Index

<table>
<thead>
<tr>
<th>adverse selection 101–2</th>
</tr>
</thead>
<tbody>
<tr>
<td>agents and principals</td>
</tr>
<tr>
<td>agency contracts: principal-agent conflict 111–12</td>
</tr>
<tr>
<td>agency costs 113</td>
</tr>
<tr>
<td>incentive pay, aligning interests by 112–13</td>
</tr>
<tr>
<td>monitoring of agents 122</td>
</tr>
<tr>
<td>Akerlof, George A. 101, 102</td>
</tr>
<tr>
<td>altruistic behavior 22</td>
</tr>
<tr>
<td>anchoring 190–92</td>
</tr>
<tr>
<td>anomalies see under rationality assumption</td>
</tr>
<tr>
<td>Arrow, Kenneth 111</td>
</tr>
<tr>
<td>impossibility theorem 141–143</td>
</tr>
<tr>
<td>‘as-if’ assumption 23</td>
</tr>
<tr>
<td>asymmetric information 55</td>
</tr>
<tr>
<td>bureaucrats, information asymmetry in favour of 133–4</td>
</tr>
<tr>
<td>detrimental impact of 100–101 government remedying 122</td>
</tr>
<tr>
<td>market power, and 55, 107–8 moral hazard see moral hazard screening 103</td>
</tr>
<tr>
<td>Australia: insurance 106–7</td>
</tr>
<tr>
<td>Axelrod, Robert 182</td>
</tr>
<tr>
<td>backwards induction 83, 87, 90–91</td>
</tr>
<tr>
<td>battle of the sexes 69, 74–5</td>
</tr>
<tr>
<td>Bayes’ theorem 185, 188</td>
</tr>
<tr>
<td>Becker, Gary 1</td>
</tr>
<tr>
<td>behavioral law and economics 25, 27–8, 177–203</td>
</tr>
<tr>
<td>alternative to rational choice approach, as 177</td>
</tr>
<tr>
<td>insights of behavioral economics 180–200</td>
</tr>
<tr>
<td>bounded rationality see bounded rationality</td>
</tr>
<tr>
<td>bounded self-control/willpower see bounded self-control/willpower</td>
</tr>
<tr>
<td>bounded self-interest see bounded self-interest</td>
</tr>
<tr>
<td>methodological and conceptual basics 178–80</td>
</tr>
<tr>
<td>behavioral component 178</td>
</tr>
<tr>
<td>economic component 179</td>
</tr>
<tr>
<td>legal component 179–80</td>
</tr>
<tr>
<td>‘micro-theory’ as 2</td>
</tr>
<tr>
<td>open questions 200–203</td>
</tr>
<tr>
<td>behavioral model of homo economicus 21–5, 108</td>
</tr>
<tr>
<td>rationality assumption see rationality assumption</td>
</tr>
<tr>
<td>utility theorem see utility/utility theorem</td>
</tr>
<tr>
<td>biases</td>
</tr>
<tr>
<td>hindsight bias 187–8, 190</td>
</tr>
<tr>
<td>non-rational behavior 26–7 causing errors in decision-making 109 overconfidence bias 188–90 present bias 199 self-serving bias 188–9 status quo bias 194–5, 196–7</td>
</tr>
<tr>
<td>Borda, Jean-Charles de 139</td>
</tr>
<tr>
<td>Borda procedure 139–41 disadvantages of 140–41 solving Concordet procedure problems 139–40</td>
</tr>
<tr>
<td>Bornstein, Brian 191</td>
</tr>
<tr>
<td>bounded rationality 28, 108–9, 180, 184–97 decision see decision judgment see judgment relational contracts, and 113–14, 115 bounded self-interest 28, 180–84 fairness/mutuality principle motivating conduct 182–4, 202</td>
</tr>
</tbody>
</table>
Economic methods for lawyers

reversal of preferences 196–7
self-interest as first principle of economics 180–81
bounded self-control/willpower 28, 180, 197–200
quasi-hyperbolic discounting 199
reversal of preferences 196–7
self-binding with foresight 198–9
self-paternalism 199–200
broken windows theory 183
Brown v. Board of Education (US) 8–9
budget constraint 39
bureaucrats 124–5
budget maximization of bureaucrats 133–6
the model 133–5
the model, influence and critique of 136
see also public and social choice theory
Calabresi, Guido 1, 97
economic analysis of tort law 1
cartel dilemma 62–5, 68, 78
externalities 78
game matrix 64–5
players, rules and outcomes 63
preferences and playoffs 63–4
causality and research design see under empirical research and statistics
ceteris paribus assumption 34
meaning of 23
Chaooull v. Quebec (Canada) 8
Chapman, Gretchen 191
choice
economic decision theory see rational choice theory
essential moment of human decision-making, as 19–20
individual choice and strategic interdependence 61–2
preferences see preferences
public and social choice theory see public and social choice theory
rationality assumption see rationality assumption
restrictions see restrictions
utility theorem see utility/utility theorem
club goods see under collective goods
Coase, Ronald
‘The Problem of Social Cost’ 1, 96–7
Coase Theorem 56–7, 97, 108, 193, 201
absence of transaction costs 56, 57
efficiency/efficiency hypothesis 57, 97
externalities 56
invariance hypothesis 97
cognitive limits and cognitive failures 108–10, 184
limits of cognition as source of imperfect information 108–9
bounded rationality 108–9
state intervention by paternalistic contract law 109–10
cognitive psychology 178, 179
collective decision-making see under public and social choice theory
collective/public goods 78–80
club/toll/excludable public goods 79
common goods/common pool resources 57–8, 79, 80
free-riding 122
government providing 121–2
non-private goods, as 78
over-exploitation 79, 80
private goods, and 79
pure public goods 79, 80
common goods/common pool resources see under collective/public goods
common knowledge 88
competition
competition law 54–5
markets without competition 53–5
perfect see perfect competition
Condorcet, Nicolas de 138
Condorcet procedure 138–9
Borda procedure solving problems of 139–41
Condorcet Paradox 139
conflict games 72–3, 74
consumer surplus 43–4, 49, 51
contract theory and economics of contract law 96–119
agency contracts: principal-agent conflict 111–12
cognitive limits/failures see cognitive limits and cognitive failures
definition of contract 96
distributive justice in contract law 117–19
mandatory contract terms 118–19
freedom of contract
assumption of rationality 108
human actors making systematic errors 109
imperfect information 100–108
adverse selection, problem of 101–2
market power and asymmetric information 107–8
screening see screening
signalling see signalling
incentive problems/imperfect information after contract concluded 110–17
long-term contracts, opportunism, cost trade-off 113–17
moral hazard see moral hazard
long-term/contracts, opportunism, cost trade-off 113–17
opportunism ex post 114–15
law: part of solution or problem 115–16
minority protection in close corporations 116–17
transaction costs and bounded rationality 113–14
transaction costs v. governance costs 115
market imperfections and case for contract law 99–100
why contracts 96–8
contracts as commitment and coordination devices 98
exchange in ideal world: Coase theorem 96–7
conventions 93–4
cooperation games 77–81
collective goods 78–80
cooperation with conflict 80–81
distribution problems 81
prisoner’s dilemma see prisoner’s dilemma
coordination games 69, 71, 73–4, 76
cost–benefit analysis 31
costs
agency costs 113
average costs 47, 50, 54
average fixed costs 47
average variable costs 47, 49
cost minimization 46
economies of scale 54
externalities 56–7
fixed costs 47, 49–50, 54
marginal costs 48, 49
marginal costs, social 58
opportunity costs 45–6
private costs 47
profits, and 50
short and long runs, and 47
social costs 47–8
some more important notions of costs 46–8
special costs and supply curve 48–9
transaction costs see transaction costs
variable costs 47, 48–8
Craswell, Richard 107–8, 118
deadweight/welfare loss 51, 54, 55, 107, 135
causes of welfare loss
bargaining power 107
low risk-consumers leaving market 119
pooling insurance contracts 106
suboptimally incentivized agents, using 113
mitigating contract law 96, 109, 119
state intervention 103, 109
decision 190–97
anchoring 190–92
bias, errors caused by 109
collective decision-making see under public and social choice theory
decision theory 25, 181, 185
economic decision theory see rational choice theory
extremeness aversion 192–3
framing see framing
prospect theory see prospect theory
stability assumption 190
demand 32–45
changes in price 39–40
demand function see demand functions
maximizing utility 38–9
valuation of goods 33–8
assumptions and indifference curves 37–8
assumptions underlying theory of rational choice 33–4
indifference curves: measuring good’s value in another good 34–5
demand functions 41–5
aggregate demand curves 41–2
airport example 44–5, 58–9
consumer surplus 43–4
demand curves of individuals 41
demand elasticity 41–2
working with the demand curve 42–3
democracy
importance of definition of 9–10
public opinion, and 10
deterrence of criminals
availability heuristics, and 186
ex ante regulation 200
excessive optimism, and 189–90
dictator game 182–3
discrimination 8–9
norms of partiality 94
discounting
discount rates 198
exponential discounting 198, 199
quasi-hyperbolic discounting 199
distribution and efficiency 12–13
distributive justice in contract law 117–19
dominant strategies 66–8
Downs, Anthony 127–8, 129
duopolies 62–3, 67–8, 78

ecological validity 27
econometrics
nature/advantages and disadvantages of 16
regression analysis 171–6
economic methods and legal reasoning 1–16
Coase, and 57
development of law and economics 1
economic methods, overview of 15–16
positive and normative economic theory 2–3
social science methods and legal reasoning see social science methods and legal reasoning
theory building and research in social sciences 3–4
economic decision theory see rational choice theory
economic paradigm 18–31
limits of model 25–8
biases and non-rational behavior 26–7
empirical challenges 25–6
relaxing the assumptions: behavioral turn 27–8
meaning of 18
theoretical assumptions 18–28
behavioral model see behavioral model of homo economicus
methodological individualism 18–19
rationality assumption see rationality assumption
scarcity of resources see scarcity of resources
utility theorem see utility/utility theorem
welfare analysis and efficiency 28–31
Kaldor-Hicks criterion see Kaldor-Hicks criterion
Pareto efficiency see Pareto principle/efficiency
economic theory 15–16
economic decision theory see rational choice theory
economic models, testing robustness of 16
empirical economics 16
positive and normative economic theory 2–3
economies of scale 54
Edgeworth, Francis 180
efficiency
Coase theorem efficiency hypothesis 57, 97
distribution, and 12–13
welfare analysis, and 28–31
Kaldor-Hicks criterion see Kaldor-Hicks criterion
Pareto efficiency see Pareto principle/efficiency
Eisenberg, Melvin A. 109
elasticity of demand 41–2, 49
elasticity of supply 49
elections see under public and social choice theory
empirical economics, main strands of 16
empirical research and statistics 146–76
dependencies, testing 169–76
correlations 169–71
regressions 171–6
descriptive statistics 156–63
histograms and distributions 157–9
statistical variables 156–7
summary statistics 159–63
differences, testing 165–9
central tendency 166–7
dispersion 167–8
distributions 168–9
inferential statistics 163–76
basic concepts of statistical testing 164–5
measuring data 152–4
implementation 153–4
preliminary thoughts 152–3
research design and causality 147–52
causality in studies with multiple variables 148–52
causality in studies with two variables 147–8
selection of statistical tests 165–76
statistical tests, selection of 165–76
testing dependencies 169–76
testing differences 165–9
types of empirical research 146–7
validity of results 154–6
endowment effect 193–4
Englich, Birte 191
equal protection 8–9
equilibrium concepts see solution concepts
European Union
competition law 54–5
emissions trading 45–6, 81
mortgage credit Directive 110
sale of consumer goods Directive 103, 118–19
evolutionary theory 203
excludability 57
meaning of 78
experimental economics 13
nature/advantages and disadvantages of 16
experiments, framing 26
externalities 56–7
collective goods 78
cooperaion problems, as source of 78
government remeding 122
meaning of externality 78
extremeness aversion 192–3
fairness norms 182, 183–4, 202
first welfare theorem 51
Fischhoff, Baruch 187
folk theorem 83, 93
framing 195–67
Asian Disease Scenario 195–6, 197
paternalistic regulation, and 196–7
freedom of contract see under contract theory and economics of contract law
gambling law, US 5–6
game theory 25, 54, 61–94
game theory and law 61–2
essential elements of a game 62
game definition, normal form and extensive form 62
individual choice and strategic interdependence 61–2
games in extensive form 83–91
definition of extensive form game 83–5
imperfect information and information levels 87–8
incomplete information 88–91
games in normal form 62–71
cartel dilemma see cartel dilemma
equilibria in mixed strategies 70–71
solution concepts see solution concepts
law and informal institutions see informal institutions and law
subgame perfection 85–7
types of games 71–83
cooperation games see cooperation games
coordination games 69, 71, 73–4, 76
discoordination games 70
mixed motives see mixed motives games
repeated games see repeated games
simple motives see simple motives games
standardization games 68–9, 71, 74, 84–6, 88

Germany
Constitution, democratic guarantee in 9–10, 144
Green Party 130–31
minority protection 117
stock corporation law 112, 113

goods
bundles of rights, as 52
collective goods see collective/public goods
common goods/common pool resources see under collective/public goods
increasing utility 34
maximizing utility 38–9
non-private goods 57–8
perfect complements 35
perfect substitutes 35
prices see prices
private goods see private goods
public goods see collective/public goods
valuation of see under demand
see also demand; supply; markets

happiness research 202–3
harmony games 71–2, 92
Harsanyi, John 12–13
hawk-dove game 73, 74–6
heuristics 109, 185–7, 202
availability heuristic 185–6, 187, 189
criminal law, and 186–7
representativeness heuristic 186–7
voting heuristic 131
Hicks, John R. 30
hold-out problems 57
homo economicus 61, 178, 180–81, 197

behavioral model of 21–5, 108
rationality assumption see rationality assumption
utility theorem see utility/utility theorem
see also behavioral law and economics
decision see decision
judgment see judgment
Hotelling, Harold 127
human rights 11, 153

incentives 21, 116
incentive problems, solutions to incentive pay, aligning interests by 112–13
monitoring 112
meaning of incentives 21
public choice theory, and see under public and social choice theory
income effect 40
indifference curves 34–5
assumptions, and 37–8
completeness 37, 38
continuity 38
informal institutions and law 91–4
informal institutions, meaning of 93
law and social norms 92–4
conventions, social norms, norms of partiality 93–4
informal institutions as equilibria in repeated interactions 92–3
norms of partiality, meaning of 94
law as price or focal point 91–2
social norms, meaning of 94
information
asymmetric see asymmetric information
common knowledge 88
complete information 88–9
decision, and see decision
heuristics, and see heuristics
imperfect information/information levels 87–8, 89, 100–108
adverse selection, problem of 101–2
contract conclusion, after 110–17
screening see screening
signalling see signalling
incomplete information 88–91, 121
information sanctions 93
law containing sanctions 92
perfect information 89
private information 101, 106
institutions
 informal institutions, and see  informal institutions and law
 public institutions see public and social choice theory
insurance market 104–7
moral hazard 110–11

Jolls, Christine 180
judges/juries 16
 anchoring, and 191–2
 extremeness aversion affecting decisions 192–3
 flexibility, need for 9
 hindsight bias 187–8
 judges’ political ideology, influence of 153
 limiting leeway in decision-making 192
 representativeness heuristics 186–7
 standards providing flexibility to react 9
 tort, damages in 191–2
judgment 184–90
 anchoring 190–91
 excessive optimism and overconfidence bias 188–90, 202
 heuristics see heuristics
 hindsight bias 187–8, 190
 self-serving bias 188–9
 wishful thinking 188, 189
Kahneman, Daniel 185–6, 190, 194, 195, 201
Kaldor, Nicholas 30
Kaldor-Hicks criterion 29, 30–31
 criticisms of 31
 deadweight loss, competition abolishing 54
 hypothetical compensation of losers 31
 nature of 12, 30–31
 perfect competition, and 51
Kelman, Mark 192
Kessler, Friedrich 107

law
 company law 113
 competition law 54–5
 compliance with, different degrees of 4
 constitutional law 9–10
 contract law see contract theory and economics of contract law
 criminal law 186, 191
 economic analysis of law, limits of 12–15
 efficiency and distribution 12–13
 normative implications of research design questions 13–15
 economic methods, and see economic methods and legal reasoning
 game theory, and see under game theory
 informal institutions, and see informal institutions and law
 international law, effectiveness of 11
 judges/juries see judges/juries
 legal doctrine 5–15
 equal protection 8–9
 proportionality 6–8
 teleological interpretation 5–6
 legal paternalism 196–7
 contract law 109–10
 legal reform 10–11
 overconfidence, and 189–90
 price or focal point, as 91–2
 regulation ex ante regulation 200
 legal regulation, consequences of 10
 paternalistic regulation 196–7
 social norms, and 92–4
 social phenomenon, law as 11
 strict liability 188
 tort/negligence
 damages in 191–2
 overconfidence and punishable negligence 190
 law of demand 39–40
 legal realism 1
 legal reasoning
 economic methods, and see economic methods and legal reasoning
social science methods, and see social science methods and legal reasoning
Lincoln, Abraham 144–5
loss aversion 194–5

Makwanyane (South Africa) 7
maximin principle 76
maximin payoff 83
market power see monopolies
markets 32, 50–60
airport example 58–9
black market trading 184
goods as bundles of rights 52
market failure 52–60
asymmetric information and hidden action 55
definition of 52
externalities, transaction costs,
Coase Theorem 55–7
government’s function to correct 121–2
markets without competition 53–5
monopoly/market power as cause of 107–8
non-private goods 57–8
market imperfections and case for contract law 99–100
market power and asymmetric information 107–8
monopolies see monopolies
perfect competition 50–52
price/value in exchange 33
methodological individualism 18–19
meaning of 18
patterns of behavior, focus on 19
micro-economics 25
minority protection 116–17
mixed motives games 74–7
battle of the sexes 69, 74–5
coopération games see cooperation games
hawk-dove game 73, 74–6
stag hunt game 74, 76–7
monitoring
agents, monitoring of 122
politicians’ limited possibilities to monitor 134, 135
monopolies 53–4
asymmetric information, and 55, 107–8
competition law 54–5
contract terms, inefficient 108
government addressing anti-competitive conduct 122
market entry game 89–91
market failure, as cause of 107–8
maximizing profits 54–5, 107–8
natural monopolies 54
prices/excessive prices 53–4, 55
imperfect information 107–8
stable monopolies 54
moral hazard 110–13
agency contracts: principal-agent conflict 111–12
opportunism 116
phenomenon of moral hazard 110–11
solution strategies
incentive pay, aligning interests by 112–13
monitoring 112
state intervention by law 113
Mussweiler, Thomas 191
mutuality, principle of 182, 183
Nash equilibrium 68–9, 82
rational behavior as common knowledge 88
subgame perfection 66, 85–7
natural monopolies see under monopolies
neuro-cognitive mechanisms 18
New Political Economy 25, 121–2
bureaucrats 126
public choice theory see public and social choice theory
voters 124–5
New Public Management 136
non-rational behavior 25, 26–7
biases 26
causing errors in decision-making 109
not leading to corporate insolvency 184
risk-taking 190
normative economic theory 2–3
normative implications of research design questions 13–15
opportunism 114–15
  definition 114
  law’s role in reducing 115–16
  minority protection 116–17
  safeguarding against 115
opportunity costs 45–6
optimism, excessive 188–90, 202
Organisation for Economic Cooperation and Development (OECD) 146
Ostrogorski paradox 143–4
overconfidence bias 188–90

Pareto principle/efficiency
  airport example 44
  contracts 100–101
  criticisms of 30
  nature of 12, 29–30
  non-paternalism 29
  Pareto optimality 30
  perfect competition, and 51
  sovereignty of consumers 29
  unanimity 29
Pareto, Vilfredo 29
paternalism
  libertarian paternalism 197
  non-paternalism 29
  paternalistic contract law 109–10
  paternalistic regulation 196–7
  self-paternalism 199–200
payoffs 23–4
  game theory 62, 63–4, 66
  maximin payoff 83
  perfect competition 50–52
  Kaldor-Hicks efficient 51
  meaning of 50
  Pareto efficient 51
politicians 123
  monitoring by 134, 135
  see also public and social choice theory
positive economic theory 2
Posner, Richard
  *Economic Analysis of Law* 1
  wealth maximization 3
poverty, definition of 14–15
predictable irrationality 177–8
  see also behavioral law and economics
preferences 20–21
  context dependence 192
  decision, and see decision
  discounting 198, 199
  endowment effect 193–4
  fairness 182, 183–4, 202
  invariant nature of 20, 21, 24, 190
  anchoring, and 190–91
  framing, and 195–6, 197–8
  loss aversion 194–5
  multiple-selves models 198–9
  non-comparable/incommensurable 20, 28–9
  ranking of options, ordinal 20, 23–4, 33–4, 37, 63
  reversal of preferences 197–8
  risk preferences 24, 77, 194–5, 196
  self-control deficits 199–200
  self-paternalism 199–200
  short-term and long-term preferences 198–9
  social preferences 181
  *status quo* bias 194–5, 196–7
  subjective nature 29, 193
  transitivity (internal consistence of preferences) 37, 38
  voting preferences see under public and social choice theory
prices
  asymmetric information, and 55
  changes in 39–40
  law as price or focal point 91–2
  monopolies, in see under monopolies
  perfect competition, and 50–52
  price of a good under 50
  perfect (first degree) price discrimination 55
  strategic interactions determining 54
  value in exchange see under markets
principals see agents and principals
prisoner’s dilemma 68, 71, 77–8, 80
  collective action 77
  cooperation problems 80, 82, 83
  defection as dominant strategy 80, 83
  externalities 78
  repeated 82
  repeated finitely 83
private goods
  collective goods, and 79
  excludable and rival 57, 78
producer surplus 49–50, 51
profits 49–50
monopolies 54–5, 107–8
property rights approach 52
proportionality 6–8
case law 7–8
four prongs of proportionality test 7
less restrictive means test 7
two-stage individual rights analysis 6
prospect theory 193–5
endowment effect 193–4
framing, and 195–6
loss aversion 194–5
status quo bias 194–5, 196–7
value function 195
weighting function 195
public and social choice theory 121–45
basic assumptions of public choice theory 122–6
bureaucrats 124–5
politicians 123
voters 124–5
budget maximization of bureaucrats 133–6
the model 133–5
the model, influence and critique of 136
collective decision-making through votes and elections: social choice 136–45
Arrow’s impossibility theorem 141–143
evaluation and legal implications 144–5
Ostrogorski paradox 143–4
problems of votes and elections 136–41
economics and explanation of government 121–2
median voter theorem 127–32
conclusion 132
the model 127–9
the model, relaxing the assumptions of 129–31
misguided incentives in representative systems 126–36
budget maximization of bureaucrats 133–6
median voter theorem 127–32
rent-seeking: special interest effect 123, 132–3
votes and elections, problems of 136–41
agenda procedure 137–8
Borda procedure 139–41
Condorcet procedure 138–9
simple majority vote 137
public goods see collective/public goods
quasi-hyperbolic discounting 199
quasi-rationality 177
see also behavioral law and economics
‘race to the bottom’ 101–2
Rapaport, Anatol 182
rate of substitution 35
marginal rate of substitution 35–6, 39
rational choice theory 25, 28, 61, 121, 184, 201
limits of model 25–7
non-rational behavior see non-rational behavior
ranking of options, ordinal 20, 23–4, 33–4, 37, 63
valuation of goods, and 33–4
rationality assumption 14, 24–5
anomalies 109, 201
addressing 25
complete information, assumption of 24–5
freedom of contract, and 108
meaning of 24
see also bounded rationality; game theory
regulation see under law
rent-seeking 123, 132–3
repeated games 81–3
finitely repeated games and backwards induction 83
folk theorem 83, 93
indefinitely often repeated games 82
research see empirical research and statistics
restrictions 21
meaning of restrictions 21
variable nature of 21, 24
risk and uncertainty 24, 181
irrational risk-taking 190
loss aversion 194–5
risk dominance 77
risk preferences 24
systematic errors made when deciding under uncertainty 109
rivalry 57
meaning of 78
Rothschild, Michael 104
Rottenstreich, Yuval 192
’satificing’ 108–9
scarcity of resources 19–21
choice as essential moment of human decision-making 19–20
preferences 20–21
restrictions and incentives 21
Schumpeter, Joseph 127
screening 103–7
means to gain information about counterparties, as 103–4
reduction of screening costs by state intervention 106–7
self-selection by contract 104–6
signalling 102–3
concept of 102
signalling that is too costly 102–3
state intervention, and 103
Simon, Herbert 108–9
simple motives games 71–4
conflict games 72–3, 74
coordination games 73–4
harmony games 71–2
Sloan, John Henry 150
Smith, Adam 50
Smythe, Donald J. 115
social choice theory see public and social choice theory
social science methods and legal reasoning 1–15
economic analysis of law, limits of 12–15
efficiency and distribution 12–13
normative implications of research design questions 13–15
legal doctrine 5–10
equal protection 8–9
interpretation of standards 9–10
proportionality 6–8
teleological interpretation 5–6
legal reform 10–11
social phenomenon, law as 11
social norms see informal institutions and law
social sciences
design of social science research 3–4
social science methods and legal reasoning see social science methods and legal reasoning
social science theories, focus of 3
solution concepts 65–71
dominance 66–8
Nash equilibrium 68–9
strategy profiles 65
Spence, Michael 103
stag hunt game 74, 76–7, 82
standardization games 68–9, 71, 74, 84–6, 88
standards, open-textured 9–10
state intervention
agency costs, lowering 113
anti-competitive conduct, addressing 122
paternalistic contract law, by 109–10
public goods, providing 121
reducing screening cost 106–7
signalling 103
transaction costs impeding free market exchange 179
welfare loss, mitigating 103, 109
see also public and social choice theory
states, international law compliance and 11
statistics see empirical research and statistics
status quo bias 194–5, 196–7
Stiglitz, Joseph E. 102, 103–4
substitution effect 40
Sunstein, Cass R. 180, 197
supply 32, 45–50
opportunity costs 45–6
producer surplus 49–50
some more important notions of costs 46–8
special costs and supply curve 48–9
supply elasticity 50
surplus see consumer surplus; producer surplus; total surplus

teleological interpretation 5–6
Thaler, Richard H. 177, 180, 197
total surplus 51, 52
monopoly markets, in 53–4
trade-offs 23–4
transaction costs 56–7
absence of 56, 57
costs of reading/costs of understanding 109
impeding free market exchange, state intervention when 179
low transaction costs 57, 193
see also Coase theorem
relational contracts 113–14, 115
transaction costs v. governance costs 115
Tversky, Amos 185–6, 190, 192, 194, 195

ultimatum game 26, 27, 181–3
uncertainty see risk and uncertainty
United Kingdom
company law 116–17
New Labour Party 129
United States (US)
competition law 54–5
corporate opportunities doctrine 113
equal protection/racial segregation 8–9
Federal Sentencing Guidelines 192
gambling law 5–6

law and economics movement,
emergence of 1
legal realism 1
legal reform 10
New Political Economy 121
proportionality 6
‘Used Car Lemon Laws’ 103
United States v. Baker (US) 192
utility/utility theorem 21, 22–4
downward sloping demand curve 22–3, 181
decreasing marginal utility 23
expected payoff 23–4
goods 34
see also demand; supply; markets
‘inner’ utility function 22–3, 181
linear, concave, convex utility functions 24
maximizing utility 38–9, 48
positive marginal utility 23, 48
preferences see preferences
ranking of options, ordinal 20, 23–4, 33–4, 37, 63
utility, meaning of 22

value
goods, of see under demand
exchange, in see under markets
voters see under public and social choice theory

Weinstein, Neil 188
welfare economics 29–31, 121–2
first welfare theorem 51
Pareto principle/efficiency see Pareto principle/efficiency
welfare loss see deadweight/welfare loss
Williamson, Oliver E. 114
wishful thinking 188, 189