

---

# Index

---

- agency  
  choice, influences over 216–18  
  fiduciary duties, and 335–6  
  *Lex Mercatoria*, and 149–50, 165  
  public agency 217–22  
  statistical decision theory, and 220
- analytical anarchism 178–9
- antitrust law *see* competition
- Aranson, Peter 196–8
- arbitration 116–17, 134
- authoritarian law 137–8
- Bainbridge, Stephen 350, 354, 357, 359
- Baird, Douglas 349, 366–7, 377
- bankruptcy 371  
  causes 383–4  
  costs 375, 383–4  
  going-concern auctions 377, 393–4  
  knowledge problem 373, 375  
  liquidation 381–4, 393–4  
  wealth creation, and 383–4
- bankruptcy law, generally *see also*  
  corporate reorganization  
  criticism of 371–2  
  judicial role 372–3, 375
- Basile, M. 130, 144, 154, 156, 158, 171
- Bebchuk, Lucian 356, 368
- Bee-Watcher problem 357
- beliefs *see also* superstitions  
  contextual influences 60–61  
  false objective beliefs 46, 58, 60  
  informal and formal rules 94–5  
  institutional frameworks, role in 59–61  
  rule reform, role in 104–105
- Benson, B. 131–3, 142, 149, 203–204
- Berman, H. 138, 140, 149, 162–4, 203
- Blancard, L. 151, 155
- Blum, Walter 385
- board of directors 358–61, 369–70  
  benefits 348–9, 353–4  
  CEO, treatment of 367–9
- close companies 351–2  
  criticism of 348–9, 355–7  
  legal basis 348, 351–3, 355  
  M&A role 365–6  
  MBCA *vs.* Delaware law 351–2  
  monitoring 363–5  
  prediction markets 361–9  
  stakeholder boards 349–50  
  structure, legal restrictions 352–3
- Boettke, Peter 95–8
- Buchanan, James M. 8, 13, 20, 103–104, 216, 426–7
- business cycle theory 9–10, 332–3
- business judgment rule 338–9
- business law  
  Austrian School theory conflicts 340–45  
  centralized economic planning 335–7, 340–43  
  corporate governance 341–2  
  entrepreneurship, role of 328–9, 337–9, 343–4  
  executive remuneration 341–2  
  fiduciary duties 335–6, 340  
  firm, theory of 326–32  
  insider-trading, and 342–3  
  limited liability 338–9  
  *nomos vs. thesis* 334, 336, 340  
  shareholder voting restrictions 340–41  
  socialist calculation debate 9–10, 326–8, 331–2
- Calabresi, Guido 268
- capital assets 329
- capital goods 10, 400
- capital, theories of 398–401 *see also*  
  human capital
- catallactic efficiency 244
- central banks 332–3
- central planning *see* commercial planning
- change, ubiquity of 328–9

- Chapter 11 *see* corporate reorganization
- Chicago school
  - competition, approach differences 288–90
- choice, generally 11–12, 61, 216–20
- choice of law/ jurisdiction
  - business associations 118–19
  - civil procedure, in 313–14
  - common law efficiency hypothesis, and 185
  - competition, and 111–13, 203–205
  - corporate governance 120–21
  - corporate reorganization 377
  - dispute resolution 116–17
  - ex post* vs. *ex ante* rules 113–14
  - franchise regulation 126–7
  - insurance industry 123–4
  - internal affairs doctrine 118–19, 122
  - internet law, and 121–2
  - legal profession regulation 119–21
  - private law, and 117–18
  - product liability law 125–6
  - property law 124–5
  - rules on, purpose 120
  - US Federal regulation 114–17, 123–4
  - US State rules and initiatives 113–16
  - welfare maximization, and 314
- civil procedure *see also* dispute resolution
  - choice of forum 313–14
  - customizability 313–14
  - default vs. mandatory rules 313–14
  - difficulties with
    - class actions 321
    - litigation, burden of 317–18
    - pleading, plausibility standard 319–21
  - economic interpretations
    - adversarial vs. inquisitorial 300–301, 311–12
    - costs, opportunity vs. social 304–11
    - development 299–301
    - dispute resolution as public good 309–11
    - efficiency 299–301, 315, 322
    - ex ante* contract specification vs. *ex post* disputes 301–4, 308–11
    - ‘fractional cow’ problem 305–11
    - strategic bargaining 299–300, 304–11
    - subjective intent 302–304
    - welfare consequences 299–300
  - free-riding, and 315–16
  - influences and incentives 297, 315–16
  - information production, and 296–302, 321
  - managerial judging 311–12, 317
  - precedent, influences of 315–16
  - purpose 296, 298–9, 321–2
  - reforms 316, 318
  - remedies 316–17
  - substance-procedure interaction 301–311, 297
  - truth and justice, role in 302
  - welfare maximization, and 299–300, 314, 322
- Coase, Ronald 29–30, 48–9
  - bargaining 304–11
  - cost and benefits analysis 29, 44
  - efficiency theory 36–7, 40–43
  - firm, on 360–61
  - harm, on 29, 247–9
  - institutional framework, on 16–17, 330–31
  - legal rights, and 239
  - Posner, compared with 49–52
  - sparks cases 236–40, 250–51
  - strict liability, and 42–3
  - welfare maximization, on 234, 244
- Coleman, Jules 267–8
- commercial planning
  - centralized planning
    - bankruptcy, in 385–9
    - judicial role 372–3, 385–9
    - limitations of 335–7, 340–43
  - economic role of 330–32
  - private vs. public 212–26, 330–31, 335–6
  - socialist calculation debate, and 326–8, 331–2, 423
- common law
  - benefits of 192, 198
  - competition, importance of 203–205

- development 194
- Ecclesiastical courts 158
- Hayek on 192, 199–203
- judicial discovery 200–201, 205
- layered justice theory 256–7
- non-economic evaluation 197–8
- spontaneous order, as 199
- common law efficiency hypothesis
  - analysis approaches, generally 192–3
  - conflicts 195
  - costs, direct and error 299–300
  - decentralization, and 199, 202–203
  - desirability, and 196–7
  - invisible hand theory 7, 195
  - judicial limitations 202–203
  - Kaldor-Hicks efficiency, rejection of
    - 192–3, 196, 198, 205, 255–6
  - neoclassical approach, and 193–6
  - partial efficiency 243
  - precedent, role of 195–6
  - rent-seeking 195–6, 204
  - spontaneous order, and 199–201
  - wealth maximization, and 192–4, 196–7, 243
  - welfare maximization, and 234, 243–5, 299–300
  - willingness to pay 196–7
- competition
  - Areeda-Turner test 290–93
  - artificial barriers 286–8
  - challenges 279
  - Chicago school, approach
    - comparison 288–90
  - competitive markets 285–8
  - consumers, assumptions regarding 281–2
  - corporate reorganization, in 385–9
  - creative destruction 109
  - definition 280–81
  - discovery process, as 200–201, 205
  - dynamic efficiency, and 111–12, 343–4
  - economic models, views on 279–80
  - entrepreneurial discovery, and 284–5
  - imperfect competition 283
  - innovation advantages 111
  - jurisdictional choice 111–18, 203–205
  - knowledge problem, and 109–10, 205, 302–303, 327–8
  - legal profession, regulation 119–21
  - market test 287–8
  - monopolistic competition 283–4, 289–93
  - perfect competition 281–5
  - political influences, on 278–9
  - predatory pricing 289–93
  - price discrimination 343–4
  - process, as 280–81
  - realism, and 283
  - static competition 343–4
  - theories of 109–10
  - theory incompatibilities with 278–94
  - vertical restraints 336–7
  - welfare maximization, and 283
- competition law
  - business associations 118–19
  - challenges 110
  - choice of law, and 111–18, 203–205
  - common law, importance for 203–205
  - criticisms of 111–12
  - discovery process, as 200–201, 205
  - dynamic efficiency, and 111–12
  - internet law, and 121–2
  - non-competition clauses 122–3
  - product liability law, and 125–6
  - property law, and 124–5
  - restrictions on 118–19
- constitutions 19–20, 94–5, 425
- contract law
  - civil procedure, and 298–9
  - customary law, as 133–4
  - fiduciary duties, and 335–6
  - medieval practices 147–50
  - product liability, and 273–4
- Cooter, Robert 195, 241–2, 254–5
- Cordato, Roy 43, 243–5, 255–7
- corporate governance *see also* board of directors
  - alternative mechanisms 361–3
  - decision-making mechanisms 361–3
  - information production, and 358–61
  - jurisdictional choice 120–21
  - M&A role 365–6
  - monitoring 363–5
  - prediction markets 361–9
  - shareholder participation 365–6
  - whistleblowing 364–5

- corporate reorganization
  - alternative mechanisms 377, 381–4, 393–4
  - challenges 377
  - competitive incentives, lack of 385–90
  - political influences 392–3
  - rent-seeking 391–3
  - valuation 372–3, 375, 381–9
- costs 375, 377–8, 382, 388–9
- criticism of 371–2, 377, 382–3
- efficiency, and 387
- financial distress *vs.* economic non-viability 379, 381–4
- forum shopping 377
- going-concern auctions 377, 393–4
- negligence, and 378–9
- opportunity cost 388–9
- procedures
  - absolute priority rule 391–2
  - comparative analysis 376–7
  - crashdown 380–81, 386–7
  - feasibility test 381
  - judicial challenges 381–3, 389–90
  - judicial role 374, 378–83, 385–92
  - political allocation 392–3
  - purpose 374–5, 377
  - success rates 375–7
- routes to 379–80
- valuation
  - entrepreneurial, benefits of 394
  - judicial difficulties 385–90, 394
  - market valuation 378–9, 382–4, 387–9
  - purpose 383–4
  - vs.* liquidation 381–4, 393–4
- Cravino, María Cristina 35, 37
- credible commitment problem 97–103
- credit instruments 147–9
- credit markets 221–3
- criminal justice systems 56–8
- customary law *see also* *Lex Mercatoria*; rules
  - authoritarian law conflicts 137–8
  - behavioural and social rules, as 65, 132–3
  - criticism 266
  - definition and characteristics 132–6
  - development 133, 135–8
- De Soto, Hernando 32, 34–6
- democracy and law 14–16, 20
- Director, Aaron 16–17, 424
- directors *see also* board of directors
  - appointment and removal 366–8
  - fiduciary duties 349
  - remuneration 341–2, 368–9
- discovery
  - competition, in 200–201, 205
  - costs of 317–18
  - social rules, judicial discovery 199–201, 205
- dispute resolution
  - agency influences 216–22
  - choice of law clauses 116–17
  - customary law, and 134, 154–60
  - medieval trade, in 154–60
  - political pricing 219–20
  - private ordering framework, in 214–16
  - public good, as 309–11
  - public-private mixed economy, in 216–20
  - research trends 209
  - slum populations, in 39–42
  - social good, role of 218–19
  - success probabilities, and 214–16
- division of labor 6
- domination, individual freedom from 265, 274–5
- dyadic markets 221–2, 227
- dynamic competition 111–12, 343–4
- Ecclesiastical courts 158, 203
- economic theories, generally
  - choice, role of 216
  - market conformability 224–5
  - market prices 219
  - public agency 217–22
  - re-feudalization 224
- efficiency *see also* common law
  - efficiency hypothesis
    - business associations 118–19
  - catallactic efficiency 244
  - Coase on 36–7, 40–43
  - corporate reorganization, and 387
  - dynamic efficiency 111–12
  - first come first served doctrine 43
  - interpretation 30
  - jurisdictional choice 111–18

- Kaldor-Hicks efficiency 192–3, 196, 198, 205, 255–6  
 layered justice theory 256–7  
 natural rights, and 29–30  
 negligence, and 268–9  
 partial efficiency 243  
 sparks cases 240–41  
 strict liability, and 42–3, 268–73  
 theories, compatibility 256–7
- Eisenberg, Melvin 353, 363–4
- entrepreneurship  
 capitalism, role in 328–9, 337–9, 343–4  
 competition, and 284–5  
 definition and interpretation 338, 389–90  
 entrepreneurial judgment 338–9  
 legal process benefits for 111  
 private vs. public ordering 212–26, 335–6
- Epstein, R. 161–2, 198, 220, 225, 265, 270–71
- evolutionary theory  
 biological vs. social evolution 82  
 change, mechanisms of 79–81  
 group survival 78–9  
 individual, role of 80–81  
 social rules 76–81, 199–201, 205
- exploitation theory 32
- Face, R. 148–50, 153–5, 163
- factor markets 327
- fallacy of the residual 290–91
- family life *see* marriage and family life
- Faustian bargaining 219–20
- Ferguson, Adam 329–30
- fiduciary duties 335–6, 340
- firm, theory of 326–32  
 economic planning, and 330–32  
 entrepreneurship, and 328–9, 337–9  
 institutions, role of 329–32  
 socialist calculation debate 326–8, 331–2, 423
- Fletcher, George 255–6
- formalism 8–12
- Foss, Nicolai 331–2
- ‘fractional cow’ problem 305–11
- franchises 126–7
- free-riding 315–16
- Fried, Jesse 356, 368
- Friedman, Lawrence 263–4, 274–5
- Friedman, Milton 11, 13, 424, 426
- Fukuyama, Francis 104
- Fuller, Lon 84, 133–4
- Gaus, Gerald F. 74, 77
- Gehlbach, Scott 98
- German Historical School 7–9, 423
- governance 178–9, 425 *see also* board  
 of directors; corporate governance
- Grady, Mark 241–2, 250, 254
- Gratton, Robert 181–2
- Greif, A. 129–30, 140–44, 163
- grown order theory 65–6  
 analysis of 86–90  
 challenges 82–90  
 change, mechanisms of 79–85  
 dispositions to act 67–8  
 evolutionary theory, and 76–81  
 group survival, and 78–9  
 individual, role of 80–81, 87–8  
 neural networks 68–9  
 rules  
 conduct, of 73  
 emergence 89–90  
 interpretation 66–71, 334  
 mind, of the 68–9  
 selection criteria 77–9  
 social context, role of 73–4, 427  
 spontaneous order, and 17–19, 72–6, 94–5, 103–104, 199–201, 330  
 subjectivism, and 70–71
- Hadfield, Gillian 197
- Hand formula, strict liability 268–71
- Hanseatic League 161, 171
- harm  
 causation, and 247–9  
 interpretation 29, 246–9, 266
- Hayek, Friedrich 11, 423–4 *see also*  
 grown order theory  
 common law, on 192, 199–203  
 competition, on 13, 109–10, 205, 278, 302–303, 327–8  
 criticism 12, 17  
 customary law, on 137, 170  
 economic planning, on 330  
 equilibrium, on 198  
 firm, interpretation of 360–61

- human rights, on 14–15
- information production, on 302–303, 312, 358, 360–61
- institutional frameworks, on 17–18
- knowledge problem 109–10, 205, 302–303, 327–8
- law and democracy, on 14–16
- law and economics, on 21–2
- Lex Mercatoria*, on 130
- private enterprise, on 360–61
- rational constructivism, on 17–18, 103–104
- rule of law, on 15
- social learning theory 68–9
- socialist calculation debate 327–8
- time and place concepts 104–105
- Hicks, Cecil 255–7
- Hobbes, Thomas 3, 6
- Holdsworth, W. 170
- Hovenkamp, Herbert 290–91
- human capital
  - heterogeneity in 400–401
  - marriage and family life, in 400–403
    - accumulation costs 401–402
    - accumulation influences and incentives 403–406
  - coordination and discord 398–9, 402–408
  - household vs. market capital 398, 401–408
  - theories of 398–400
- Hume, David 6, 10, 13, 65, 83
- informal organizations, role of 34–6
- information *see also* knowledge
  - complete and perfect information 99–101
  - imperfect information 101–102
  - Lex Mercatoria*, role in 152, 164–5
- insider-trading 342–3
- institutional frameworks 3–5, 17, 426–7
  - beliefs, role in 59–61
  - endogenous rule formation, and 18–19
  - evolutionary characteristics 12–13
  - firm, theory of 329–32
  - invisible hand theory 7, 195, 329, 426–7
  - logic of choice, and 10–11
  - political economy theories, and 11
  - re-discovery 5–6, 9–11, 15–16
  - institutional placebo effect 58
  - intellectual property rights 53–5
  - interest rates 332–3
  - internal affairs doctrine 118–19, 122
  - internet law 121–2
  - invisible hand theory 7, 195, 329, 426–7
  - Iowa Electronic Markets 361–2
  - Islamic law 130
  - Jacobs, Jane 209–10, 224, 226
  - Jensen, Michael 343
  - Jenson-Conklin, Susan 376
  - ‘Judge Judy’ effect 312
  - justice
    - civil procedure role 302
    - corrective justice 267–8
    - informal organizational role 34–6
    - judgment of God 56–7
    - layered justice 256–7
    - libertarian theory 257
    - natural law, and 257–8
    - tort law, and 267–8, 274–5
    - total justice 274–5
  - Kadens, E. 157–8, 162–5
  - Kaldor-Hicks efficiency 192–3, 196, 198, 205, 255–6, 384
  - Kaldor, Nicholas 255–7
  - Kaplan, Stanley 385
  - Kirzner, Israel 109, 198, 328–9, 338
  - Klein, Peter 329, 331–2
  - knowledge
    - aggregation 359
    - complete and perfect information 99–101
    - credible commitment, and 97–103
    - distance, in rule reform 93, 95–7
    - efficiency, and 110–11, 200
    - Hayek on 109–10, 205, 302–330, 358, 360–61
    - imperfect information 101–102
    - law, role in 110–11, 302–304, 427
    - tacit knowledge 350, 358, 360–61
    - transferability, in rule reform 104–105
  - knowledge problem
    - bankruptcy, in 373

- competition, and 109–10, 205,  
 302–303, 327–8  
 market processes, and 109–10,  
 327–8  
 rules design, and 109–10  
 knowledge production  
   adversarial vs. inquisitorial  
   procedures 311–12  
   civil procedure, in 296–302, 321  
   corporate governance, and 358–61  
   Hayek on 109–10, 205, 302–303,  
   312, 327–8, 358, 360–61  
   managerial judging 311–12, 317  
   price mechanisms, and 358  
   remedies, and 316  
 Krugman, Paul 13, 364
- labor, interpretation 258  
 Lachmann, Ludwig 399  
*laissez faire* 326–8  
 Lange, Oskar 12  
 Latin America  
   informal markets/ trade fairs 37–8  
   slum population studies 32–6  
 Law Merchant *see Lex Mercatoria*  
 Leeson, Peter 19–20, 196  
 legal centrism 178, 182, 189  
 legal profession  
   innovation, challenges for 120–21  
   regulation, and jurisdictional choice  
   119–21  
 Leoni, Bruno 18–19  
 Lerner, Abba 11  
*Lex Mercatoria*  
   agency arrangements 149–50, 165  
   applicability 159–60  
   characteristics 162–5, 172–3  
   competition, and 171–2  
   credit arrangements 147–9, 163  
   customary law, as 130–32, 136  
   definition and interpretation 130,  
   138  
   development 129–31, 138–40,  
   163–4, 171–4  
   dispute resolution 154–60  
   enforcement 139–46  
   English law, differences from 156–7  
   equity, role of 163  
   evidence and proof 162–3  
   freedom of contract principles 167  
   implied obligations 151–2  
   incentives 141–6, 169–70  
   information sources 164–5  
   information transmission 152  
   inter-group cooperation 144–6  
   limitations 130–31  
   local variations 164–7  
   Maghribi trade practices 141–4  
   Medieval attitudes towards 129–30  
   ostracism 141–4  
   Pie Powder courts 156–60  
   polycentricity vs. universality  
   160–69  
   reputation, role of 141–6  
   royal recognition 159–60, 170  
   Statute of Staples 160–61  
   trade networks 152–4  
   transportation arrangements  
   150–51  
   trial by oath 162–3  
 liberalism 193–4  
 libertarian legal theory 265–7  
 limited liability 338–9  
*Little Red Book of Bristol* 130, 144,  
 154, 156, 158, 171  
 Locke, John 257–8  
 logic of choice 11–12, 61  
 logic of practice 210  
 logic of situation 11  
 LoPucki, Lynn 392
- Macey, Jonathan 357–8  
 MacIntyre, Alasdair 210  
 macroeconomic demand management  
   11  
 Maghribi traders 141–4  
 magic, belief in 52–5  
 Malynes, G. 145, 155–6  
 Mangels, A. 129, 131, 140, 144–6, 148,  
 151–3, 160  
 Manne, Henry 342, 424  
 market-based theory  
   ambiguities 220–24  
   business cycle theory, and 332–3  
   central banks, and 332–3  
   economic activity, influences on 209  
   factor markets 327  
   *laissez faire* 326–8  
   market conformability 224–5  
   prediction markets, and 361–9

- market conformability 224–5
- market data 378
- market economy 211
  - dyadic vs. triadic markets 221–2, 227
- market failure
  - regulation, and 220–21
  - theories 12–13, 19
- market processes
  - institutional support needs 109–10
  - knowledge problem 109–10, 327–8
- market socialism theory 9–13 *see also*
  - business cycle theory; socialist calculation debate
- marriage and family life
  - children
    - custody, maternal expectation 403–406, 408
    - divorce, impacts on 412
    - responsibilities for, conceptual vs. real 403–406, 408
    - step-parents, role and rights of 414–17
  - divorce 403–406
    - avoidance incentives 411–14
    - no fault divorce 409–14
    - pre-marital contracts 409–11
    - trends 409–10, 414
  - household production 400–402
    - coordination and discord 398–9, 402–408
    - household vs. market capital 398, 401–408
    - involvement incentives 406–408
    - responsibilities 403–406
    - trends 403–406
  - law, influences of 403–406
  - marriage
    - covenant marriages 412–13
    - expectation mismatches 413–14
    - success indications 403
    - trends 414
- medieval legal systems *see also Lex Mercatoria*
  - arbitration 155–60
  - development 138–40
  - non-merchant courts 156–60
  - superstition role in 56–8
- medieval trade
  - agents, role of 149–50, 165
  - arbitration 155–6
  - commercial practices 147–50
  - credit arrangements 147–9
  - development 138–40
  - dispute resolution 154–60
  - fairs 139–40, 142, 146–54, 157, 159–60, 164–7, 171–2
  - implied obligations 151–2
  - incentives 141–6, 169–70
  - Maghribi trade 141–4
  - merchant courts 156–60
  - ostracism 141–4
  - reciprocal arrangements 152, 170–72
  - royal influences 159–60, 170–71
  - trade networks 152–4
  - transportation arrangements 150–51
- Mendlow, Gabriel 267–8
- Menger, Carl 5–8, 12–13, 329–30, 423–4
- mergers and acquisitions 365–6
- Merrill, Thomas 233–4
- Mill, John Stuart 6, 13, 266
- Mises, Ludwig von 4, 6, 10–13, 50–51, 109, 326–8, 389, 423–4
- moral syndromes 209–10, 224
- natural law 257–8
- natural rights 29–30
- negligence
  - contributory negligence 235–6
  - corporate reorganization, and 378–9
  - efficiency theory, and 42–3, 268–9
  - Hand formula 268–71
  - sparks cases 235–6
  - strict liability 42–3, 235, 262–3, 268–9
- negotiable instruments 147–9
- New Institutional Economics 12–13
- Neyman, Jerzzy 220
- nomos vs. thesis* 334, 336, 340
- North, Douglass 94–5, 425
- Nuestra Familia prison gang 181–2
  - activities 187–9
  - governance rules 181–2, 185–6, 188
  - information transmission 185–7
  - property rights protection 182–5
- nuisance 249, 266–7
- O’Driscoll, Gerald 196–7
- ostracism 53–4, 60–61, 141–4



- Ostrom, Elinor 210–11  
 Ostrom, Vincent 225
- Pantaleoni, Maffeo 219  
 Pareto, Vilfredo 218, 224  
 perfect competition theory 281–5  
 Pie Powder courts 156–60  
 Pigou, A.C. 237  
 plausibility standard, pleading  
   319–21  
 Polinsky, A. Mitchell 273  
 political economy  
   constitution of liberty, restoration  
     225–6  
   fiscal irresponsibility, and 225–6  
   market conformability, and 224–5  
   theories 4, 6–7, 10–11, 210–11  
 political pricing 219–20  
 polygraph tests 58  
 Posner, Richard 48–50, 424  
   civil litigation, welfare consequences  
     299–300  
   Coasean theory, compared 49–52  
   common law efficiency hypothesis  
     192–4, 299–300  
   negligence, on 268–71  
   primitive societies, on 53–4  
   sparks cases, on 240–41, 254  
   wealth maximization 193–4  
   welfare maximization 254–5  
 Pospisil, L. 132–3, 137  
 Poughkeepsie Study 376  
 praxeological analysis 11–12, 50–51,  
   210  
 precedent, doctrine of 195–6,  
   315–16  
 predatory pricing 289–93  
 prediction markets 361–9  
 price discrimination 343–4  
 price mechanisms 9–10  
   economic planning role of 330–31  
   equity mispricing 343  
   information production, and 358  
   insider-trading, and 342–3  
 Priest, George 194, 273, 275  
 primitive societies  
   intellectual property rights 53–5  
   legal systems 52–3  
   social ostracism 53–4  
   superstition 52–5  
 prison gangs 180, 183–74  
   activities 184, 187–9  
   functions 182–7  
   Nuestra Familia prison gang 181–2  
   self-governance rules 181–2, 184–6,  
     188  
 product liability law  
   choice of law 125–6  
   contract law, and 273–4  
   tort law 262, 264–5, 272–4  
 property rights 10 *see also* sparks  
   cases  
   choice of law 124–5  
   civil society, role in 6  
   collective property 211–12  
   consent, and 386–7  
   easements laws 124–5  
   economic analysis, separation from  
     255  
   economic rationality, and 211  
   efficiency, and 30–31  
   freedom of use of land 246, 248–9  
   harm, interpretation 246–9  
   intentional torts, protection from  
     265–6  
   interpretation variations 246–9  
   justice theories, and 256–8  
   justification for 14–15, 249  
   legal centrism, and 178, 182, 189  
   moral approaches 256–8  
   organized crime, protection by 184  
   prisoners, of 182–5  
   public agency, and 220  
   slum populations, in 31–43  
   social costs, and 246–9  
   state protection 182–3  
 rational choice theory 11–12, 61, 218,  
   325  
 rational constructivism 17, 103–104  
 rationality, generally 210–11  
   collective property, and 211–12  
   incentives 217–18  
   multiple contexts influences  
     215–16  
   political pricing 219–20  
 rent-seeking 195–6, 391–3  
 risk utility test 265  
 Rizzo, Mario 196–7, 243, 245, 269–72,  
   399

- Rothbard, Murray 192, 198, 203, 244–5, 255–7, 266–7
- Rowthorn, R. 411
- Rubin, Paul 194–5, 274
- rule of law 15–16, 19–20
- rule reform
- challenges 92, 97–103, 105–106
  - design
    - beliefs, role of 104–105
    - institutional capacity, and 104–105
    - processes 96–7
    - rational constrictivism, and 103–104
    - restraints 93, 95–6, 104–106
  - incentives
    - appropriateness 93, 95–6
    - complete and perfect information 99–101
    - credible commitment, and 97–103
    - imperfect information 101–102
    - knowledge distance 93, 95–7
    - knowledge transferability 104–105
    - law and economics of 92, 105–106
    - success 92–3
      - credibility, and 99–103
      - reasons for 93, 95–6, 99–105
  - rules *see also* common law; rule reform; social rules
    - behaviour, of 132–3
    - characteristics 92, 94
    - classification 334
    - default rules 336
    - design 93–6, 109–10, 198, 334
    - development, influences on 94–6, 427–8
    - endogenous rule formation 18–19
    - enforcement 96–7
    - formal vs. informal 94–5
    - incentives for 135
    - jurisdictional hierarchies 135
    - nomos vs. thesis* 334, 336, 340
    - past experiences, influences of 94–5
    - purpose 92, 94, 135, 427
    - teleological rules 334
- Sachs, S. 131, 140, 142, 149, 153, 165–6
- Sanders, Anthony 196–7, 273
- Schumpeter, Joseph 109
- Scott, Lynn 353–4
- self-governance *see* Nuestra Familia
- prison gang
- self-maintenance, theories of 75–6
- sensible knave principle 83, 86–7
- Shavell, Steven 273
- Sima, Josef 196–7
- slum populations
- property rights in
    - approaches 37–8
    - dispute resolution 39–42
    - efficiency theory, and 36–7, 40–43
    - formal title, need for 38–9
    - informal organizations role 34–6
    - negotiations 31–3
    - security, perception of 38–9
    - social costs, and 44
  - studies 32–44
  - trends 31–2
- Smith, Adam 3, 6–7, 9, 11, 13, 203–204, 329, 425
- Smith, Henry 233–4
- social costs
- joint product, of 236–9, 250
  - property rights, and 246–9
  - sparks cases 236–40, 251–3
- social harm 247
- social interactions *see also* marriage and family life
- efficiency vs. coordination 399
  - private vs. public ordering 212–26, 330–31, 335–6
- social learning theory 69
- social norms 65
- social rules *see also* grown order theory
- alternative rule availability 83–4
  - conformity recognition 83, 87
  - dispositions to act 67–8
  - group rules 84–5, 88
  - law, as basis for 65
  - mechanisms 79–85
  - neural networks 68–9
  - rule testing 83–4, 87
  - rules of the mind 68–9
  - self-maintenance theories 75–6

- transmission of new rules 85, 87–90
- voluntariness, and 82–3
- socialist calculation debate 9–10
- endogenous rule formation, and 18–19
- firm, theory of 326–8, 331–2, 423
- Sowell, Thomas 233, 358
- sparks cases 234
  - causation 247–8
  - Coase on 236–40, 250–51
  - contributory negligence 235–6
  - economic efficiency, and 240–41
  - harm, interpretation 246–9
  - judicial incompatibilities 240
  - legal and common sense 249–50
  - liability exceptions 249
  - moral justification, and 255–7
  - negligence 235–6
  - Posner on 240–41, 254
  - precautions, paradox of 241–2
  - private property liability, and 234–5
  - property rights interpretation 246–51
  - social cost analysis 236–40, 251–3
  - subjective analysis 250–53
  - welfare maximization, and 243–5, 253–5
- spontaneous order
  - common law, as 199–201
  - Hayek's theory 17–19, 72–6, 94–5, 103–104, 199–201, 330
  - self-maintenance, and 75–6
  - vs. rational constructivism 17, 103–104
- static competition 343–4
- statistical decision theory 220
- Stearns, Maxwell 195, 204
- Stiglitz, Joseph 13
- strict liability *see also* sparks cases
  - efficiency, and 42–3, 268–73
  - Hand formula 268–71
  - legal theories on 267–8
  - negligence 235, 262–3, 268–72
  - tort law, and 262–7
    - accidental torts 262–3
    - defenses 262
    - negligence 262–3
  - product liability 262, 264–5, 272–4
    - risk utility test 265
- Stringham, Edward 203, 267
- Suchman, Mark C. 54–5
- Sugden, Robert 74
- superstition 47
  - contagion superstition 60
  - false objective beliefs 46, 58, 60
  - hot water ordeal 57–8
  - judgment of God 56–8
  - magic beans 54–5
  - primitive societies, in 52–5
  - rights enforcement role 52–5
  - separating equilibrium 57–8
  - social ostracism 53–4, 60–61
  - witches 52–3
- Surowiecki, James 359
- tacit knowledge 350, 358, 360–61
- thesis vs. nomos* 334, 336, 340
- tort law *see also* sparks cases
  - accidental/ unintentional torts 262, 268–72
  - corporate reorganization 378–9
  - corrective justice 267–8
  - costs trends 261
  - defenses 262, 266
  - definition 262
  - efficiency theory, and 42–3
  - first come first served doctrine 43
  - Hand formula 268–71
  - homesteading 266
  - individual freedom from domination 265, 274–5
  - intentional torts 262, 265–8
  - limitations 275
  - negligence 262–3, 268–71
  - nuisance 249, 266–7
  - overview 261–5
  - principles 266–7
  - product liability 262, 264–5, 272–4
  - proof, standard of 266
  - reforms 262–3, 274
  - risk utility test 265
  - strict liability, and 262–7
  - total justice 274–5
- trade fairs
  - informal markets, in Latin America 37–8

- medieval 139–40, 142, 146–54, 157, 159–60, 164–7, 171–2
- tragedy of the commons 211
- transaction costs 31, 44, 58
  - Coasian bargaining, and 304–11
- triadic markets 221, 227
- Tullock, Gordon 20, 195, 300–301
- Twombly-Iqbal* standard 319–21
  
- utilitarianism 267
  
- Van Horn, Robert 16
- Venkatesh, Sudhir Alladi 36
- vertical restraints 336–7
- Volckart, O. 129, 131, 140, 144–6, 148, 151–3, 160
- Volokn, Alexander 272
  
- Wagner, Richard 209, 217, 219
- Warren, Elizabeth 377
  
- wealth maximization
  - common law efficiency hypothesis 192–4, 196–7, 243
  - informal organizations, by 36
- welfare maximization 233–4, 243–5
  - bankruptcy 384
  - civil procedure role in 299–300, 314, 322
  - common law efficiency hypothesis, and 234, 243–4, 299–300
  - perfect competition, and 283
  - sparks cases 243–5, 253–5
- Whitford, William 392
- witches, belief in 52–3
  
- Zarazaga, Rodrigo 35–6
- Zipursky, Benjamin 268, 271
- Zouch, R. 156–7
- Zywicki, Todd 195, 197–8, 203–204, 265, 273