

Index

- academic writing *see also* expert
 - blogging; law publishing
 - generally
 - argumentative technique role of 225
 - cult of citation, and 228–9
 - pluralization 242
 - technology role in 231–2
- tactics
 - argumentative strawmen, and 231
 - empiricism, and 229–30
 - erudition, and 233–4
 - generally 225–6
 - new idioms/neologism,
 - development of 234–5
 - roughing-out 231–2
 - scholarly intimidation 235–6
 - self-gratification 233
 - semantic instability, and 227–8
 - textual aesthetics, and 228–9
 - textual economy 227
- accountability
 - deformalization, and 90–91
 - formalism, and 105
 - for public authorities 90–91
 - state role in law-making, and 117–20
- Althouse, Ann 251
- argumentative practice, law as
 - access restrictions 13–15
 - communitarian practice 3, 220
 - confrontation, role of 23–6
 - interdisciplinarity, and 56–8
 - principles 1–3
 - situationalism, and 6–8
 - studies 4–9
- argumentative techniques, generally
 - 1–3 *see also* academic writing;
 - dissemination; expert blogging;
 - interpretation; methodology
 - foundational doctrines, overlaps
 - between 28–9
 - situationalism, and 6–8
 - social arrangements, and 5–6
 - social validation of law, and 22–7
 - socialization of lawyers, and 9–15
- authority
 - accountability, and 90–91
 - international law, and
 - erosion of 95–7
 - law-making legitimacy, and 80–81, 94
 - tradition concept 220
- Bianchi, Andrea 215
- Brölmann, Catherine 155–6
- Brunée, J. 17
- Charnovitz, Steve 116
- cognition
 - international law-making, and
 - dynamic output-based approaches 133–5
 - dynamic participation-based approaches 129–33
 - dynamic pedigree-based approaches 135–7
 - formal sources of international law, and 127–9
 - input impacts focus 114
 - instrumentalist turn 129–33
 - legal personality, and 121–4, 126
 - light subjecthood thesis 123–4
 - natural law, and 126–7
 - New Haven School 129–32, 135–6
 - pluralism in 137–8
 - qualification criteria 126
 - relevance 107–8
 - retroactive construction, and 134

- rule or source-based 126–8, 131
- social thesis 136–7
- static pedigree-based approaches 126–9
- static vs. dynamic approaches 115–16, 135–7
- subject-based approaches 121–6
- subjecthood paradigm 113–4, 121–6
- theoretical divergence in 120–37
- models
 - community of practice 17–18
 - epistemic community 16–17
 - interpretative community 18
 - multiplicity approach, benefits of 20–21
 - shared communication 19–20
- communities of law, generally
 - background 4–5
 - communitarian practice 3, 220
 - community of practice 17–18
 - epistemic community 16–17
 - interpretative community 18, 219–21
 - meaning 10–11
 - models 16–21
 - pluralism 21
 - purpose 5–6
 - shared vocabulary 19–20
 - social validation 22–7
 - socialization 9–15
- community of practice 17–18
- constitutionalism
 - in international law scholarship, generally 63–4
 - rule of law, deformalization
 - influences on 98–101
 - vs. contractualism
 - dialectical reconciliation 151–61
 - reconceptualization 159–61
 - tensions 141–51, 161–6
- content-determination interpretation
 - constraints 214–17
 - disciplining rules 214–17
 - formalization, and 211–12
 - generally 207–9
 - law-ascertainment interpretation, and
 - constraints 217–22
 - differences 212–14, 222–4
 - similarities 209–12
 - power relations, and 210–11
 - purpose 212–14
 - research agenda 223
- contractualism
 - vs. constitutionalism
 - dialectical reconciliation 151–61
 - reconceptualization 159–61
 - tensions 141–51, 161–6
- Crawford, James 50–51
- critical legal studies
 - deconstructivism, and 12, 195–7
 - disorder vs. order 198
 - influences of 197–8
 - post-modernism 196
 - situationalism, and 6
- customary law
 - interpretation conflicts 208–9
 - sources of
 - deformalization, and 69–75
 - identification 71–5
 - law-ascertainment, and 69–71, 77–8
 - morality and public conscience, and 77
 - soft law, and 85–8
 - substantive validity, and 76–8
- Dann, Philipp 80
- Debray, Régis 237
- deconstructivism
 - critical legal studies 12, 195–7
- deformalization, of sources
 - agendas 88–9
 - creative argumentation, and 93
 - international law development, for 89
 - international law promotion, for 89–90
 - legal materials, search for 91–2
 - legal pluralism, and 94
 - legal scholarship, in 83–7, 91–2, 97
 - legitimacy, evaluation of 94
 - public authority accountability, and 90–91
- contemporary applications 75–6

- effect/impact-based conceptions of law 78–83
- process-based conceptions of law 83–5
- soft law role in international law, and 85–8
- substantive validity, and 76–8
- costs and challenges 95–101
 - erosion of character and authority of law, and 95–7
 - formal unity of international law, and 100–101
 - international law critiques, and 97–8
 - legal scholarship conflicts 97
 - legal system viability, and 99–100
 - rule of law sustainability, and 98–9
- customary international law, and 69–75
- formalism, resilience 101–8
 - culture of 104–6
 - generally 101–2
- Global Administrative Law 102–3
- Heidelberg project 103
- legal positivism, and 106–8
 - generally 63–4, 108–10
 - benefits 89–94
 - definition 65–8
- Global Administrative Law project 79–80, 81–2, 102–3, 114
- Heidelberg research project 79–80, 82, 103, 114
- international law
 - customary law 69–75
 - relationship with 63–4, 69–75
- law-ascertainment, and 65–75, 83–5
- legal realism, and 67–8
- liberal individualism, and 84
- prospects for
 - formalism trends 102
 - generally 101–2
 - Global Administrative Law project, and 102–3
 - Heidelberg research project 103
- dissemination, of law *see also* expert blogging
 - academic publishing, and 239, 242
 - argumentation, link between 27–8
 - communication *vs.* transmission 237
 - digitization, and 242
 - importance 237–8
 - law journals, and 240–41, 243–5
 - networks and hierarchies 238, 246, 247
 - order and sequence in 241–2
 - processes 243–5
 - quality control and certification 240–41
- effectiveness *see also* *effectivité*
 - definition 167–8
 - scope 52, 167–9
 - statehood, in law of 51–2
- effectivité*
 - definition 167–8
 - effectiveness, differences from 167–9
 - scope 167–8
 - statehood tensions, internal *vs.* external 38–9
- effectivity *see also* *effectivité*
 - benefits 171–2
 - bridging function 169–71
 - definition 167–8
 - in international context 169–71
 - negative aspects 172–4
- empiricism
 - as academic writing tactic 229–30
 - methodological choices, and 187–9
 - objectivism, and 188–9
- epistemic community
 - meaning 16–17
- expert blogging
 - advantages 247, 248–51
 - criticisms of 246–8
 - expertise, importance of 251–2
 - law journals, influences on 242, 247
 - legal scholarship, relationship with 252
 - limitations and hazards 251, 248
 - membership determination 252
 - safeguards 251–2
 - self-restraint, and 252
 - sociological thinking, and 250–51
- facticism *see also* *effectivité*

- statehood, legalist tensions 36–7
- Fish, Stanley *see* Fish vs. Fiss
 - interpretation debate
- Fish vs. Fiss interpretation debate
 - constraints, standardization of 216–17
 - disciplining rules 213, 216–17
 - interpretative community concept 218–20
 - rules, need for 216–17
- Fiss, Owen *see* Fish vs. Fiss
 - interpretation debate
 - formalism
 - accountability 105
 - culture of 104–6
 - generally 101–2
 - Global Administrative Law, and 102–3
 - Heidelberg project, and 103
 - legal positivism, and 106–8
 - vulgar vs. sophisticated forms 65
- foundational doctrines, generally 1–3
 - see also* effectivity; institutions; law-making; sources; statehood
 - argumentative techniques, overlaps between 28–9
 - influences, continental vs.
 - Anglo-American 29
 - situationalism, and 6–8
 - social arrangements, and 5–6
 - social validation of law, and 22–7
 - socialization of lawyers, and 9–15
- Franck, Tom 84, 187
- Fuller, Lon 77–8
- functionalism
 - contractualism vs. constitutionalism, and 141–4, 145–6, 158
- Global Administrative Law project
 - deformalization, and 102–3
 - law-ascertainment interpretation 81–2
 - norm-generating processes 79–80, 81–2
 - on reconceptualization of international institutions 160–61
- Goldmann, Mathias 80
- Heidelberg research project
 - deformalization, and 103
 - law-ascertainment interpretation 102, 103
 - on norm-generating processes 133
- hierarchy
 - dissemination through 246, 247–8, 250
 - in international law, generally 180–81, 184
 - social validation of law, in 25
- Higgins, Rosalyn 130
- institutionalism
 - liberal individualism, and 84
- institutions
 - international law tensions
 - autonomy, role of 143–51, 156–8
 - balancing, success in 161–6
 - contractualism vs.
 - constitutionalism 141–66
 - dédoublement fonctionnel* notion 154–6, 159
 - definitions 142, 147
 - dialectical reconciliation, and 151–61
 - dichotomy avoidance mechanisms 152–61
 - diverging capacities 142–3
 - functionalism, and 142–3, 145–6, 158
 - generally 139–40, 146
 - institutional veil concept 155–6
 - internal vs. external roles 142–3
 - legalism and managerialism 157
 - methodological choices, and 183–5
 - need for 161–2
 - reconceptualization, and 159–61
 - scholarship, criticisms of 164–6
- law of
 - challenges 139–40
 - characteristics 139
 - development 163–4
 - functionalism, and 145–6
 - influences on 162–3
 - self-reflection trends 141

- international law, generally
 - confrontational character 203–6
 - effectivity in context 169–71
 - institutional hierarchies 180–81, 184
 - normative universe, commitment to 199–201
 - purpose 129–30
- international law-making
 - approaches
 - conflicts 113–14, 130–31
 - dynamic output-based 133–5
 - dynamic participation-based 129–33
 - dynamic pedigree-based 135–7
 - formal sources of international law, and 127–9
 - instrumentalist turn 129–33
 - legal personality, and 121–4, 126
 - light subjecthood thesis 123–4
 - natural law, and 126–7
 - qualification criteria 126
 - rule or source-based 126–8, 131
 - static pedigree-based 126–9
 - subject-based 121–6
 - generally
 - norm-identification 79–82
 - public authority legitimacy 80–81
 - purpose 129–30
 - trends 111–12, 115–17
 - legal cognition, and
 - dynamic output-based approaches 133–5
 - dynamic participation-based approaches 129–33
 - dynamic pedigree-based approaches 135–7
 - formal sources of international law, and 127–9
 - input impacts focus 114
 - instrumentalist turn 129–33
 - legal personality, and 121–4, 126
 - light subjecthood thesis 123–4
 - natural law, and 126–7
 - New Haven School 129–32, 135–6
 - pluralism in 137–8
 - qualification criteria 126
 - relevance 113–14
 - retroactive construction, and 134
 - rule or source-based 126–8, 131
 - social thesis 136–7
 - static pedigree-based approaches 126–9
 - static vs. dynamic approaches 115–16, 135–7
 - subject-based approaches 121–6
 - subjecthood paradigm 113–14, 121–6
 - theoretical divergence in 120–37
 - non-state actors, role in
 - development 116, 117–18, 123–4
 - regulation 118
 - transnational regulatory networks 118–19
- pluralization
 - instrument diversification, and 117
 - international law character, influences on 115–17, 124
 - non-state actor role in 116, 117–18, 123–4
 - state dominance and resilience 117–20
 - transnational regulatory networks 118–19
 - trends 111–12, 115–17, 137–8
- international legal scholarship *see also*
 - academic writing; cognition; Critical Legal Studies; methodology
 - anti-pluralism 76–7
 - behaviourism 78–9, 82
 - constitutionalism, generally 63–4
 - contractualism vs. constitutionalism
 - autonomy, role of 143–51, 156–8
 - criticisms 164–6
 - dédoulement fonctionnel* notion 154–6, 159
 - definitions 142, 147
 - dialectical reconciliation, and 151–61
 - dichotomy avoidance mechanisms 152–61
 - diverging capacities 142–3
 - functionalism, and 141–4, 145–6, 158
 - generally 141–6, 150–51
 - institutional veil concept 155–6

- internal vs. external roles 142–3
- legalism and managerialism 157
- reconceptualization, and 159–61
- reconciliation mechanisms 159–61
- tensions 141–51, 161–6
- deformalization
 - agendas 88–94
 - creative argumentation, and 93
 - culture of formalism 104–6
 - generally 63–4
 - Global Administrative Law project 79–80, 81–2, 102–3
 - Heidelberg research project 79–80, 82, 103
 - international law development, for 89
 - international law promotion, for 89–90
 - legal materials, search for 91–2
 - legal pluralism, and 94
 - legitimacy, evaluation of 94
 - public authority accountability, and 90–91
 - reductionist legal positivism 106–8
 - generally
 - effect/impact-based conceptions of law 78–83
 - fluidity of 12
 - Global Administrative Law project 79–80, 81–2, 102–3, 114, 160–61
 - Heidelberg research project 79–80, 82, 103, 133
 - interdisciplinarity and multidisciplinary 189–91
 - interpretation, research trends 222–4
 - on law of international organizations 141
 - morality and public conscience, and 77
 - process-based conceptions of law 83–5
 - public recognition of 193–4
 - reform, need for 192–3
 - socialization of lawyers, influences on 12–13
 - soft law role in international law 85–8
 - statehood, and 49, 51
 - subjecthood paradigm 113–14, 121–6
 - situationalism 6–8
- international organizations *see* institutions
- interpretation, generally *see also* content-determination
 - interpretation; law-ascertainment interpretation
 - authority, and
 - absence of 204–5
 - argumentative 206, 210, 213, 224
 - power relations, and 210–11
 - submission to 220
 - conflicts in 202–3, 223–4
 - confrontational character of
 - international law, and 203–6
 - constitutive and performative function 202, 207
 - definition and scope 199–201, 222–4
 - existing law and practice, focus on 200–201
 - of facts 209
 - formalization, and 211–12
 - indeterminacy, influences on 211
 - instabilities of 211, 220
 - international scholarship
 - limitations 214–17, 223
 - research trends 223–4
 - multi-dimensional nature 200–201, 207
 - primary norms vs. rules of recognition 208–9
 - tradition concept 220
 - validation standards in 208
 - veil of unicity, and 205–6
- interpretive community *see also* Fish vs. Fiss interpretation debate
 - communitarian practice, and 217, 219, 220
 - constraining role 220
 - criticism of 220–21
 - meaning 18, 219–20

- Jellinek, Georg 38–40
 Johns, Fleur 210
- Kennedy, David 109, 195
 Koskenniemi, M. 104–6, 195–7
 Kuhn, T. 198
- Lauterpacht, H. 44
 law-ascertainment interpretation *see*
 also deformalization
 behaviourist approaches 78–9, 82
 challenges 74–5
 constraints on 213, 217–22
 content-determination interpretation,
 and
 differences 208, 212–14
 research agendas 222–4
 similarities 209–12
 customary law, and 71–5
 effect/impact-based conceptions of
 law 78–83
 Fish vs. Fiss debate 216–20
 formalization, and 211–12
 generally 208, 217–8
 Global Administrative Law project
 79–80, 81–2, 102–3
 Heidelberg research project 79–80,
 82, 103
 international law development, and
 89
 international law promotion, and
 89–90
 legal certainty, and 99, 220–21
 power relations, and 210–11
 principles
 generally 217–8
 natural law, and 77
 public authority accountability, and
 90–91
 purpose 212–14
 research trends 223–4
 social approach to 218–21
 soft law role in international law
 85–8
 substantive validity, and 76–8
 tradition concept 220
 treaties, and 71, 74–5
- law journals
 blogging, influences on 242, 247
 digitization, and 242
 dissemination role 238, 239, 243–5
 law validation, and 238–45
 limitations 240, 242
 new/specialist journals 243–4
 quality control and certification
 240–41
 selectiveness 240
- law-making *see* international
 law-making
- law publishing
 externalities of 239
 information dissemination role
 237–9
 law validation, and 238–45
 limitations 240, 242
 new/specialist journals 243–4
 public good, and 239, 243
 quality control and certification
 240–41
 selectiveness 240
- lawyers, socialization *see* socialization,
 of international lawyers
- legal positivism
 deformalization of sources, and
 106–8
 methodological choices, and 185
- legal realism
 compliance-based approaches to
 international law 82
 deformalization, and 66–7
- legalism,
 statehood, and
 as agenda of 51–3
 facticist tensions 35–7
 interdisciplinarity, and 56–8
- legitimacy
 deformalization, and 94
 evaluation of 94, 187–8
- liberal individualism
 global institutionalism, and 84
 trends 187–8
- McDougal, Myles S. 129–30
 Manhattan Law School 84, 187

- methodology
 - methodological choices
 - constraints on 180–82
 - deconstruction, and 195–8
 - empiricism, and 187–9
 - EU vs. US traditions 185–6
 - evaluation of 182–3
 - freedom of 179–80
 - inductive methods, and 185–7
 - institutional background 183–5
 - interdisciplinarity and multidisciplinarity 189–91
 - legal positivism, and 185
 - legal theory, and 177–9
 - legitimacy 187–8
 - liberal individualism 187
 - perspectivism, and 194–5
 - pluralism, and 194–5
 - reform, need for 192–3
 - self-awareness, and 198
 - self-validation, and 84, 188
 - systemic thinking, and 185–7
 - theory, relationship with 177–9
 - Mitchell, Mark 220
- natural law
 - deformalization, and 99–100
 - doctrine of sources, and 69–70, 126–7
 - law-ascertainment, and 77–8
 - minimum content 100
 - morality and public conscience, and 77
 - principles 77–8
- New Haven School
 - on deformalization 83–4
 - on dynamic law-making 129–32, 135–6
 - on subjecthood paradigm 113–14
- non-state actors
 - law-making role
 - development 116, 117–18, 123–4
 - legal personality, and 123
 - pluralization of international law 111–12, 115–16, 123–5
 - transnational regulatory networks 118–19
- objectivism
 - empiricism, and 188–9
 - statehood, subjectivist tensions 35, 39–42, 51–2
- Patterson, Dennis 221
- peer review
 - alternatives to 244–5
 - quality control, and 241, 243, 244
 - responsibility and civism 243–4
- pluralism
 - anti-pluralism 76–7
 - deformalization, and 94
 - methodological choices, and 194–5
- positivism *see* legal positivism
- post-modernism
 - critical legal studies 196
- proceduralization
 - statehood, in law of 46–7, 54
- quality control
 - alternative forms 244–5
 - in law publishing 240–42, 243, 244
 - peer review, responsibility and civism 243–4
- recognition
 - of international legal scholarship 193–4
 - rules of vs. primary norms 208–9
- responsibility
 - deformalization, and 65–6
 - peer review quality control, and 241, 243–4
- rule of law
 - deformalization, influences of 98–9
- Scelle, Georges 154–5
- Schlag, P. 221
- Schmitt, Carl 36
- self-determination 46–7, 125–6
- Singh, Sahib 195
- situationalism
 - challenges 7–8
 - determinism, and 8
 - generally 6–7
 - research trends 7–8, 197

- social validation 22–7
 - challenges 23–4
 - confrontational nature of law, and 23–6
 - criticisms 25–6
 - dissemination, and 234, 235, 237–8, 242, 243–5, 246
 - foundational doctrine and argumentation techniques influences on 23–4
 - hierarchies 25
 - law journals role 239, 241, 242, 243–5
 - of methodological choices 183, 191
 - peer review, and 243–4
 - persuasiveness, and 25–7
 - principles 22–3
 - quality control, and 240–45
- socialization, of international lawyers
 - access to legal argumentation, and 13–15
 - argumentative techniques, and 5–6, 8–11
 - background 4–9
 - confrontational nature 23–6
 - descriptive frameworks 11–13
 - development 9–11
 - fluidity of 12
 - foundational doctrines, and 5–6, 8–11
 - influences on
 - education and training 12–13
 - English language 15
 - scholarship 13
 - meaning 10–11
 - shared consciousness, as 11–13
 - situationalism, and 6–8
 - sociology studies 4
 - sources, role of 61–2
- soft law
 - internationalization role 86–8
 - law vs. non-law continuum 85–6
 - source of international law, as 85–8
- sources
 - customary law
 - deformalization, and 69–75
 - identification of 71–5
 - law-ascertainment, and 69–71, 77–8
 - morality and public conscience, and 77
 - soft law, and 85–8
 - substantive validity, and 76–8
- deformalization
 - agendas 88–94
 - benefits 63–4
 - costs and challenges 95–101
 - creative argumentation, and 93
 - customary international law, and 69–75
 - definition 65–8
 - effect/impact-based conceptions of law 78–83
 - erosion of character of law, and 95–7
 - examples of 69–75
 - formal unity of international law, influences on 100–101
 - formalism, influences on 65, 69–70, 98
 - generally 62–4, 65–8, 108–10
 - Global Administrative Law project 79–80, 81–82, 102–3
 - Heidelberg research project 79–80, 82, 103
 - international law critiques, influences on 97–8
 - international law development, for 89
 - international law promotion, for 89–90
 - international law, relationship with 69–75
 - law-ascertainment, and 65–75, 83–5
 - legal materials, search for 91–2
 - legal pluralism, and 94
 - legal positivism, and 106–8
 - legal realism, and 66–7
 - legal scholarship agendas 88–94
 - legal scholarship conflicts 97
 - legal system viability, and 99–100
 - legitimacy, evaluation of 94
 - liberal individualism, and 84
 - process-based conceptions of law 83–5
 - prospects for 101–8

- public authority accountability, and 90–91
- rule of law sustainability, influences on 98–9
- soft law role in international law 85–8
- substantive validity, and 76–8
- generally
 - definitions 65–8
 - importance of 63
 - legal acts vs. legal facts approaches 85–6
 - natural law, and 69–70, 126–7
 - secondary rules on international law 217
 - shared communication vocabulary 19–20
 - socialization role 61–2
 - studies, precedence in 61–2
 - will of state, and 69–70
- treaties
 - law-ascertainment, and 71, 74–5
- statehood, law of
 - agendas in
 - anthropomorphism 45–6
 - disentanglement of law 43–4
 - effectiveness, and 52–3
 - elucidation 46–8
 - epistemological self-rehabilitation 54–9
 - explanation 43–6
 - generally 33, 42–3
 - interdisciplinarity, camouflaged nature of 56–7
 - international law
 - comprehensiveness 50–51
 - international state membership and control 49–50
 - legal scholarship 58–9
 - legalism 51–3, 56–7
 - objectivism, and 51–2
 - proceduralization 46–7, 54
 - regulation 49–54
 - self-referential dynamics, and 43–4
 - sophistication as redemption, and 55–6
 - territorialization 48
 - ubiquity of international law, and 59
 - development 33, 59–60, 162–3
 - epistemological tensions
 - effectivité, internal vs. external 38–9
 - facticists vs. legalists 35–7
 - subjectivists vs. objectivists 35, 39–42, 51–2
 - three elements doctrine 38–40
 - interpretation 33
 - methodological developments 59–60
 - studies, criticism of 33–4
 - subjecthood paradigm 113–14
 - subjectivism
 - statehood, and
 - objectivist tensions 35, 39–42, 51–2
 - subjects, doctrine of *see* statehood
 - three elements doctrine 38–40
 - Toope, S.J. 77–8
 - tradition *see also* customary law
 - concept of 220
 - treaties
 - deformalization, and 75–6
 - law-ascertainment interpretation 75–6
 - Vienna Convention
 - drafting conflicts 215–16
 - formalization of interpretation, role in 212, 214
 - validity, of law
 - dissemination, and 238–45
 - interpretation rules, generally 202–6
 - law journals role 239
 - quality control and certification 240–41
 - selectiveness 240
 - self-validation 84, 188
 - social validation 22–7
 - challenges 23–4
 - confrontational nature of law, and 23–6
 - criticisms 25–6
 - dissemination, and 237–8, 243–5

- foundational doctrine and
 - argumentation techniques
 - influences on 23–4
- hierarchies 25
- law journals role 239–41
- of methodological choices 183
- peer review, and 241, 243, 244
- persuasiveness, and 25–7
- principles 22–3
 - quality control, and 241, 243, 244
 - substantive validity 76–8
 - symbolic validation 10
- Verdross, Alfred 215
- Virally, Michel 158
- von Bogdandy, Armin 80

- Waldock, Humphrey 215–16

