-160, 167, 232-3, 324-5, 335, *see also* Co-ordination problem
 - defined, 138, 165
- Co-ordination problem, 153, 167, 232-3, 244-9, 256, 276, 306, 335, *see also* Co-operation
 - defined, 255

- Corporations, 153, 160, 268, *see also* Community
- Cost-benefit considerations, 111–12, 115, 122, 131, *see also* Consequentialism
- Courts, *see* Judge
- Cranston, Maurice, 229
- Criminal law, 261, 270, *see also* Coercion; Punishment; Sanctions
- Cudworth, Ralph, 38, 53
- Culture(s), 30, 83–4, 91, 145, 147, 150, 220, 379–81
— defined, 137
- Culverwel, Nathaniel, 47, 54
- Cumberland, Richard, 54
- Curiosity, 60–6, 72, 76, 84
- Custom, 14, 238–45, 247, 268, 277, 286–287, 295, 306
- Daniel, William, 346–7
- Danto, Arthur C., 364
- D'Arcy, Eric, 133
- David, King, 107
- Davitt, Thomas E., 97, 98, 347
- Death, 104, 108, 111, 114, 372, 407
- Definition, *see also* Focal meaning
— explanatory, 1–22, 265, 277–9
— in jurisprudence and other descriptive social sciences, 1–22, 26–27, 162, 170, 259, 265, 278–9, 358
— lexical, 162, 265, 277
— stipulative, 202–3, 265–6
- Del Vecchio, G., 194, 196–7
- Delos, J. T., 160
- D'Entrèves, A. P., 25
- Deserts, 175, 261, *see also* Gratitude; Retribution
- Desire, 69–71, 78–9, 132, *see also* Inclinations
- Detachment, 109–10, 131
- determinatio*, 284–9, 295–6, 380
- Dhokalia, R. P., 296
- Dicey, A. V., 293
- Diggs, B. J., 156
- Dignity, 225, 272–3, 353, *see also* Personality
- Diogenes Laertius, 295, 411
- Directive force (*vis directiva*) of law, 254, 259, 260, 314–20, 348, *see also* Obligation
- Dognin, P.-D., 194, 196, 228
- Double-effect, principle of, 120, 122–4, 133
- Dostoyevsky, Fyodor, 176, 195
- Driedo, John, 327
- Durkheim, E., 156
- Duska, Ronald, 25, 79
- Dworkin, Ronald M., 21, 194, 213, 221–3, 224, 230, 312, 314, 344, 356
- Edel, M. (with A. Edel), 97
- Edgley, Roy, 77
- Education, 83, 87, 94, 138, 159, 217, 222, 229, 232, 408
- Edwards, Paul, 412
- Empiricism, 79
- 'End', of human persons, *see also* Goods
— ends and means, 64, 77, 82, 226, 230, 289, 316, 337–42
— dominant *v.* inclusive ends, 113, 129, 132, 401–2
— 'last end' (*ultimus finis; summum bonum*), 30–1, 51, 377, 402
- End-state, 192–3, 197, 220, 288, *see also* Consequentialism
- Epictetus, 131
- Equality, 162–3, 173–5, 177, 190, 192, 193, 194–5, 221–3, 230, 262
- Estoppel, 299, 344
- Eternal Law, 389–403, 412
- Ethics, ethical, 101, 128, *see also* Moral
'*etiamsi daremus . . .*', *see* God, hypothetical non-existence of
- eudaimonia*, 103, 129, 130, 395–6, *see also* Flourishing
- European Convention (on human rights), 211–12, 215, 224
- Evil, 36, 114, 265, 274, 391, 393, 405, 410, 412–13
— moral, 342
- Exclusionary reason, 231, 308–9, 345, 352
— defined, 234, 255
- Existence, 382–9, 411–12
- Facts and norms, *see* 'Is' and 'ought'
- Faculty
— perverted, 48, 55
— psychology, 340
- Fairness, 143, 149, 175, 206, 257, 261–4, 273–4, 291, 303, *see also* Impartiality; Justice
- Family, 87–8, 136–8, 145–6, 147–8, 151, 157–9, 175, 216–17, 303, 367
- Fanaticism, 110, 113, 274, 410
- Farnsworth, E. A., 343
- Farrell, Walter, 347
- Feinberg, Joel, 214, 230, 343
- Feuerbach, L., 411

- Finnis, J. M., 50, 80, 98, 132, 133, 194, 226–30, 275, 291, 295
- Fitness (*convenientia*, fittingness), 38–47, 55, 403, 412, *see also* Nature, conformity to
- Flourishing, human, 23, 67, 87, 144, 192, 195, 219–21, 378, 380, 395–6, 398, *see also* Goods, human
- Focal meaning, 13, 20, 158, 266, 277–81, 294, 363–6, 368, *see also* Analogy; Central cases
- Fortenbaugh, W. W., 20
- Fortescue, John, 251–2, 258, 275
- Franck, Thomas M., 344
- Frankena, W. K., 98, 128
- Freedom, 84, 88, 90, 100, 130, 146, 220, 263–4, 291, 384, 389, 401, 413, *see also* Autonomy; Liberty (—right); Speech, freedom of
- and rights, 204–6, 207–9, 211–13
- Friendship, 83, 88, 91, 92–3, 95, 97, 99, 141–8, 157–8, 220, 222, 303, 371–372, 397–8, 409–10
- defined, 142–3, 157–8
 - classification of types, 11, 141
- Freund, Julien, 21
- Fried, Charles, 78, 133
- Friedmann, Wolfgang, 25
- Fuller, Lon L., 8–9, 18, 227, 273–4, 292–4, 367
- Gaius, 209
- Galileo, 66
- Game(s), 98, 255, 267, 305, 408–10, *see also* Play
- Game-theory, 160, 255
- Gauthier, R. A. (with J. Y. Jolif), 20, 76, 158, 193, 196, 343, 413
- Geach, P. T., 53, 79, 132, 367, 384
- Germany, 171, 293
- Gewirth, Alan, 79
- Gierke, Otto, 256, 258
- Gilby, Thomas, 156
- Ginsberg, Morris, 97, 98
- Glover, Jonathan, 176–7, 195–6
- Gluckman, Max, 210, 344
- God
- existence of, 32, 48–9, 52, 382–8, 412
 - hypothetical non-existence of, 43–44, 54, 90
 - love of (friendship with), 32, 46, 52, 95, 113, 392, 397–8, 406–10
 - nature of, 388–93, 404–5, 408–9
 - revelation of, 392–8, 402, 406, 411
 - will of, 39, 44, 48–9, 130, 342–3, 350, 388, 403–5, 409–10
 - other references, 38, 89–90, 95, 108, 259
- Golden Rule, 107–8, 131, *see also* Impartiality
- Good, common, *see* Common good
- Goods, human
- aggregation of, 213, *see also* Consequentialism
 - basic, 30, 34, 59, 63, 69–70, 80–99, 105–6, 371–2, 376
 - particular objectives, 61, 75, 82, 118, 379
 - general form (value), 61–4, 75–6, 77, 82, 379, *see also* Participation
 - intrinsic, 62, 70, 76, 94, 109, 130
 - desired, desirable, perfecting, 78–79
 - respect for basic goods, 118–25, 132
- Gough, J. W., 257, 258
- Gratian, 195
- Gratitude, 149, 175
- Gregory de Valencia, 347
- Gregory, of Rimini, 54
- Grisez, Germain G., v, 53, 55, 76, 77, 78, 80, 98, 127, 129, 131, 132, 157, 230, 382, 384, 387, 412–13
- Grotius, Hugo, 43–4, 54–5, 207–8
- Group(s), *see* Community
- Grover, Robinson A., 132
- Grua, G., 197
- Haines, C. G., 50
- Hale, Matthew, 254, 258, 259, 292
- Hardie, W. F. R., 20, 77, 103
- Hare, R. M., 128, 345
- Harré, R., 78
- Harrison, Jonathan, 37, 53
- Hart, H. L. A.
- on analogy, 10, 20
 - on functions of law, 6–8, 14, 292
 - on internal viewpoint, 226, 257
 - on justice, 163, 196, 359
 - on method in jurisprudence, 6–8, 10, 12–14, 21, 160, 327
 - on natural law and natural law theory, 18, 26, 29–31, 34, 50, 52–3, 78, 82, 238, 293, 364–5, 367
 - on obligation, 313, 327, 344, 359, 367
 - on rights, 204–5, 226–7

- Hart, H. L. A.—*cont.*
 — other references, 132, 257, 345
 Hegel, G. W. F., 387
 Henry of Ghent, 328
 History, 24, 50, 373–4
 Hitler, Adolf, 11
 Hobbes, Thomas, 160, 208, 227–8, 344, 348–9
 Hodgson, D. H., 131, 345
 Hohfeld, W. N., 199–204, 226–7
 Holmes, O. W., 196, 322–5, 329, 346–7
 Homans, G. C., 151
 Honoré, A. M., 160, 194, 197, 226, 258, 292, 295–6
 Hooker, Richard, 281–5, 412
 Hostages, 117, 119, 123, 224
 Howe, Mark de W., 346
 Hudson, Manley O., 256
 Huizinga, Johan, 98
 Hume, David, 36–9, 41–2, 47–8, 53–4, 131, 258, 301–2, 313, 325, 343, 381–2, 384
- Ideal, *see* Value
 — ‘idealism’, 29
 — ideal world, 164, 170, *cf.* 191
 Ideal-types, 9, 20, *see also* Central cases
 Ideology, 16, 248, 274
 Impartiality
 — in respect of persons, 106–9, 112, 116, 131, 143, 149, 164, 303–4, 307, 371, 397
 — in respect of values, 105–6, 112
 Inclinations, human, 34, 60–1, 65–6, 70, 72, 76, 78, 82, 84, 91, 94, 97, 104, 127, 371, 379–80, 400–3
 Indifferent matters (*adiaphora*), 284–7, 295
 Institutions, 227, 268, 271, 276, 278, 290, 299, 312, 356–7
 Intelligence, 34, 47, 82, 137, 394–5, 399–400, 402, *see also* Reasonableness
 Interest-theory of rights, 203–5, 227
 International
 — community, 150, 156, 160, 175, 177, 240, 244–5, 265
 — law, 238–45, 265
 Interpretation, 286–7, 316, 356
 ‘Is’ and ‘ought’ (‘fact’ and ‘norm’), 33–48, 50, 53, 66, 73, 85
 — in classical natural law theory, 20, 36, 47–8, 55
- Jaki, S. L., 412
 James, William, 132, 293
 John XXII, 228
 Jones, Sir William, 289, 296
 Judge (judicial power and functions), 13–14, 20, 21, 179, 196, 271, 275–6, 284, 286–90, 292, 295–6, 317, 321–323, 356–7, 360, 362
 Juridical acts, 200, 268–9, 288, 292, 353
 — defined, 226
 Jurisprudence, iii–iv, 3–6, 9–19, 20–1, 23, 234, 236, 265, 270, 275, 289, 290, 292, 296, 351, 354, 357–9
jus, 206–9, 228
jus gentium, 296
 Justice, 23, 161–97, 205, 210, 232, 243, 259, 260, 270, 273, 288, 351–62, 367, *see also* Common good; Fairness; Impartiality
 — defined, 161–4, 165
 — commutative, 166, 177–86, 188–193, 196, 223, 230, 304, 353–4
 — distributive, 165–77, 185–93, 196, 223, 230, 352–3
 — general *v.* particular, 164–6, 169, 171, 185, 193–4, 196, 304
 — ‘legal’, *see* general
 — ‘palm-tree’, 267
- Kant, Immanuel, 28, 122, 349, 373–4, 377, 381, 384, 387, 411
 Kateb, George, 77
 Kelsen, Hans,
 — on method in jurisprudence, 5–6, 9–10, 13, 19, 22
 — on natural law, 18, 25, 26–9, 50
 — other references, 284, 291, 327, 344, 349–50
 Kenny, Anthony, 413
 Knowledge, 59–76, 78, 80, 81, 106, 379–380, 394–5
 — and truth, 59, 61
 Kyburg, Henry E., 78
- Law (human, positive), *see also* Legal System; Rule of Law
 — creation of, 238–45, 268–70, 276–277, 290
 — derivation from natural law, 24, 27, 281–90, 294–6
 — formal features of, *see* Legal system
 — General Principles of, 261, 288, 296
 — of lesser groups, 148
 — penal, purely, *see* Penal law
 — practical conceptions of, various,

- Law—*cont.*
 4, 6, 266–7, 273
 — significance (functions, importance), 6–9, 14–15, 269
 — sources of, 290, 320
 — ‘supremacy’ of, 8, 148, 150, 159, 260
 — theories of, *see* Jurisprudence
 — unjust, 294, 351–67
- Lawson, F. H., 196–7
- Legal science, 318–20, *see also* Viewpoints, legal
- Legal system, 148, 159, 266–73, 276–280, 282–4, 291–2, 294–6, 311, 317, 320, 355–7
- Lehmkuhl, A., 331
- Leibniz, G. W., 384, 387, 412
- Lenin, V. I., 262
- Lewis, D. K., 256
- Liberty (right), 199–201, 207–8, 227, 362
- Life, human
 — basic good of, 83, 86–7, 91–3, 96, 281
 — right to, 202, 211, 214, 218–19, 229, *see also* Abortion; Murder
- Life-plan, 83, 103–5, 109–10, 113, 129–130, 155, 210, 233
- Locke, John, 208, 228, 256–7, 292, 295, 337
- Logic, 67–8, 71, 74, 78, 273, 371, 385, 387
 — ‘of the will’, 34, 42, 349
 42, 349
- Lonergan, B. J. F., 22, 79, 413
- Love, 86, 158, *see also* Friendship
- Lowie, R. H., 98
- Lucas, J. R., 292
- Lycophron, 159
- Lying, 55, 124, 184, 225
- MacBeath, Alexander, 97
- MacCormick, D. N., 131, 160, 227, 255, 257, 344
- MacDonald, Margaret, 33
- Mackie, J. L., 79, 227
- Maguire, J. P., 413
- Maine, Henry Sumner, 156, 228, 344
- Maitland, F. W., 66, 258–9
- Majority rule, 253, 256–7
- Malebranche, Nicolas, 38
- Mangan, J. T., 133
- Marcel, Gabriel, 131
- Maritain, Jacques, 255
- Marshall, Geoffrey, 227, 228
- Marx, Karl, 16, 373, 411
- Maslow, A. H., 98
- McNair, A. D., 258
- Medina, Bartholomew, 347
- Merkelbach, B.-H., 185
- Messner, J., 194, 331
- Mill, J. S., 35, 132, 177, 373
- Miller, Barry, 412
- Mishan, E. J., 131
- Molina, Louis, 327
- Monan, J. Donald, 77
- Montesquieu (de Secondat), 35, 38
- Moral (and morality), *see also* Obligation; Viewpoints
 — definitions of, 15, 23, 47–8, 62, 84, 101, 118, 126, 129, 342
 — judgment, 25, 59, 101, 282–3, 400
 — philosophy (ethics), iii, 23, 282
 public morality, 212–13, 215–18, 220, 229–30
 — self-regarding duties, 30, 122, 298
 — standards (rules, principles), 22, 34, 103, 282, 290, 318–20, 345
 — variety of notions, 29–32, 50–1, 72–3, 85, 126–7, 225
- Morris, Herbert, 176, 291
- Mullock, P., 226
- Murder, 119–24, 133, 224–5, 230, 281–3, 289
- Nathan, 107
- Natural law, *see also* Reasonableness; Eternal Law
 — defined, 103, 280
 — doctrines (theories), 24–5
 — and history, 24, 50
 — and legislation, 2, 346
 — principles of, 23–4, 103, 124–5, 251, 350
 — source of, 398–403
 — term, 35, 251, 374
 — theory of, 18, 103, 221, 234, 281, 290, 320, 350, 364–5
- Natural science(s), 3, 67–8, 78, 136, 280, 294, 383, 390, 402
- Nature
 — conformity to, 377, 410
 — and human good, 78, 80
 — human, and history, 50
 — human, as microcosmos, 94
 — human, and morality, 35–48, 103
 — human, practical grasp of, 34, 81
 — order of, 380–1, 389
 — ‘state of’, 160, 208, 295

- Nature—*cont.*
 — and Stoic moral theory, 374–7
- Navarrus (Martin de Azpilcueta), 328, 347
- Need(s), 22, 98, 174, 189, 195, 205
- Nesbitt, Winston, 255
- Newman, W. L., 158
- Nielsen, Kai, 33, 48–9
- Nozick, Robert, 95, 186–7, 189, 197
- Objectivity, 21, 50–1, 69–75, 79, 92–3, 105, 387, 397
- Obligation, *see also* Will
 — concept(s) of, 296–7, 341
 — and commitment, 48
 — contractual, *see* Contract
 — legal, 14, 184, 254, 259, 309–20, 325–37, 346, 354–61
 — moral, 15, 40–2, 44–6, 53–4, 297–298, 307, 318, 320, 325, 329–31, 334–7, 342–3, 345–7, 350, 359–62, 388, 406–7
 — not ultimate moral category, 409
 — political, 247
 — promissory, 298–309, 343–4, 379
 — and self-contradiction, 40, 48, 348–9
- Ockham, William of, 228, 350
- O'Connell, D. P., 347
- O'Connor, D. J., 33, 34, 52
- opinio juris*, 238–45, 256–7
- Oppenheim, L. F. L., 239, 256
- Order
 — defined, 136, 157
 — the four orders, 136–9, 150, 157, 380–1, 389–91
 — world-order and disorder, 90, 372–3, 378–82, 389–90
- Ownership, *see* Property
- Pain, 114, 132, 412
- Participation
 — in classical sense (causality and imitation), 398–403, 413
 — in value, 64, 77, 82, 84, 96, 100, 104, 106, 110, 111, 119, 155, 262, 280, 372, 379
- Partnership, 141, 150, 182, 190
- Paternalism, 220–3, 229–30
- Pearce, Lord, 203, 227
- 'Penal' law, 295, 325–32, 336–7, 346–7
- Pereña, L., 54, 55
- Personality, 120–1, 220, 225, 263–4
- Peter d'Ailly, 350
- phronimos*, 102, 128
- Pieper, Josef, 98
- Pinckaers, S., 347
- Plato
 — on coercion, 29
 — on communism, 144, 146, 158–9
 — on God, 54, 93, 130, 131, 393–8, 407–10, 413
 — on justice, 161–2, 165
 — on law, 274, 293, 363, 407
 — on play, 93, 408–10
 — on reason and nature, 36, 393, 400
 — on rulership, 258–9, 363
 — other references, iv, 15, 35, 66, 102, 130, 194, 259, 363, 376, 393, 399, 411, 413
- Play, 83, 86, 87, 92–3, 98, 140–2, 149, 154, 157, 408–10, 413
- Pleasure, 95–7, 105, 114, 130, 132
- poenae naturae* (natural sanctions), 380, 410
- Political science, 246–7, 252, 257, *see also* Social science
- Politics, 154–5, *see also* Aristotle
 — defined, 148
- Positivism, 26, 234–7, 320, 357–9, 392
- Pospisil, Leopold, 344
- Pound, Roscoe, 132, 196, 293, 344
- Powell, G. B., 8
- Practical
 — definition, 12, 16, 20, 42, 236
 — judgments, 239–45, 249
 — philosophy, 12, 17, 20, 78, 236
 — principles, *see* Principles
 — reasonableness, *see* Reasonableness
 — reasoning, 150, 283, 302, 315–20, 322–33, 349, 376–7
 — syllogism, 63–4, 77, 122
 — viewpoint, *see* Viewpoints
- Prescriptivity, 79
- Principle(s)
 — defined, 63, 401
 — basic practical (pre-moral), 23, 30, 32, 47, 51, 59, 63–4, 71–3, 81–99, 101, 103, 109, 128, 380, 405
 — of law, 275, 286–9, 295–6, 314, 316, 356
 — methodological, practical, *see* Reasonableness, requirements of
 — moral, *see* Moral; Natural law
 — of natural law, *see* Natural law
 — practical, 63–4, 71–3, 109–10
 — of right and wrong, *see* Moral

- Principle(s) —*cont.*
 — and rules, 77, 110, 288, 312, 314, 344
 — of theoretical reasoning (rationality; epistemic principles), 32–3, 68–9, 385–8
- Procreation
 — basic good of, 2–9, 83, 86–7, 94, 225
- Projection, 71, 79, 377–8, 411
- Promises, 232, 298–309, 343
- Property, 83, 145, 169–73, 186–92, 194, 197, 206, 211, 220, 285–6
- Protagoras, 396
- prudentia*, see Aquinas
- Psychology, 34, 65–6, 81, 85, 98
- Public order ('*ordre public*'), 212, 215–218, 220, 229
- Pufendorf, S., 208, 348
- Punishment, 186, 262–6, 291, see also Coercion; Sanction(s)
- Quinton, Anthony, 132
- Rahner, Hugo, 98, 413
- Raphael, D. D., 37, 38, 53, 131
- Rationalism, 45, 47, 54
- Rawls, John, 76, 82, 103–6, 108–9, 129–130, 157, 158, 160, 163–4, 292
- Raz, Joseph
 — on analogy, 10
 — on exclusionary reasons, 234, 255
 — on functions of law, 7–8, 19
 — on method in jurisprudence, 6–10, 12–14, 19–21, 344
 — on natural law, 18, 26, 50, 278
 — on obligation, 343–4
 — on Rule of Law, 292–3
 — on types of normative statement, 235–7, 255
 — other references, 77, 226, 257, 343, 345
- Reason(ableness), practical (practical intelligence), see also Practical; *spoudaios*
 meanings of, 134, 277
 — authority of, 260–1, 395, 397, 407–9
 — basic good of, 23, 88–90, 94, 98, 100, 102, 126, 378, 393
 — criterion of central case, 15–16, 18
 — as criterion of 'natural', 395
 — as inclination, 401
 — as principle of order, 138
 — principles of, 18, 251, 277, 360, 395, 403, see also Principles
 — practical requirements of, 3, 15, 23, 100–33, 161–5, 198, 225, 265, 282–4, 296, 371, 376, 395, 405, 409–10
 — and will, 337–41, 347
- Reason, speculative, theoretical, 135, 378–81, see also Aristotle; Practical; Reason, practical
- Reciprocity, 83, 152, 272–4, 277, 292
- Reid, Lord, 203, 227
- Religion, 83–4, 89–90, 93, 98, 410
- Reputation, 98–9, 105, 130, 220, 304
- Responsibility, 90, 100, 127, 175, 176–7, 246, 249, 252, 275, 304–5
- Retribution, 263, 291, 331, see also Punishment
- Right, natural, 280, see also Natural law
- Rights, human (natural), 198–9
 — absolute, 121, 213, 223–6, 230, 288, 362
 — conceptual structure of, 162, 193, 198–210, 218–21, 225–7, 229, 304
 — as 'translation' of *jus*, 206–10, 228
- Roman legal thought, 178, 193, 197, 206–7, 209–10, 228, 292
- Rommen, H., 29, 49, 54, 196
- Ross, Alf, 25
- Royce, Josiah, 129, 131
- Rule(s), 153, 191, 238–45, 257, 278–80, 295, 312, 314, see also Conventions; Custom; Law; Principles
- Rule of Law (as institution, state of affairs, virtue of legal system), 8–9, 15–16, 23, 267, 270–9, 286–9, 292–3, 351, 353, 355
 — defined, 270–1
- Rulers, 223, 244–54, 257–9, 272, 289
- Russell, Bertrand, 132, 293
- Sale of Goods Act, 310–12
- Sanctions, 7–8, 261–2, 266–70, 276–7, 281–2, 313, 331, see also 'Penal' law; Coercion; Punishment
- Sanderson, Robert, 346
- Sartre, Jean-Paul, 51, 90, 176
- Scepticism, 70–75, 79, 127, 392, see also Self-refutation
- Schapera, I., 210
- Schrag, Francis, 229
- Schütz, Alfred, 19, 20
- Science, see Legal science; Natural science; Social science
- Selden, John, 228

- Self-constitution (self-determination, self-perfection), 86, 88, 95–7, 110, 130, 134–5, 141, 146, 154, 168, 220, 274, 378, 409–10, *see also* Freedom; Self-interest
- Self-evidence, 32, 33, 39, 51, 64–9, 73, 75, 77–8, 81, 83, 85, 371
- Self-interest, 14, 107, 116, 127, 131, 134, 142–3, 156, 158, 301–4, 372
- Self-possession, *see* Self-constitution
- Self-refutation, 51–2, 73–5, 80, 221–2, 276
- Sellars, W., 53, 78, 79
- Sextus Empiricus, 29
- Sex(uality), 65, 78, 83, 86–7, 93, 94, 97, 136, 144, 215–17, 220, 222, 229
- Shaw, R., 76, 98, 132
- Shwayder, David, 77, 256
- Simmel, Georg, 292
- Simon, Yves, 253, 254–5, 257
- Simpson, A. W. B., 296, 345–6
- Singer, Peter, 195
- Slote, Michael, 78
- Smith, Adam, 54, 131
- Smith, M. B. E., 345
- Sociability, 83, 88, *see also* Friendship
— meaning of ‘social’, 135
- Social contract, 131, 149, 159–60, 247–8, 252, 257–8, 292
- ‘Social control’, 6, 8, 274, 293
- Social science
— descriptive, 3–4, 9–19, 20–21, 85, 170, 379
— and law, 8
— reflective equilibrium in, 17, 21–22
- Social theory, *see* Social science
- Society, 135, *see also* Community; Sociability
- Socrates, 66, 130
- Solzhenitsyn, Alexander, 292
- Sophists, 159–60, 396
- Soto, Dominic de, 155, 327, 346
- Speech, freedom of, 213, 220, 229
- spoudaios*, 15, 31, 101–3, 128–9, 366
- Sprott, W. J. H., 151, 152
- Stalin, Josef, 11
- State(s), 147–50, 184–8, 238–45, *see also* Politics
- Statements
— juristic, 241–2, 320
— about norms, types of (S_1 , S_2 , S_3), 234–7, 239–42, 255, 320
- St. German, Christopher, 254, 281, 285, 346, 363, 367, 412
- St. Leger, J., 54
- Stoics, 35, 47, 55, 130, 131, 295, 374–8, 411
- Stone, Julius, 25, 31–3, 52, 292–3
- Strauss, Leo, iv, 29, 34, 51, 52
- Suarez, Francisco, 43, 45–9, 54–5, 206–7, 256, 258–9, 292, 294, 325–6, 329–331, 336–43, 347–8, 350, 367
- Subsidiarity, 169, 197, 233, 292
— defined, 146, 159, 188, 194
- Suicide, 229, *see also* Murder
- Sylvester Prierias, 328
- synderesis*, 51, 78
- Tanaka, Judge, 256
- Tax(ation), 173, 186–7, 192, 327, 332, 347
- Taylor, Richard, 384
- Teleology, 34, 52–3
— ‘teleological ethics’, 298, 343
- Ten Commandments, 51, 101, 128, 392
- Thomson, Judith J., 229
- Tollefsen, O., 78, 80, 127
- Tönnies, Ferdinand, 156
- Tort(s), 180–1, 184, 196, 284, 286
- Torture, 212–13, 224
- Transmission theory of authority, 247–8, 252, 257–8
- Truth, 59, 83–5, 87, 387–8, *see also* Knowledge
- Tswana, 209–10
- Tyranny, 252, 259, 272–3, 278, 292–3, 363–4, 367–8
- Ullmann-Margalit, E., 160, 255
- Unger, R. M., 55
- United Nations, 211–12
— Covenants on human rights, 211, 214–15, 224, 229
— Universal Declaration of Human Rights, 211–18, 224
- Universalizability, 107, *see also* Impartiality
- Utilitarianism, 112, 116, 154, 177, 192–3, 195–6, 213–14, 224, 230, 305, 345, 373–5, *see also* Consequentialism
- Validity, legal, 26–8, 50, 268–9, 279–80, 291, 309
- Value, *see also* Goods
— defined, 61
— basic, *see* Goods, human
— ‘value-free’, *see* Social science
- Van Overbeke, P. M., 228

- Vazquez, Gabriel, 43, 45-7, 54-5, 330, 337-41, 346
- Veatch, Henry B., 99
- Viewpoint(s)
- 'bad man's', 12, 322, 325
 - death (from time of), 104, 143
 - detached, professional, 234-5, 237
 - distinctions between importance of, 365-6
 - of friends, 143, 158
 - of 'ideal observer', 108, 131, 143, 304, 406
 - 'internal', 12-13, 70, 234, 257, 314, 323
 - 'legal', 13-14, 235, 237, 292, 318-20, 361
 - 'moral', 14-15, 361
 - 'practical', 12-16, 18, 70
 - 'sociological', observer's, 'external', 234
 - 'universal', 21-2
- Villey, Michel, 228, 295
- Virtue, 35-6, 165
- Vitoria, Francisco de, 45, 54, 257, 259, 350
- Voegelin, Eric, 19, 20, 98, 158, 159, 160, 194, 257, 258, 259, 291, 293, 413
- Voluntarism, 45, 47, 228, 259, 347-50, *see also* Will
- von Wright, G. H., 345, 349
- Warnock, G. J., 132
- Weber, Max,
- on ethical objectivity, 50-1, 176
 - on law, 250, 266-7, 270, 291
 - on method in social science, 9, 19, 20, 21, 50
 - on natural law, 18
 - on rulership, 250, 266, 341
- Weiler, Paul C., 291
- Weinreb, Lloyd L., 55
- Westermarck, E., 79, 97
- Will
- as 'source of obligation', 45, 79, 307-8, 330-43, 347-50
 - theory of rights, 204-5, 207-8, 227
- Wittgenstein, L., 98, 305
- Wolff, Christian, 412
- Xenophon, 411
- Zeno, of Cyprus, 295, 411