Index

abstraction, isolating 108
abuse of market power, Chicago School 61
active state concept 26
adhocracy 216
adversary concept
   adversarial tradition 154
   in jurisprudence 154–7
   in politics 150–54
agglutination of power 200
agonism 154
agonistic liberalism 151, 152
agrarian economic model 15–16, 18
Akman, Pinar 32, 97, 111, 113
Ancient Greek philosophy 10–15, 34, 124–5, 129
antagonism 154
anticompetitive agreements, pro-competitiveness of 269–71
antinomy 93, 94, 130
antitrust doctrine
   authorisation of mergers 18
   Brussels/Neo-Brussels Schools 110–18
   coherent application of law 4
   empirical techniques 64
from EU perspective
   Brussels/Neo-Brussels Schools 110–18
   Ordoliberal roots of European antitrust 80–103
expertise-based economics 72
historicism doctrine 28, 74–5
history of ideas 73
internal competition 267–8, 269
laissez-faire v. intentionalist perceptions of market process 73
libido theory 158–9
methodological holism 3
neutral policy requirement 62
normative and methodological components 47–9
paradoxicality of antitrust 68
progressive nature 79
scope of antitrust goal, shaping 55–6
theory 201
from US perspective
   based on European economic and legal foundations 79–80
cartels 86–7
Chicago School 59, 63, 65, 66, 72
economic efficiency 61
effectiveness of antitrust rules 46, 47
evolution of 38, 39
global influence on competition law 79
monolithic narrative of development of antitrust 58
normative and methodological components 47–9
norms 44–5
opposition to an interpretive jurisprudence 43
and Ordoliberalism 87, 95
polarised views 44
Post-Chicago School 70
scope of antitrust goal, shaping 55–6
wording and interpretation 36
see also United States
antitrust paradox 168
antitrust regulation of competitive process, flaw in 172–6
re-authorisation 173, 175
Aquinas, St. Thomas 17
arbitrariness
   balancing 237–8, 241
   bounded 213–17
Aristotle 13–14, 129
art 144, 146
Arthur, Thomas C. 37, 38, 43, 143
Austin, John 250
Austrian School
competition from perspective of 26, 99, 104–10
deductive approach of 108
and Historical School 107, 108
neoclassical economics 108, 109
and Ordoliberalism 105, 106, 108
autopoiesis of values 180–86
analytical two-step model 181–2, 183, 184
closeness of autopoietic systems 184–5
decision-making 180–81
self-sufficiency and self-maintenance 182
axiomatic human rights-based approach see deontological (non-consequentialist) approach to competition
balancing
arbitrariness 237–8, 241
balancing act
Chicago School 65
in constitutional jurisprudence 236–45
dialectics 131
and incommensurability of values 76, 194–8
marginal utility concept, application to 26
proportionality 187
regulatory circles 167
and self-destructive nature of competition 165
sub-acts 200
theoretical approaches 234
consequentialist approach to 244
constitutional 243
decision-making process, preconditions see decision-making
inevitability of 188
interdisciplinarity 188, 199–206, 229
and interpretation of values 186–212
law of economics and economics of law 229–33
mechanics of 178–234
monosemic models 190–92
political balancing between values 25–6
scarcity of regulatory choices 188, 209–12
systemic approach to 193
values see values
Balkin, Jack M. 200, 202, 204, 233, 251
barriers to entry, Chicago School 61, 63
Bentham, Jeremy 21, 25, 65, 250
Berdyaev, Nicolas 104, 122, 131, 134, 135, 139–40, 159
Berlin, Isaiah 83, 97, 99, 104, 133, 135–40, 151, 152, 164, 189, 198, 219
Böhm, Franz 32, 82, 85–9, 92, 97–9, 102, 159, 205, 227, 296
Böhm-Bawerk, Eugen von 107
Bork, Robert H. 41, 56, 63, 68, 121, 148, 168–9, 190, 227
bounded arbitrariness of decision-making 213–17, 261
bounded objectivity 213
Brietzke, Paul H. 37, 38, 143
‘broader picture’ issues 4–5
Brussels/Neo-Brussels Schools of Antitrust 110–18
market integration ethos 114, 116, 117
and Ordoliberalism 110–14, 117
Buchanan, James M. 106, 143, 144, 147, 191, 224, 230
Budzinski, Oliver 22, 23, 30, 31, 48, 54, 57, 61, 64, 69, 70–72, 77, 81, 85, 98, 99, 103, 105, 118, 136, 146, 151, 158, 164, 167, 172, 199, 201, 212, 219
bureaucracy 216
capitalism
role of universities prior to 16–17
and Roman law 14
cartels 24, 38, 63, 98
in Germany 85–6
justification for 86–7
Chicago School 47–8, 52, 56–66, 72, 78, 117
see also Post-Chicago School
academic and political success 59
antitrust doctrine 59, 63, 65, 66
deductive techniques 72
as example of normative economics 78
features 61–2, 63
and Harvard School 57–8, 64, 75
as ideological movement 62
ideological opponents 66
law, contributions to 59–60
non-intervention tradition 57
v. Post-Chicago School 70, 71–3, 75, 76–8
premises in antitrust scholarship 59
rule of reason 47–8, 62–3
skepticism, legacy of 57
Christiansen, Arndt 42
Cicero 14
Clark, John B. 39, 105
Clark, John M. 51
classical economic theories 14, 50, 84
role of competition in 21–9
Coate, Malcolm B. 57
coefficient of utility 25
Cohen-Eliya, Moshe 243
collectivism 84, 137
commensurability concept 194
commoditisation of money 14
communication
between decision-makers and
influence groups 222–5
inter-value 223
intra-value 222, 223
trans-value 222
value of competition, and
communicative problems 225–9
between values and decision-makers 213
comparative advantage principle 29,
61, 62
competition
see also competition policy;
competitive process
anticompetitive agreements, pro-
competitiveness of 269–71
Austrian School perspective 26, 99,
104–10
‘broader picture’ 4–5
complete 32, 33
consitutional approach, practical
implications 265–73
cultural 145, 146, 147, 148, 155,
168
deoontological approach to
see deontological (non-
consequentialist) approach to
competition
doctrinal foundations of law
see doctrinal foundations
competition law
economic concept see economic
contcept of competition
effect-oriented approach 53–4, 58
formal requirements for existence
3, 4
free 21–2, 23, 24, 30, 31, 147
good and bad 13, 125, 126
handicap 99
imperfect 51, 62
interaction with public interests 54
internal 3, 4, 265–9
internal limitation 164–5
between labour force and capital 27
legal rules v. legal principles 44
Marxian concepts 26–8
on the merits 99
neoclassical v. dynamic
understanding 30
normative value see normative value
of competition
Ordoliberal conception of 94–103
perfect see perfect competition
phenomenon of 3, 4, 44, 98
philosophical perspective 124–42
political 8, 144–5, 148, 155
preventive interpretation 17–18
primary objective of jurisprudential
account of 1–2
primary stage 27
protection of 141
in public domain 8, 142–3
pure 162
rivalry between approaches to 5, 6
self-destructive nature 122, 163–76
social market economy 5–6
theory, reconciling with practice
271–3
value of, and communicative problems 225–9
workability of, US 51–5
competition policy vii, vii, ix, x, xi, 1, 3, 117, 276
see also competition; competitive process
balancing mechanics 199, 226, 234
contemporary viii, 2
economic concept of competition, evolution 29, 30, 33
European 80, 95, 111
evolution of competition law from US perspective 54–7, 61, 69, 70
normative value of competition 126, 141, 176, 177
and positive/negative freedom 136–42
US perspective 79
competitive markets 5, 68
see also markets
competitive process vii, viii, ix, x, 1, 5–9, 258, 275, 276, 277
antitrust regulation of, flaw in 172–6
balancing 178, 234
decision-making 213, 222, 225, 226, 229
interpretation of values 188, 193, 198, 207
Chicago School 64
constitutional approach 193, 265–73
and dialectics 131
doctrinal foundations of competition law 35
EU perspective 83, 94–7, 102–105, 107, 109, 115
US perspective 36, 47, 49, 53–4, 56, 64, 66, 68
economic concept of competition, evolution 11, 33
classical economic theories 23, 26, 28
ideas before late 18th century 16, 17, 20
form- and effect-based assessments of performance of 53–4, 58
legal theoretical aspects 235, 245
normative value of competition 121–4, 131, 148, 149–50, 158, 177
adversary concept 151, 153, 155, 156
antitrust regulation of competitive process, flaw in 174, 176
regulatory circles 165, 167, 168, 170, 172, 260–61
and Ordoliberalism 97
v. perfect competition 30–33
positive feature 245
and societal well-being 177
Treaty on the Functioning of the European Union 260, 261, 264
complete competition 32, 33
Comte, Auguste 186
conflicts of values 188, 192–3
natural 206–208
consequentialism 6, 66–8, 244
constitutional approach to competition balancing act in constitutional jurisprudence 236–45
economic constitution, concept 100
effects of constitutionalisation 179
internal competition, concept 265–9
norms, constitutional 239
and Ordoliberalism 96–7, 100
practical implications 265–73
consumer surplus 117
consumer welfare 1, 232, 263, 276, 277
balancing and interpretation of values 205, 207, 210
constitutional approach to competition 270, 272
decision-making process, preconditions 219, 222, 226, 227
foundations of competition law, doctrinal
from EU perspective 103, 116–18
from US perspective 38, 56–8, 60, 61, 70
normative value of competition 123, 149, 173, 174
contestability, assumptions theory 63
cost-benefit analysis 46, 81, 232, 234, 240, 245
creationist view on development of competition 20
Critical Legal Studies 66
cross-disciplinary studies 188, 203
cultural competition 145, 146, 147, 148, 155, 168
Index

Dabbah, Maher M. 19, 104, 121, 141, 142, 217
Darwin, Charles 73, 137
decision-making
ad hoc 182–3
autopoiesis of values 180–81
and balancing 189
bounded arbitrariness of decision-making 213–17, 261
communication between decision-makers and influence groups 222–5
preconditions of process 212–29
rock-paper-scissors effect 213, 220–22
and self-destructive nature of competition 165
subjective aspect 26
deliberative democracy, principles 133
democracy
agonistic 154
as best of the worst 146
deliberative 133
liberal see liberal democracy
pluralistic 153
de-mystification of law 67
deonotology 2, 22, 24, 152
and formalism 240
freedom 152, 261
and Ordoliberalism 96, 99, 102–103
re-authorisation 262, 263
regulatory circles 168
and rights 96, 142, 208
v. utilitarianism 6–7
Derrida, Jacques 181
destruido (destructive elements) 160
dialectical materialism 196
dialectics
and balancing 181
competition quia dialectics 127–30
and competitive process 131
concept 127, 129
development of dialectical thinking 12
dialectical spiral 132–3
dialogue 128, 129
dilemmas, aporias and paradoxes 129
of epistemology 128
externality 129
and German Idealism 130
and harmony 135
of Hegel 134–5
of history 196
as instrument of argumentation 130
laws of 1
and liberal democracy 132, 133–4
and necessity of tragic choices 134–6
noetic 127–8
of ontology 128
origins of 129
quantity–quality continuum 197
reflective 127–8
regulative 127–8
taijitu symbol 128
and value pluralism 131–4
and values 195
Dialogues (Plato) 13
dirigisme concept 19, 82–4, 114
distributive justice 24
division of labour, Platonic concepts 12–13
doctrinal foundations of competition law 35–120
evolution of competition law from EU perspective 79–118
Brussels/Neo-Brussels Schools of Antitrust 110–18
Ordoliberal roots of European antitrust 80–103
evolution of law from US perspective 36–79
Chicago School 47–8, 52, 56–66
consequentialism, as source of legal realism 66–8
Harvard School tradition 47, 50, 51, 54–6, 75, 118
normative and methodological components of antitrust doctrine 47–9
Post-Chicago School see Post-Chicago School
rule of reason v. reason of rule 39–47
scope of antitrust goal, shaping 55–6
Structure–Conduct–Performance (SCP) paradigm 48, 50, 52–3, 56, 58, 60, 75, 118
universalists and historicists, conflict between 74–5
workability of competition 51–5
intentionalism 35, 73
legalistic doctrinarism 2
pendulum narrative 53–4, 74, 118–19
dogmatism 156
Drexl, Josef 112, 115–17, 274–6
Durkheim, Emile 215
Dworkin, Ronald 240

Easterbrook, Frank H. 57, 60, 61
Ebenstein, William 185, 253, 254
Ebner, Alexander 90, 111
economic concept of competition 1, 164
archetype of economic reasoning, equilibrium principle as 30
classical theories see classical economic theories constructed perspective 10–11
descriptive perspective 10, 11
equilibrium economics 25, 30, 31, 109, 162, 205, 270
evolution of 9, 10–34, 96
Ancient Greek philosophy 10–15, 34, 124–5, 129
ancient roots 11–16
antitrust ideas in 19th century 73
creationist v. evolutionary view 20
ideas before late 18th century 16–21
mercantilism 18–19
Roman philosophy 10, 11, 14, 34
social context, understood in 12
transition from feudal to capitalistic perception of economy 18
ideas before late 18th century 16–21
law as influence on economics 201–202
law of economics and economics of law 229–33
marginal utility concept, development 24–5
mathematic processes 30
and normative value of competition 149–50, 160
perfect competition v. competitive process 30–33
scarcity of regulatory choices 210

and self-destructive nature of competition 163–4
subjectivist and inductive economic schools 25
universal and deductive principles of mainstream equilibrium economics 25
economic constitution, concept 100
economic efficiency 12, 86, 119
evolution of competition law 56, 61, 62, 66
economic freedom concept 18, 113, 148
economic positivists, v. normativists 76–7
economic theory vii, xi, 9, 15, 46, 157, 206, 238
economic competition, ideas before late 18th century 16, 19, 29
evolution of competition law from EU perspective 81, 93, 98, 112
perfect competition v. competitive process 30, 31
Post-Chicago School 69, 73
economies of scale 53
Chicago School 61
economy of scale, concept 12
effect-oriented approach to competition 53–4, 58
empiricism 5, 22, 72, 197
criticism 191–2
historical 89, 93, 108
inductive 47
entrepreneurial discovery viii, 8, 104–105, 139, 163
entrepreneurial freedom viii, 158
entrepreneurial spirit 8, 15, 31, 109
Epicureans 16
equilibrium economics 44, 109, 162, 205, 270
economic concept of competition 25, 30, 31
eris (strife), concept of 12
eros, Platonic notion of 159
Eucken, Walter 23, 29, 32, 74, 75, 78, 80–83, 87, 88–90, 92–4, 96–8, 100–103, 108, 164, 189, 197, 205, 206, 218, 220, 227, 277
eugenics 183–4
European Union (EU)
creation of similarities 141
The normative foundations of European competition law

National-Liberal movement (19th Century) 83
positivistic tradition 247
post-war economic miracle 89–90
The Good Society (Lippmann) 84
governmentality, liberal 83
Gray, John 138
Greek philosophy see Ancient Greek philosophy
guilds 19, 24
Günther, Klaus 215

Habermas, Jürgen 239–40, 241
Hamiltonians, United States 38
handicap competition 99
happiness
Ancient Greek philosophy 13, 16
and utilitarianism 22, 25
Harvard School tradition, US 47, 50, 51, 54–6, 75, 118
and Chicago School 57–8, 64
Hayek, Friedrich A. von 26, 33, 83, 87, 91, 107, 109, 170, 199, 221, 256
Hedonists 16
Hegel, Georg Wilhelm Friedrich 130, 134–5, 196, 253
Heidegger, Martin 181
Heraclitus 129
Hesiod, works of 12, 124–5
hierarchies, negation of 189–94
Historical School
and Austrian School 107, 108
and evolution of American antitrust scholarship 79–80
and institutionalism 73
and Ordoliberalism 87–94
antinomy 93, 94
legal positivism 89, 91
rule of law 91, 92
similarities 94
historicism doctrine 28
conflict between universalists and historicists 74–5
homonymy 33
of values 188, 199–206
House of Representatives, US 39
Hovenkamp, Herbert J. 8, 28, 38, 39, 41, 48, 53, 54, 58, 60, 61, 63, 65–7, 70, 71, 74–6, 78, 80, 86, 94, 150, 158, 159, 170, 227, 231, 268, 273
humanisation of law 67
humanism 247
Husserl, Edmund Gustav Albrecht 108
hyperinflation 86
idealism, legal 255
imperfect competition 51, 62
in-/commensurability of values 25, 188
and balancing act 194–8
and commensurability 194
conditions 198
indifference, law of 195
Industrial Organisation methodology 219
and Brussels/Neo-Brussels Schools 117–18
and Post-Chicago School 71, 72, 75
influence groups 222–5
information failures 53
Inquiry into the Nature and Causes of the Wealth of Nations (Smith) 22
intellectual property 19
intentionalism 35, 73
inter-brand competition 273
interdisciplinarity 3, 65, 67, 229
and balancing 188, 199–206
internal competition 3, 4, 265–9
internal market, and open market 115–16
interpretation of values, and balancing 186–212
inter-state barriers/anti-competitive practices 114
interventionism, liberal 83
intra-brand competition 273
intradisciplinarity 203, 232, 250
‘invisible hand’ metaphor 22
Jeffersonians, United States 38
Jellinek, Georg 233
Jenny, Frederic 144
Jevons, William S. 25, 26, 195, 218
Joerges, Christian 83, 111
Jones, Franklin D. 19
jurisprudence
adversary concept in 154–7
balancing act in constitutional jurisprudence 236–45
Index

compared to political philosophy 237
legal process 154–6
mechanical 185
primary objective of jurisprudential account of competition 1–2
rights-based positivist tradition 250
sporadic operationalisation of 3
term 1
justice 24

kaleidoscopic constellation of values 213, 217–20
Kant, Immanuel 92, 93, 130, 136
Katz, Avery W. 78
Kerber, Wolfgang 42
Keynes, John Neville 77, 78, 231
Kirzner, Israel M. 31, 107
Knight, Frank H. 144, 170, 247
Kramer, Matthew H. 248
Kress, Ken 215

labour forces and capital 27
Lachmann, Ludwig 107
laissez-faire tradition
and Austrian School 107–108
Austrian School 110
Austrian School perspective 106
Chicago School and Post-Chicago School 62, 68, 73
economic concept of competition, evolution 20, 27
Ordoliberalism 84
philosophical perspective of competition 137
Lane, Jessica 226, 258
Lange, Bettina 185
Lariguet, Guillermo 244
Laski, Harold J. 137, 164
law
see also legal theoretical aspects of competition
Chicago School contributions to 59–60
competition see competition
correlation of law and morality 246–53
de-mystification of 67
economics of, and economics of law 229–33
essence of, taken as set of social norms 3
humanisation of 67
ideal and material 254–9
pure 253
subordination of 65
legal norms 214
legal positivism 233, 254, 255
exclusive 250–51, 258
inclusive 250
law and morality 247–8, 251–2
and legality 249–50
and logical positivism 185, 257
and Ordoliberalism 89, 91
and scientific positivism 185
and sociological positivism 185–6
legal process jurisprudence 154–6
legal realism, consequentialism as source of 66–8
legal theoretical aspects of competition 235–59
balancing act in constitutional jurisprudence 236–45
correlation of law and morality 246–53
ideal and material law 254–9
rule of reason, US 46
legalistic doctrinarism 2
Levinson, Sanford V. 202
lexical order 211
Lianos, Ioannis 185, 228
liberal democracy
see also values
adversary concept
in jurisprudence 154–7
in politics 150–54
and dialectics 132, 133–4
role of competition in 95, 122, 176
libido concept 8–9, 157–63
normative role 142–63
values 21, 151
liberal interventionism 83
liberalisation policies 18, 114
liberalism 17, 131, 147, 260
see also liberal democracy; neoliberalism; Ordoliberalism
agonistic 151, 152
The normative foundations of European competition law

constitutional choice 132
economic 17, 22
end-state 102
modern 84
monistic 153
and Ordoliberalism 83, 84
pluralistic 153
rule-oriented 101
liberty principle (Mill) 138
libido concept and psychological aspects of competition 8–9, 157–63
Liefmann, Robert 169
Lippmann, Walter 84
literalism 42, 43
Locke, John 21
logical positivism 185, 257
Luhmann, Niklas 182, 185, 193, 196, 204
MacCormick, Neil 249
Machiavelli, Niccolò 18
McNulty, Paul J. 31
Maher, Imelda 103
majority, rule of 133
marginal utility concept, development 24–5, 26
marginalist revolution 108
market failure 161–2
market incentives 6
markets
abuse of market power 61
ancient origins 12, 14
commonality of 114
competitive 5, 68
‘eroticism of market relations’ 159
European 114
free markets 12, 21, 67
incentives 6
market integration ethos 114, 116, 117
market results, workability of competition 53–4
open market/open market economy 115–16, 172
social market economy 5–6
state–market relationship, either-or perception 20
Markham, Jesse W. 51–2
Marmor, Andrei 192
Marshall, Alfred 26
Marx, Karl 26–8
Mason, Edward S. 162
Mathews, Jud 192, 221, 238
Maturana, Humberto 182
media pluralism 268–9
Menger, Carl 74–5, 107
mercantilism
development of 18–19
and feudalism 24
and United States 39
mergers 18, 63
meritocratic justice 24
merits, competition on the 99
Mestmäcker, Ernst-Joachim 90–91, 100, 112, 158
minimalism 146
Mises, Ludwig von 107, 108
modernism 181
Molle, Alexander 175
monetary policy 14
monism 16, 152
monopolies
and Austrian School 109
Chicago School 63
hostility towards 18–19
inefficiency 38
justification for 18–19
Marx on 27
origins of 14, 17
regulatory circles 169
social perception 162
in United States 37, 38
monosemic models 190–92
Monti, Giorgio 174, 231, 271
morality, and law 246–53
Morgan, Mary S. 36
Möschel, Wernhard 85–6
Mouffe, Chantal 153
Müller-Armack, Alfred 101–102
music 200
mythology, Greek 12, 125
natural law tradition 246–7, 249, 250
natural price 23
natural selection 137, 206
negation of hierarchies, and polysemy of values 189–94
Index

negative freedom and competition policy 136–42
Neo-Chicago School 73
neoclassical economics 84, 116
and Austrian School 108, 109
neoliberalism 83–4, 103
v. neoclassical economics 84
Neves, Marcelo 185
New Institutional Economics, and Ordoliberalism 93
Nicolaides, Phedon 54–5
Nietzsche, Friedrich 125
noetic dialectics 127–8
non-exclusivity clause 3
normative value of competition 7–8, 121–77
adversary concept
in jurisprudence 154–7
in politics 150–54
competitive process 121–4, 131, 148, 149–50, 158, 177
adversary concept 151, 153, 155, 156
antitrust regulation of competitive process, flaw in 174, 176
regulatory circles 165, 167, 168, 170, 172
consumer welfare 123, 149, 173, 174
freedom of speech 129–30, 140, 145, 146, 168, 171, 176
liberal democracy 142–63
philosophical perspective 124–42
competition qua dialectics 127–30
dialectics and necessity of tragic choices 134–6
dialectics and value pluralism 131–4
freedom and competition policy 136–42
self-destructive nature of competition 122, 163–76
utilitarianism 146, 148
normativists, v. economic positivists 76–7
nothingness 159
Novak, Marko 236
Nozick, Robert 211

Olympic Games, and competition 11
open market/open market economy 115–16, 172
opposites, unity of 129
Ordnungs politik, notion of 100
Ordoliberalism 118, 119
see also liberal democracy; liberalism
and American antitrust jurisprudence 95
and Austrian School 105, 106, 108
and Brussels/Neo-Brussels Schools 110–14, 117
competition, perception of 32, 94–103
competition and communicative problems 226–7
competition-centric vision, v. market integration 114
and constitutional approach to competition 96–7, 100
and economic principles 89, 94
etymology 81
Freiburg School 94, 101, 102
and Historical School 87–94
antinomy 93
legal positivism 89, 91
rule of law 91, 92
similarities 94
and legal positivism 89, 91
and New Institutional Economics 93
Ordoliberal roots of European antitrust 80–103
political dimension of 95–6
and rule of law 90–92, 103
state–market relationship 80–81, 83, 84, 90–91
theoretical development 83–5, 94
organisms, self-maintaining (analogy of) 22–3
Ouroboros paradox 168, 261
outcomes of competition 146
Page, William H. 62, 73–4
The Paradox of Choice (Schwartz) 190
Pareto optimality 238
Paulson, Stanley L. 233
Peacock, Alan T. 102
Peczenik, Aleksander 220, 249
pendulum narrative 24, 53–4, 74, 118–19
per se rules 44, 45
Pera, Alberto 115
perfect competition
  Chicago School 64
  v. competitive process 30–33
  and imperfect competition 51
  and workability of competition 51–2
  Peritz, Rudolph J. 42, 170
  Perrotta, Cosimo 15–16
  Petrochilos, George A. 13
  phenomenological reduction 108
  philosophical perspective, competition
    phenomenon from 124–42
    competition qua dialectics 127–30
    dialectics and necessity of tragic
      choices 134–6
    dialectics and value pluralism 131–4
  freedom and competition policy
    136–42
  physiocracy 18
  planned economy 27
  Plato 12–13, 129, 159
    The Republic 128
  pluralism 8, 268–9, 273
    see also value pluralism
  Plutarch 14
  polis theory 16
  political competition 8, 144–5, 148, 155
  political philosophy 237
  politics
    adversary concept 150–54
    grassroots 277
    political competition see political
      competition
    regulatory circles 165–6
  polysemy of values 188, 189–94
    and monosemic models 190–92
  Porat, Iddo 243
  positive freedom and competition
    policy 136–42
  positivism 67, 76, 257
  anti-positivism 254
  criticism of 252, 254
  economic 78
  legal see legal positivism
  logical 185, 257
  modern 250
  as politically neutral 252
  scientific 185
  sociological 185–6
  Post-Chicago School 47, 48, 60, 68–79, 119
  antitrust doctrine 70
  v. Chicago School 70, 71–3, 75, 76–8
  and economic positivism 78
  end of ‘monopoly’ of the Chicago-
    oriented rationale 70
  game-theoretic approach 48, 69, 70–71, 72, 118
  inductive analysis, reliance on 71
  proactive nature 69
  techniques 71
  traditions 68–9
  post-classical period 29
  postmodernism 181
  potential competition, theory of 63
  private property 17, 18, 27, 29
  production cycle, agrarian economies
    15–16
  property rights 81
  proportionality, and balancing act 187
  psychological perspective 8–9
  quae sunt Caesaris, Caesari approach,
    failure 2–3
  quantity–quality continuum 188, 195, 196–7
  Rawls, John 152, 211
  Raz, Joseph 255
  realism 42, 66–8
  reason, rule of see rule of reason, US
  re-authorisation
    antitrust regulation of competitive
      process, flaw in 173, 175
    deontology 262, 263
    regulatory circles 165–6, 261, 262
    recognition, rule of 250
    reductionism 20–21
    reflective dialectics 127–8
    regulative dialectics 127–8
    regulatory choices, scarcity 188, 209–12
    regulatory circles 165–72, 260–61, 263–4
    first (big) circle 165–6, 168, 169, 172, 262
    second (middle) circle 165, 166, 168, 170, 261, 262, 264
    third (small) circle 167, 171, 262
    politics 165–6
    rationales for prohibition and re-
      authorisation 165–6, 261
<table>
<thead>
<tr>
<th>Index</th>
<th>339</th>
</tr>
</thead>
<tbody>
<tr>
<td>resale price maintenance</td>
<td>41, 61</td>
</tr>
<tr>
<td>restrained liberalism</td>
<td>83</td>
</tr>
<tr>
<td>revisionism/non-revisionism</td>
<td>2</td>
</tr>
<tr>
<td>Ricardo, David</td>
<td>29</td>
</tr>
<tr>
<td>rights</td>
<td>192, 217, 222, 229, 236, 268</td>
</tr>
<tr>
<td>absolute nature of</td>
<td>229, 236, 240</td>
</tr>
<tr>
<td>civil</td>
<td>143</td>
</tr>
<tr>
<td>of competitors</td>
<td>62</td>
</tr>
<tr>
<td>concept</td>
<td>229, 235, 243</td>
</tr>
<tr>
<td>conflicting</td>
<td>142</td>
</tr>
<tr>
<td>constitutional</td>
<td>140</td>
</tr>
<tr>
<td>and deontology</td>
<td>96, 142, 208</td>
</tr>
<tr>
<td>economic</td>
<td>81</td>
</tr>
<tr>
<td>exclusivity of</td>
<td>243</td>
</tr>
<tr>
<td>and freedom</td>
<td>142, 170, 171</td>
</tr>
<tr>
<td>fundamental/basic</td>
<td>91, 119, 143, 237</td>
</tr>
<tr>
<td>and goals</td>
<td>179, 180</td>
</tr>
<tr>
<td>human</td>
<td>6, 20, 21, 224, 243, 250, 262, 274</td>
</tr>
<tr>
<td>inalienable</td>
<td>262</td>
</tr>
<tr>
<td>individual</td>
<td>39, 96, 99, 170</td>
</tr>
<tr>
<td>inflation in</td>
<td>274</td>
</tr>
<tr>
<td>language of</td>
<td>81, 96, 243</td>
</tr>
<tr>
<td>legal</td>
<td>97, 193, 234, 240, 241</td>
</tr>
<tr>
<td>limits of</td>
<td>237</td>
</tr>
<tr>
<td>of minorities</td>
<td>208, 274</td>
</tr>
<tr>
<td>moral</td>
<td>234, 254</td>
</tr>
<tr>
<td>natural</td>
<td>20</td>
</tr>
<tr>
<td>and Ordoliberalism</td>
<td>91, 96, 99, 101</td>
</tr>
<tr>
<td>procedural</td>
<td>115</td>
</tr>
<tr>
<td>property</td>
<td>81</td>
</tr>
<tr>
<td>protected</td>
<td>112, 149, 170, 180</td>
</tr>
<tr>
<td>sports media</td>
<td>268</td>
</tr>
<tr>
<td>treaty-protected</td>
<td>112</td>
</tr>
<tr>
<td>and values</td>
<td>243</td>
</tr>
<tr>
<td>Robins, Lionel</td>
<td>214</td>
</tr>
<tr>
<td>Robinson, Joan</td>
<td>77</td>
</tr>
<tr>
<td>rock-paper-scissors effect, decision-making</td>
<td>213, 220–22</td>
</tr>
<tr>
<td>Rödl, Florian</td>
<td>83</td>
</tr>
<tr>
<td>Roman philosophy</td>
<td>254</td>
</tr>
<tr>
<td>and economic concept of</td>
<td>competition 10, 11, 14, 34</td>
</tr>
<tr>
<td>Ross, Alf</td>
<td>254</td>
</tr>
<tr>
<td>Royall, Sean M.</td>
<td>64, 73</td>
</tr>
<tr>
<td>rule of law</td>
<td>262, 274</td>
</tr>
<tr>
<td>ambivalence of concept</td>
<td>91, 92</td>
</tr>
<tr>
<td>and Ordoliberalism</td>
<td>90–92, 103</td>
</tr>
<tr>
<td>procedural approach to</td>
<td>91</td>
</tr>
<tr>
<td>substantive</td>
<td>92</td>
</tr>
<tr>
<td>rule of reason, US</td>
<td>see also under antitrust doctrine; United States</td>
</tr>
<tr>
<td>application of concept</td>
<td>43–4</td>
</tr>
<tr>
<td>balancing concept</td>
<td>178</td>
</tr>
<tr>
<td>Chicago School</td>
<td>47–8, 62–3</td>
</tr>
<tr>
<td>difficulties with</td>
<td>41, 42</td>
</tr>
<tr>
<td>legal rules v. legal principles</td>
<td>44</td>
</tr>
<tr>
<td>need for</td>
<td>42</td>
</tr>
<tr>
<td>per se rules</td>
<td>44, 45</td>
</tr>
<tr>
<td>v. reason of rule</td>
<td>39–47</td>
</tr>
<tr>
<td>standards</td>
<td>45–6</td>
</tr>
<tr>
<td>rule of recognition</td>
<td>250</td>
</tr>
<tr>
<td>Säcker, Franz Jürgen</td>
<td>40, 52, 53–4, 175</td>
</tr>
<tr>
<td>Sanders, Anthony B.</td>
<td>92</td>
</tr>
<tr>
<td>Sartor, Giovanni</td>
<td>181</td>
</tr>
<tr>
<td>Schauer, Frederick</td>
<td>198</td>
</tr>
<tr>
<td>Schelling, F. W. J.</td>
<td>130</td>
</tr>
<tr>
<td>Schmitt, Carl</td>
<td>214</td>
</tr>
<tr>
<td>Schroeder, Jeanne L.</td>
<td>134–5, 197, 253</td>
</tr>
<tr>
<td>Schumpeter, Joseph A.</td>
<td>13, 15, 17, 22, 63, 105</td>
</tr>
<tr>
<td>Schwartz, Barry</td>
<td>190</td>
</tr>
<tr>
<td>Schweitzer, Heike</td>
<td>113</td>
</tr>
<tr>
<td>Scottish Enlightenment philosophers</td>
<td>104</td>
</tr>
<tr>
<td>S–C–P paradigm, US</td>
<td>see Structure–Conduct–Performance (SCP) paradigm, US</td>
</tr>
<tr>
<td>Sebok, Anthony J.</td>
<td>154, 185–6</td>
</tr>
<tr>
<td>selective intervention doctrine</td>
<td>82</td>
</tr>
<tr>
<td>self-destructive nature of competition</td>
<td>122, 163–76</td>
</tr>
<tr>
<td>antitrust regulation of competitive process, flaw in</td>
<td>172–6</td>
</tr>
<tr>
<td>regulatory circles</td>
<td>165–72</td>
</tr>
<tr>
<td>self-discipline</td>
<td>161–2</td>
</tr>
<tr>
<td>self-sufficiency of law</td>
<td>246</td>
</tr>
<tr>
<td>Silvermintz, Daniel</td>
<td>16, 17</td>
</tr>
<tr>
<td>Skinner, Andrew S.</td>
<td>22</td>
</tr>
<tr>
<td>Smith, Adam</td>
<td>22, 23–4, 31, 77</td>
</tr>
<tr>
<td>Social Darwinism</td>
<td>21</td>
</tr>
<tr>
<td>social market economy</td>
<td>5–6, 83, 90, 101–102, 111</td>
</tr>
<tr>
<td>social utility concept</td>
<td>240</td>
</tr>
<tr>
<td>socialisation of state</td>
<td>82</td>
</tr>
<tr>
<td>society, interests of</td>
<td>3–4</td>
</tr>
<tr>
<td>Socio-Legal Studies</td>
<td>66</td>
</tr>
<tr>
<td>sociological positivism</td>
<td>185–6</td>
</tr>
</tbody>
</table>
Socrates 13
Somek, Alexander 243
Sosnick, Stephen H. 52
specialisation 227–8
Spencer, Herbert 73
spontaneous order 26
sports media, and internal competition 267–8
state
see also state–market relationship
active state concept 26
dirigisme concept 19, 82–4, 114
planning by 109
Schmittian conception of 82
socialisation of 82
state–market relationship 20
Ordoliberalism 80–81, 83, 84, 90–91
stock exchange trading companies 24
Stoicism 14
Streit, Manfred E. 88–9
Structure–Conduct–Performance (SCP) paradigm, US 48, 50, 52–3, 56, 58, 60, 75, 118
sublimation 158
Sullivan, Lawrence A. 70, 72
Svetiev, Yane 68–9, 70
Sweet, Alec S. 192, 221, 238
symbiotic theory 123
syncretism/non-syncretism 2–3
systems theory 182

Taoism 128
Teubner, Günther 185, 202
Thalmann, William G. 12, 124–5
The Internal Market and Competition, Protocol 275
‘The Ordo Manifesto’ 205
The Theory of Moral Sentiments (Smith) 22
Thucydides 12
Tiedeman, Christopher G. 42
Torrens, Robert 29
tragic choices, necessity for 134–6
transaction costs 53
transdisciplinarity 204
travaux préparatoires 111
Treaty on European Union (TEU) 2
Treaty on the Functioning of the European Union 2
Article 101 and First Amendment 260–64
Commission’s application of rationale for Article 101 271–2
trusts 37, 38, 39, 86, 268
see also antitrust doctrine
Tumlir, Jan 85
type I errors, avoiding 61
Ungrund (abyss) 139, 159
United States
antitrust doctrine see under antitrust doctrine
balancing of values and rights 243
evolution of competition law from perspective of 9, 36–79
big industries, rapid growth 37–8
Chicago School 47–8, 52, 56–66
consequentialism as source of legal realism 66–8
evolutionary and pendulous perspectives 79
exclusive dealing 41
Harvard School tradition 47, 50, 51, 54–6, 75, 118
monopolisation regulation 37, 41
normative and methodological components of antitrust doctrine 47–9
Post-Chicago School see Post-Chicago School
rapid development of trusts 37
resale price maintenance 41
rule of reason v. reason of rule 39–47
S–C–P paradigm 50, 52–3, 56, 58, 60, 75
universalists and historicists, conflict between 74–5
workability of competition 51–5
Industrial Organisation methodology, and Post-Chicago School 71, 72, 75
legal culture 37
North American system of distribution of sports media rights 268
Post-Chicago School see Post-Chicago School
Supreme Court 39–40, 41
evoting system 145
universalists and historicists, conflict between 74–5
universality 3
universities, role of 16–17
utilitarianism
in art 146
Chicago School 65
v. deontological approach 6–7
and economic concept of competition 13, 16, 22
essence of 22
and happiness 22, 25
and normative value of competition 146, 148, 162
proto-utilitarian economic reasoning 17
psychological perspective 163
public goals 177
regulatory circles 168, 172
values 208
utility, laws of 25
value pluralism
and dialectics 131–4
principles 219
values see also balancing: value pluralism
autopoiesis of 180–86
in/-commensurability of 25, 76, 188, 194–8
competing at regulatory level 261
conflicts of 188, 192–3, 206–8
correlation of law and morality 246–53
hierarchy of 221–2
homonymy of 199–206
interpretation 186–212
kaleidoscopic constellation of 213, 217–20
monistic approach to 153
natural conflict of 206–208
normative 49
Ordoliberalism 81
political balancing between 25–6
polysemy of 188, 189–94
qualification 188, 195
quantification 188, 194, 195, 201
and rights 243
utilitarian 208
Vanberg, Viktor J. 102
Varela, Francisco 182
vertical agreements 63
vertical integration, Chicago School 61
Vickers, John 206–8
Viner, Jacob 13, 18, 22, 192, 197, 212, 214
vitalist tradition, psychology 159
voluntary simplicity 190
Waldron, Jeremy 240, 244, 245
Walras, Marie-Esprit-Léon 30
Weber, Max 215
welfare considerations 5, 7, 54, 72, 205, 275–6
see also consumer welfare
Ordoliberalism 100–101
Wieser, Friedrich von 107
Wiggers, Angela 87
Willgerodt, Hans 102
Willoughby, Westel W. 214
Wohlgemuth, Michael 84
Wolf, Dieter 275, 276
Wolff, Jonathan 160
workability of competition, US 51–5
form- and effect-based assessments
of performance of competitive process 53–4, 58
market results 53–4
Wright, Joshua D. 74
Xenophon 12, 16
Yankwich, Leon R. 39
Yin-and-Yang 128
Zeno 129
zero-sum contraposition 21
Zucca, Lorenzo 245
Zywicki, Todd J. 92