

Index

- administration 38–9, 47, 113ff
 - law-making authority of 84–85, 107
 - and primacy legislation 78
 - see also* interpretation; judicial review
- analytical jurisprudence 10
- ‘artificial reason’ 55–6, 103
- Austin J 33, 47, 49, 58, 92, 94–5, 108, 149, 162
 - and ‘habitual obedience’ 92, 162, 169
- autonomy (including self-determination) 63
- authoritarianism 194
- authority 6–7

- Bacon, F 56
- basic norm (*Grundnorm*)
 - change of 178ff
 - and constitution 157ff
 - and independence by devolution 152–3
 - presupposition of 164ff
 - and State creation 151–2
 - and the status of parliament 176
 - and usurpation 190–91
 - of the UK legal order 171ff
- Bell, J 73
- Bennion, F 121
- Bentham, J 36–7, 45, 47, 57, 108
- Bingham, J 2, 54
- Bingham, Lord 76, 93
- Blackstone, Sir W 111
- Browne-Wilkinson, Lord 64, 68

- Burke, E 56

- Coke, Sir E 55–6, 97, 102, 174
- common law
 - changes in 103
 - and judicial review 121–2
 - and morality 58ff
 - and natural law 46–7
 - origins of 175
- common law courts 96–8, 145
 - and basic norm 175–6
 - constitutional status of 176–7
 - and judicial review 139–40, 145–6
 - and natural law 53–4
 - and parliament 62–3, 68–70, 72, 80–81, 97–9, 103–5, 113–14, 130, 140–41, 145–6, 156, 177
- constitution, amendment of 89, 91
- constitution, as customary law 87–8
- constitution, essence of 85
- constitution, historically first 97, 151, 154, 159, 167, 173–4, 179
- constitution, material and formal 86–7
- constitution, 1920 Austrian 126
- constitution, ‘real’ 128–9, 160–62
- constitution, unwritten 85, 88–9, 91, 97ff, 100ff, 108, 140
- constitution, US 146–7
- constitutional legislation 86, 88–90
- constitutional review 126, 137–8, 143–4
 - see also* judicial review
- constitutional rights 44
 - and judicial review 140
 - and natural law 44

- and Rule of Law 193, 195
- and statutory interpretation 112, 121
- constitutionality, of statutes 142 *see also*
 - judicial review of statutes
- constitutions, written 86, 88–9, 142, 144, 146–7
- Cotterrell, R 18
- customary law 87–8

- democracy, development of 48–52
- D'Entrevres, AP 20, 155
- Denning, Lord T 62, 75, 125, 185
- Devlin, Lord P 60
- Dicey, AV 36, 50–51, 66, 86, 101–3, 110, 123, 195
- Diplock, Lord 71, 72, 78, 120
- discretion, administrative 114ff
 - and legislative conferral of authority 116–19
 - and royal prerogative 125
- discretion, judicial 73
- discretion, prosecutorial 13, 71

- Eekelaar, J 187
- efficacy, of legal norms 11, 179
- efficacy, of total legal order 167ff, 172–3, 179
- electoral reform 1832 92
- enemy aliens 77–8
- 'ethical minimum' 37, 50, 57 *see also* Jellinek, G

- fatherhood, legal 16
- fiction 16–17, 66
- Finnis, J 191
- freedom (including liberty) 35–6, 100
 - and fundamental rights 44
 - and positive legal regulation 6, 23, 35–6, 48
 - and rule of law 193
- Friedmann, W 9, 71, 81, 103, 155
- Friedrich CJ 33, 36

- 'general will' 28
- Goff, Lord 64
- Goldsworthy, J 147
- Goodhart, Sir A 9, 18, 48, 57, 59, 166
- Grundnorm see* basic norm

- Harris, JW 150, 165, 177
- Hart, HLA 11, 18, 33, 40, 52–4, 67, 149, 163, 170
 - and rule of recognition 163, 170
- hierarchy of norms
 - and discretion 84, 115
 - general dynamics 83ff
- Hobbes, T 45, 56
- Hoffmann, Lord 63
- Holdsworth, Sir W 100
- homicide 64–5
- Honore, A 58
- Human Rights Act 1998 90, 129, 197

- imputation 16–17, 25–6, 66
 - and parliament 92
- interest-based theories 36ff, 41, 46–7, 52
- interpretation
 - and the constitution 144–5
 - as a form of law-making 106–7
 - and legislator's intention 69–72, 98, 109, 111–12, 117, 119, 121–3, 145
 - of statutes 53, 106ff, 123
- Interessenjurisprudenz* 43, 71, 105
- interest-based theories 36, 41
 - constitutional dimension of 47
- Is* and *Ought* 8–11, 13
 - and efficacy of a legal order 182

- James I 191–2
- Jellinek, G 20, 37, 42, 45, 50, 57
 - 'ethical minimum' 37, 50, 57
- judicial decisions, conflicts between 129
- judicial review
 - and common law 121–2

- constitutional 126, 131
 - and the rule of law 195–6
 - and statutory interpretation 121–3
 - and the *ultra vires* model 122–3
- judicial review of statutes 142, 144–6, 147–8
 - and legislative ‘self-review’ 142–3
- jurisprudence, analytical 2
- justice 41–2
 - and morality 59
 - and natural law 53–4
- Kant, I 8, 45
- Laband P 113
- Larenz, K 3, 18
- Lauterpacht, H 9, 17, 22, 53, 57
- Laws, Sir J 86, 88, 90, 109, 121
- legal norms
 - efficacy of 11
 - validity v application 12
- legal personality 15
- legal science 1ff
 - and social sciences 3–6
- legal system
 - identity of 156–7
 - unity of 26, 83–4, 152
- legislation 27ff, 45ff
 - and constitution 87ff
 - and democracy 48–52
 - and judicial review *see* judicial review of statutes; parliament
 - primary and secondary 84–5
 - public opinion and 92
- legislative intention *see* interpretation; judicial review
- liberty *see* freedom
- Llewelyn, K 163
- Locke, J 124
- Maine, Sir H 102
- Maitland, Sir F 102
- majority decision-making 28, 48, 90–91
- medical judgment 64–5
- mens rea* 10, 12, 64–5, 111–12
- morality 10, 56ff
 - and autonomy (self-determination) 63
 - and common law 58ff
 - and justice 59
 - and legislation 62, 72, 147
 - public and private 61
 - relativity of 63–4
 - vs policy and interest 63–5
 - and vulnerability 61
- natural justice 132
- natural law 34–5, 44, 47
 - and common law 53–4
 - and constitutional rights 44
 - and justice 53–4
 - and reasonableness 46–7
 - and revolution 35
- Norman Conquest 97, 173–4, 178
- norms *see* legal norms
- nullity 130ff
 - and *locus standi* 136
 - and natural justice 132
 - and the *ultra vires* model 131, 134
- Oakeshott, M 50, 124
- ‘objective law’ 40, 46, 54
- parliament
 - and common law courts 62–3, 68–70, 72, 97–9, 103–5, 113–14, 130, 140–41, 145–6, 156, 177
 - and constitution 85, 91, 96–9, 128, 144–5
 - and the executive 126, 138–40
 - and imputation 92
 - and independence of colonies 153

- and 1998 Human Rights Act 90, 129, 197
- privileges of 91
- and the rule of law 195, 198
- sovereignty of 91, 177, 183, 192, 195
- and statutory interpretation 123, 137
- supremacy of 177
- see also* judicial review of statutes
- policy *see* social policies
- Pollock, Sir F 36, 46–7, 68
- positivism 1–3, 29
 - and formation of legal concepts 15
 - and individual freedom 23, 35
 - and natural law 33–4
 - and the object of legal science 8
 - and utilitarianism 28, 33
- Pound, R 3, 39, 53, 67, 71, 109
- practice statement 1966 105
- precedent 101, 129–30
- purity of legal method 1, 3–4, 159
 - and positivism 10, 15
 - and the scope of legal science 33
- Raz, J 31, 58, 152–4, 156–7, 159, 186
- ‘reason of State’ 22
- reasonableness 46, 68, 71
 - and natural law 46–7
- Reid, Lord 69
- res judicata* 127
- revolution
 - and constitutional disruptions 186, 189
 - and efficacy of a legal order 185ff
 - French 1789 92
 - glorious 188, 190–91
- Rousseau, J–J 28
- royal prerogative 124ff
- rule of law
 - and arbitrariness 196–7
 - Dicey on 193, 195
 - and judicial review of administrative decisions 195–6
 - and judicial review of statutes 197–8
 - material and formal 193
 - and parliament 195, 198
 - ‘rule of recognition’ *see* Hart, HLA
- Salmond, J 160–61, 175
 - on parliament 161–2
- Scarman, Lord 79, 98–9, 176
- Sedley LJ 177
- Sein see Is and Ought*
- separation of powers 138–9
- Simpson, AVB 17
- social policies
 - and changes in common law 71–2, 74–5, 77–8
 - and ethics 74
 - and positivism 75
- Sollen see Is and Ought*
- Somalia 185
- Southern Rhodesia 180–81, 183–5
- sovereign, legislative 30–31, 183, 195
- sovereignty (of a State) 94–6
- State
 - identity with law 20ff
 - and imputation 26
 - organs of 25–6
 - population of 26–7
 - purpose of 31
 - society and 26–7, 29
 - will of 27–30
- statutory interpretation *see* interpretation
- totalitarianism 36
- ultra vires* model 121, 123–4, 131 *see also* administration; discretion, administrative; judicial review
- unity of a legal system *see* legal system
- utilitarianism 20, 36, 39, 51–2, 56, 70, 93, 99, 116, 118, 164

- constitutional implications of 47
- and democracy 48–58, 94
- and interest-based theories 36
- and legislation 51–2, 93
- and majority vote 28, 48
- and natural law 36
- and positivism 33
- and private (group) interests 37–8, 47–8, 51–2
- Volksgeist* 39–40
- Von Ihering, R 3, 37–9, 48, 124–5, 186, 194
- Wade, Sir W 93, 177, 187–8
- Westminster Statute 1931 153
- Wilberforce, Lord 69, 74, 110
- Wolfenden Report 60–61

