Index

abduction 115–16
abductive conclusions 117
animal instincts 117–18
distinction between context of discovery and context of justification 116–17
inference 117–18
American Legal Realism 19
American legislatures 46–7
Anglo-American legal systems 6, 61
importance of context and purpose 51–3
legislative intentions in statutory interpretation 47–50
practice-based norms 45–6
statutory interpretation in 43
textualism and purposivism 50
 treatment of official records 51–2
animal responses 113, 128
antipositivism 23–4, 36
complications about 37–9
Aquinas, Thomas 15
Aristotle 15
artifactualism 237, 239, 241, 243–4
Atlantic Triton Company v People’s Revolutionary Republic of Guinea 221
attitudes and beliefs 32, 36, 71, 79, 84, 140, 188–9, 191, 194, 196–7, 199, 204, 209, 213
Australian parliaments, legislative authority of 46
authoritative intention thesis 7, 130–31, 133–4, 142, 144
authoritative interpretation thesis 138
authoritative normative facts 23–4, 32–5, 37–8, 40–41
Bayesian networks 8, 114
Benvenuti and Bonfant Srl v The Government of the People’s Republic of the Congo 221
Bix, Brian H 6
Born, Gary 221
Brandom, Robert 121–2, 189–90
inferentialism 176
inferential semantics 188–9, 191–2
Calder v Bull 46
Carston, Robyn 2
causal referentialism 229
Chrisman, Mathew 192
Chrysipus 118
classical expressivism 213–14
communicated content 1, 5, 9, 131, 196, 206, 209
communication theory (CT) 60–62, 107–8
criticism against 61
Goldsworthy’s views 61, 67
Greenberg’s views 61, 67
interpretation of statutes 63–70
legal positivistic perspective 62–3
modest version of 68–9
communicative content 1, 43, 51–3
non-literal meaning 51–3
“substantive” canons or presumptions of interpretation 53–4
communicative model of legislation 5–6
compromise legislation 198
condensed argument 131–2, 142–5
consistency 3
constructive interpretation 179–80, 184, 190–91
continental theories of legal interpretation 63–4
correct judgement 6
criminal law 14
criterial semantics 177–80
Critical Legal Studies 19

“Darwinian Dilemma” argument 26
descriptivism 32–3, 229–31, 234, 239, 241, 244
devices for thinking and making decisions 114–15
Donnellan, Keith 242
Dutch Equal Opportunities Act (1989) 200
duty-imposing rules 17
Dworkin, Ronald 2–3, 9, 104, 138, 141, 170
concept of law 9, 180–81, 188, 208–9
constructive interpretation 179–80, 184, 188, 190–91
fallacy 176–87
inferential semantics 191–2
intent of law-maker 137–8, 145
interpretive theory of concepts 182–7
jurisprudence presupposes 180
Justice in Robes 177–8, 182
justifying purpose of interpretation 184
law as integrity 108, 138, 184, 187
Law’s Empire 182
‘metasemantic’ position 179, 181, 193
rejection of criterial semantics and metaphysical realism 178–80
understanding of legal practice manifest 191
view of interpretation of artistic objects and social practices 130–31
emotivism 213
endorsement test 203
Enoch, David 25, 215
Equal Protection Clause of the
Fourteenth Amendment 203
Equal Treatment Act (1994) 200
Establishment Clause of the First Amendment 203
ethical judgments 26, 28–31, 34, 39
European Convention for the Peaceful Settlement of Disputes 218
Evans, Gareth 242
Everett, Anthony 237
ex aequo et bono adjudication method 10, 212, 217–22
cases adjudicated 221
definition 219–20
equity rules 220
in international arbitration 218–19
interpretation of cases 222–6
objective and rational considerations 220
Sudanese Abyei Arbitration 222
exclusive legal positivism 6, 25, 33, 39–41, 138
expressivism 9, 29, 196
classical 213
quasi-/hybrid 212, 214–15, 223
factual disagreements 19
fictional names 233
orthodox doctrine’s approach to 234–5
Finlay, Stephen 215, 223
Fish, Stanley 199
Free Law Movement 19
game theory 195
Gardner, John 179
Goldsworthy, Jeffrey
communication theory (CT) 61, 67
legislative communicative intentions 206–7
Goodman, Nelson 178
Greenberg, Mark 3–4, 7, 12–13, 37, 39, 74, 77, 81, 210–11
ahistoricity 93–4
approach to linguistic practice 90–91
Atomism-Holism distinction 109–11
communication theory (CT) 60–62, 107–8
determining content of law 62
distinction between legal meaning and legal content 62
flaw of legal positivism 71
idea of standard picture 13–14
on legal practice 14
linguistic practice 84–5
meaning of text 72
Moral Impact Theory of Law 34, 37, 40, 71, 101, 209
moral obligations 34
notion of ‘law-determining practices’ 78–84
relationship of legislation and legal content 13–14, 18–21
on Standard Picture 108
theory of legal interpretation 61–2
Green, Michael Steven 9, 179, 184, 187, 189, 191
criterial and realist metasemantic theories 177
Griffiths, John 197
Hand, Learned 55–6
hard interpretivism 99–101, 104, 106–7, 111
Hart, H.L.A. 161, 215
cognitivism and descriptivism about legal thought 33
Concept of Law, The 32
connection between law and practical reasoning 15–16
form of “inclusive” legal positivism 32
rule of recognition 32–3, 36
Hellman, Deborah 203
holistic interpretation 97–8, 107
Human Rights Act 1998 (UK) 58
hybrid/quasi-expressivism 214–15
approach to law and morality 222–3, 227–8
to explain legal statements 215–16
semantics 223–4
illusionary legislation 198
inclusive legal positivism 6, 25, 32, 35, 40, 42, 138
incompleteness 239–41
inferential practices 117–18, 121
parrot’s responses 121–2
inferential semantics 188–9, 191–2
institutional names
descriptivist view about 231–2
meta-uses of 244
orthodox doctrine approach to 235–41
referential expressions 241–4
internalism 64–5
International Chamber of Commerce (ICC) Rules of Arbitration 218
interpretation 2, 7, 122, 126–7, 160–61
continental theories of 63–4
controversy related to 65
criteria of validity 73
first- and second-level rules of 65–6
legal positivistic perspective 70–75
linguistic constraint 2–3
normative theories of 64–5, 67, 74
problem of conflict 66–7
semantic theory 64–5, 67–8
of statutes 6–7, 43–4
interpretative criteria 7–8, 66, 153, 157
interpretative discretion 154–8
interpretative norms 7, 149–54
in accordance with superior norms 151
conflicts of 153–4
consequences of 152–4
difference between norm sentence and interpretation criteria 151
linguistic uncertainty and 150–56
norm sentence 151
ought-to-do contents 150
second-degree 153–4
superior norms 151
interpretive community 199–200, 208
interpretive objectivity 148
interpretivism 7
vs communicative model of legislation 5
Dworkin’s view 4, 170
Greenberg’s view 4
hybrid 5
pure 2
reliability challenge and 6
Shapiro’s view 4
strongest form of 2–3
intersubjective determinacy 226
Italian law criminalizing illegal immigration 200
Jeshion, Robin 242
judges 6
method of legal interpretation 73–4
moral considerations 2
reasons for interpreting linguistic practice 91–2
judicial review 9, 196, 211
jurisprudential theories 6
justification 116–17
“just too different” intuition 35

Kant, Immanuel 15
Kripke, Saul A 164–5, 234, 237, 240, 243

language
adjudication of meaning 156
elected criteria 157–8
interpretative discretion 154–8
interpretative norms 149–54
linguistic uncertainties 147–9
natural 147
parallel between linguistic uncertainty and discretion 154–6

law-maker
argument from authority 138–41
authority of 132–3
condensed argument 142–4
intent of 137–8, 145
no-prediction argument 134–8
real intentions 132–4
understanding legal texts and non-legal texts 144–5

legal content 1, 3, 5, 40
legal institutions 10
legal interpretation 7, 25
Soames’ characterization of 21

legal interpretivism 96
Atomism-Holism distinction 109–11
continental and common law theories 100
descriptive and normative premises 106
hard and weak interpretivists 99–107
holistic interpretation 107–11
moral norms 102–5
plausible interpretations of validity 109–10
rule-guided process 99
scientific reasoning 110
legal judgments 31–6, 38
legal meaningfulness 100
legal obligations 42

as authoritative normative obligations 41
legal positivism 1, 7, 13, 15, 23–4, 41, 63, 138, 206
complications about 39–42
contemporary 4
flaw of 71
inclusive vs exclusive 40
legal interpretation and 70–75
moral norms 33
plausibility points 25
Spaak’s view 72
see also legal positivism

legal reasoning 5, 13–17, 103, 116, 127, 131, 142, 220
legal understanding 18, 131–2, 144
legislative authority 46, 209
legislative intentions in statutory interpretation 7, 47–50
contextual evidence 52
courts as “faithful agents” 50
objective and subjective 52
personal intentions 52
primary object of statutory interpretation 48–9
pure subjective intentionalism 49
legislative supremacy 46–7, 54, 56–7, 65
legislative intentions 47–50

legislatures 2
Lemon v Kurtzman 203
linguistic practice 84–92, 188
phonemes 88
phonetics 87
transformation of lower-level facts into higher-level facts 86–7
linguistic uncertainties 147–9
interpretative scenarios 148–9
lume naturale 116
lying 120
Lynch v Donnelly 203

major questions doctrine 125
Marmor, Andrei 2, 198, 237–9
meaning Platonism 162–3
metaethical expressivism 196
metaethics 27
epistemological challenges in 29
judgment-dependent views of humour 27
non-naturalistic realist views 28–30, 35
quasi-realist expressivist views 28–9
reliability challenge in 26–31, 36
meta-fictive use of institutional names 244
metalegal inquiry, reliability challenge in 31–7
meta-semantics 9
metasemantic theories 177, 188–93
Millikan, Ruth
  concept of practice qua lineage 78
  proper function 78–84, 118–20
  purposes 119
Moore, GE 102–3
Moral Impact Theory of Law 12–13, 34, 37, 40, 71, 101, 209
morality 7, 23, 74
moral obligations 4, 18, 34, 42, 62, 103, 105–6, 141, 210
National Federation of Independent Business v OSHA 123, 127
  abductive arguments 127
  inferences 128
  interpretation and construction 126–8
  majority and minority views in 124–8
  see also Occupational Safety and Health Administration (OSHA) Act
naturalism 114, 118
naturalistic realism 27–30, 35–6
Neale, Stephen 2
negative answer 1–2, 5
Neta, Ram 82–3, 88
  ‘reasons’ to participate in a practice 83
Niemi, Richard G 205
non-cognitivism 213
non-naturalistic realism 28–30, 35, 37
no-prediction argument 131–2, 134–8, 140, 145
normative legal system
  adoption of natural language 147–8
  interpretative norms see interpretative norms
  linguistic dependence 146
linguistic uncertainties,
  interpretative scenarios of 148–9
  shared communicative code 146–7
  normative theories of interpretation 64–6
  normative thinking and decision-making 114
  norms 146
Nozick, Robert 201
Occupational Safety and Health Administration (OSHA) Act 123–8
see also National Federation of Independent Business v OSHA
O’Connor, Sandra Day 203
orthodox doctrine
  approach to
  fictional names 234–5
  institutional names 235–41
parliamentary sovereignty 56
see also legislative supremacy
Peirce, Charles S 115–16
Petrick, Josephine Mason 222
Pildes, Richard H 204–5
planning theory of law 4
Plunkett, David 215, 223
positive answer 1, 5
power-conferring rules 17
practical reasoning 6, 13–17
  connection between law and 15
  contrasted with theoretical reasoning 14
  response to Greenberg’s challenge 18–21
practice
  Greenberg’s concept 78–84
  intelligible reasons 91–2
  law practice vs linguistic practice 84–92
  Millikan’s concept 78–84
  of promising 82–3
  of using guillotine 93
  of using knife 81
pragmatism 7
prescriptivism 213
principle of legality 57
promising practice 82–3
proper function 79–84, 86, 118–20
causal role 94
as coordination function and constitutive function 81
embedded 94–5
interdependence with practice 81
legal forms and requirements 120
in normative terms 83, 94–5
purposes and 119
survival value 94
proper function notion 7
proper names 230–31
prosaic facts 30
public rule-following 171–3
pure interpretivism 2
quasi-expressivism 9, 212, 214–15
quasi-realism 37, 214
quasi-realist expressivism 28–9, 37
quietist realism 28–9, 37
rational choice theory 195
rationality 114, 121
Raz, Joseph 15, 41–2
authoritative intention thesis 130
Between Authority and Interpretation 131
authority of law-maker 132–3
coherence thesis 138
condensed argument 142–4
consequents of claims 139–41
Ethics in the Public Domain 131
incorporation thesis 138
legal directives 141
legal positivist theory 15
legislative intent 131–4
methods and techniques of interpretation 133–4
no-prediction argument 134–8
Practical Reason and Norms 15–16
reasoning 141
sources thesis 138
understanding legal texts and non-legal texts 144–5
realist metasemantic theory 177
reasoning 141
abductive 115–16
lower bound of reason 115–21
upper bound of reason 121–8
referentialism 229–31
reliabilism 121
reliability challenge 6
legal judgments 31–2
in metaethics 26–31, 36
in metalegal inquiry 31–7
‘response-dependence’ theory 169–70
rule-application 7, 165
distinction between linguistic meaning and 9
rule-following 159, 161–2
community view 164–8, 171, 174
criterion of correctness 172–3
determinacy thesis 169, 173
grammatical and empirical question of 171–4
internal-relation thesis 168–70, 174
linguistic errors 173
objectivity and determinacy 164
‘paradox’ of 163–5
private language argument 164
public 171–3
rule of law 56
rule of recognition 32–3, 72
rule-skepticism 7
scientific facts 31
semantics 9–10
criterial 177–80
hybrid/quasi-expressivism 223–4
inferential 188–9, 191–2
interpretation 64–5, 67–8
meta-semantics 9
truth-compositional 222
separation of powers 1–2, 4, 53, 64, 123, 125, 127, 157
Shapiro, Scott 3–4, 15, 25
authoritative normative ethical facts 34
judgments 33–6
Planning Theory of Law 33
theory of law 6
shared communicative code 146–7
Soames, Scott 21
soft law 195
Spirit of Laws, The 2
standing commitments 58
status legislation 198
statutory meaning
Interpretivism and the limits of law

adjustments 56
to fulfil legislative purposes 54–6
idea of tacit 57
legislature’s standing commitments 58
mens rea (guilty mind) presumption 57–8
to protect independent values 56–9
rectification of 54–9
supplementing 54

Strader v West Virginia 204

Sunstein, Cass 194
symbolic functions of law 194–5, 205–11
communicative functions 199, 206–7
Dworkin’s model 209
expressive meanings 202–4
Greenberg’s model 210–11
legal relevance of 196, 202–5
symbolic lawmaking 197–202
symbolic legislation 9, 195, 197
causal effects 201–2
compromise legislation 198
illusionary legislation 198
measure of dishonesty 198
non-instrumental 201
status legislation 198
textualism and purposivism 50
theoretical reasoning 14

thick terms 214
thinking 114
Thomasson, Amie 237
tie-breakers 54
Toh, Kevin 215
truth-aptness 235–9
truth-compositional semantics 222
truth-conditions 216–17, 222–3, 225–6
United Nations Commission on
International Trade Law
(UNCITRAL) Rules 218

vaccine mandate 123
validity of legal norms 109–10
value-based reasoning 77
van Klink, Ban 197–200
Vila, Iglesias 170–71, 173
Walton, Kendall 237
weak interpretivism 99–106
Weber, Max 202
Witteveen, Willem 199–200
Wittgenstein, Ludwig 161–2, 182
Investigations 163
Philosophical Investigations 163
Tractatus Logico-Philosophicus 163
workplace safety 125–6

Zvolenszky, Zsófia 237