TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA
UNIVERSITY OF WELLINGTON

Victoria University of Wellington Legal Research Papers

Paper No 140/2017 **2017**

Editor, Professor John Prebble QC
Assistant Editor, Nina Opacic

Volume 7 Issue No 34, 2017

DIACHRONIC INDEX AND GLOSSARY TO WHAT IS JUSTICE

JOHN PREBBLE AND NINA OPACIC

universität wien

WU WIRTSCHAFTS UNIVERSITÄT WIEN VIENNA UNIVERSITY OF ECONOMICS AND BUSINESS

WU International Taxation Research Paper Series

No. 2017 - 14

A Diachronic Index and Glossary to What Is Justice? Collected Essays by Hans Kelsen

John Prebble
Nina Opacic

John Prebble and Nina Opacic

A Diachronic Index and Glossary
to
Hans Kelsen: What is Justice?

ISBN 978-0-473-41537-2

Prebble , J (John) 1944-
Opacic, N (Nina) 1995-

A Diachronic Index and Glossary

to

What is Justice?

Collected Essays by Hans Kelsen

John Prebble QC

BA, LLB (Hons) Auckland, BCL Oxon, JSD Cornell, Inner Temple, LEANZF, Barrister, Professor and former Dean of Law, Victoria University of Wellington, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien; Adjunct Professor, School of Law, Notre Dame University, Sydney, NSW, Australia.

Nina Opacic

BA, LLB(Hons) Candidate Victoria University of Wellington

Table of Contents

Introduction 5
Index 13
A 13
B 18
C 20
D 28
E 34
F 39
G 42
H 47
I 51
J 55
K 61
L 62
M 71
N 77
O 88
P 89
Q 102
R 103
S 111
T 121
U 124
V 125
W 129
Y 131
Z 132
Glossary 134

Introduction

What is Justice?: collected essays by Hans Kelsen was first published in 1957 by the University of California Press, Berkeley by arrangement with Hans-Kelsen Institut,Vienna. *What is Justice?* is a compilation of essays by Hans Kelsen that deal with the problems of justice and their relationships to law, philosophy, and science. Some were published in the book for the first time, and some were presented in a revised version.[1]

The general applicability and broad scope of *What is Justice?* makes it a uniquely valuable source for research and writing across jurisdictions and in almost any area of law. Surprisingly for such a highly regarded and influential book, the English version of *What is Justice?* was published without an index. The authors of this present index hope that it will provide scholars everywhere with a key to access Kelsen's work.

The Index is diachronic in that, unlike ordinary indexes, it attempts to present Kelsen's theories in a manner that enables readers to apply them to any area of law whether Kelsen addressed that area or not and even whether the area of law in question has evolved since Kelsen's time, or was not an identified field of study when Kelsen was alive.

[1] Preface to Hans Kelsen *What is Justice?* (The Lawbook Exchange Ltd, New Jersey, 1957).

Composing a comprehensive and navigable index for *What is Justice?* that achieves these objectives presented many challenges. The first consideration was that *What is Justice?* is a jurisprudential text, primarily comprising arguments and theories, rather than concrete concepts or facts that lend themselves naturally to the generation of key words. The index must necessarily capture these arguments and theories and make them findable by readers. References in the index to reasoning and arguments leads to longer index entries than may be conventional for other texts.

Kelsen's analysis is broad and conceptual, characterized by remarkable generalizations. He rarely narrows his analysis to a particular legal doctrine, and applied examples of his theories are uncommon in his writing. The breadth and all-encompassing nature of Kelsen's theories that contributes to continuing influence at the same time results in essays that are densely packed and not always easily accessible. This Index endeavours to identify legal doctrines and categories that Kelsen refers to only indirectly. The authors hope that this approach will allow Kelsen's arguments to be more intelligible and practically useful. An implication of including these specific concepts and categories is that the Index includes concepts or categories that Kelsen never directly mentioned.

The authors have included a glossary to provide an additional aid to navigating *What is Justice?*, by means of definitions, and in some cases explanations, of concepts that may be unfamiliar to readers.

The authors have a common law perspective; a perspective that from time to time challenged their own understanding of Kelsen's general theory and how it can be applied to particular legal institutions. A number of entries in the glossary identify possible inconsistencies between civil and common law understandings and concepts. An example is Kelsen's use of the term "Rule of Law".[2]

The indexing method chosen for the present work employs traditional indexing techniques: a careful reading of the book and recording of entries by hand on index cards. The cards were consolidated and arranged into alphabetical order before being entered into word processing software. One advantage of this approach is the several stages of consolidation and editing required before the index itself is produced. This staged process in itself generates additional synonyms and corresponding concepts that can be given index entries. Index cards for the whole book were reviewed and merged so that multiple references to the same concept or argument were

[2] See the entry for "Rule of Law" in the *Glossary,* page 92.

logically grouped together. The final stage of entering the alphabetically arranged slips into the computer was essentially a task of data entry.

In producing the index, the authors followed A.R. Hewitt and C.C. Branwell, "A Practical Guide to Law Indexing" (occasional paper, London, 1977), though the authors departed from one of the conventions of indexing that Hewitt and Branwell recommended: namely, that cross references should be used only where there are three or more entries for the same concept under a particular heading. In that event, Hewitt and Branwell recommended moving the entries to their own heading. Fewer than three similar entries stay where they are. An example of a cross reference is: Capital punishment see Death Penalty. In this example, the cross reference would conform to the convention only if there were at least three entries under the heading Death Penalty. The reason for the convention is to strike a balance between, on one hand, the undesirability of sending readers hither and yon within the index instead of directly furnishing page references to the text itself, and on the other hand, avoiding repetition of identical lists of entries. The convention limits repetition to cases where there are fewer than three entries under the particular heading. The authors made an exception for non-english terms. Where the text employs non-english words the index cross-refers to the

corresponding English term, regardless of how many entries appear under the English word.

This organisational technique appears frequently because some translations of Kelsen's essays have retained many non-english words. A reason is that one can often make distinctions in a foreign language that are not linguistically possible in English or possible only at the expense of pleonasm.

What is Justice? uses American spelling; the Index has adopted American spelling for consistency.

The main motivation for composing an index was to increase the accessibility of Kelsen's *What is Justice?*. Kelsen's writing has already influenced and informed a great deal of legal scholarship throughout the world. Kelsen's tightly packed generalisations and conceptual arguments, which are intended to apply generally to all laws and legal systems, are impressive, but are not comprehensible and accessible to all readers. Students, and readers from non-civil law backgrounds are important targets of the Index. The authors hope that the Index will allow scholars of all levels of experience to take full advantage of Kelsen's wisdom, especially in areas of the law that Kelsen may not have considered or even come across, such as, to take random examples, tax law

and the law relating to intellectual property and competition.

Despite the deep, general, and conceptual nature of *What is Justice?*, and despite the relevance of the work to almost any legal scholarship, in practice the use of *What is Justice?* tends to be confined to scholarly writing on legal philosophy. In fact, Kelsen's insight can inform work on areas of law that are often thought of as discrete subjects, such as contract, torts, trusts, property, taxation and so on. The authors hope that scholars writing on such topics will find it useful to search the Index for Kelsenian generalisations that shed light on the nature of law in their particular areas of study. This aspiration of the authors is one reason for the length of the index. The authors have included many synonyms and terms from a variety of areas of law in the hope of enabling scholars to locate material in *What is Justice?* that is relevant to their particular line of inquiry.

The authors hope that they can reasonably claim originality and insight in respect of the Index and its companion Index to Kelsen's *Pure Theory of Law*. Unlike workmanlike indexes that can be compiled electronically, the present index is diachronic and conceptual. It connects relationships between Kelsen's thought and legal reasoning that even Kelsen himself did not perceive. It thus opens the way to applying

Kelsen's reasoning across far wider areas of law than he ever considered. Of all literary forms, the Index is perhaps the best adapted to this approach. For example, the Index allows us to see the light that Kelsen's reasoning sheds on certain oddities of the law of income taxation. Some aspects of taxation law that are logically matters of factual causation, upon examination, show themselves to be creatures of imputation and legal reasoning. References to this reasoning can be found in the Index under "causation", "imputation", "norm" and "rule".

Finally the authors are anxious to make Kelsen's work accessible to students. Despite its great distinction, *What is Justice?* is little read by students and seldom recommended to them. A good illustration is J.C Smith and David N Weisstub (eds) The Western Idea of Law (Butterworths, Canada 1983). In their work, Smith and Weisstub have collected one of the best and most comprehensive selections of excerpts from writings on jurisprudence that is available. The work extends from Aristotle to the late twentieth century. As well as excerpts from works that are virtually canonical, it includes many interesting but relative obscure pieces. But Kelsen is omitted. The authors hope that their Index will go some distance in preventing such omissions from future collections.

Kelsen "welcome[ed] constructive criticism. He regards his works not as the final word but as an enterprise that would benefit by continued additions, refinements, or improvements in general". The authors of the present Index and Glossary respectfully adopt Kelsen's words and, like Kelsen, will be grateful for suggestions for "additions, refinements, or improvements in general".

Index

A

Absolute monarchy
21, 152, 201, 205

Absolute norm

Absolutism, political
Democracy, and, 204, 207
Government, as form of, 201, 202
History, and, 205

Absolutism, philosophical
De Monarchia, in, 205
Democracy, and, 204
Theory of, 198

Acts of the Apostles, Book of
Final judgment, 69, 70
Paul the Apostle, arrest of, 77

***Adikia, see* Injustice**

Adjective law
279

Administrative law
Technique of, 254-255
Organs of, 373

Adultery
Christ, teachings of, and, 47
Divorce as, 29
Involuntary transaction, as, 129
Paul, teachings of, 76
Trial for, 28

Aeschylus
Agamemnon, in, 306
Pederasty, view on, 88
Prometheus, in 310

Aetios*
312, 313

Agamemnon
305-306

Alighieri, Dante
De Monarchia, 205

Altruism, principle of
196

Amos, Book of
Divine justice, 36

Ananke
Prometheus, in, 310

Anarchists
Golden age, 240
Social behaviour, view of, 227

Anarchy, state of
Caused by resisting rule, 149, 298
Democracy, relationship with, 4
Nature, state of, as 241
Marxian socialism as, 242

Anaximander
Cosmological theory of, 305
Divine law, 309
Equilibrium, 307

Anaximenes
Cosmological theory of, 305

*Defined or explained in the *Glossary*

Animals
Humans, comparison to, 8
Killing, prohibition against, 311
Retribution, and, 39

Animism* -- under primitive law?
Causality as removed from, 330
Jurisprudence, in, 293
Hebrew society, in, 37
Natural-law doctrine, in, 141
Primitive man, belief of, 137-138, 328-329
Science, emancipation from, 288

ἄπειρον, *see Apeiron**

***Antipeponthós, see* Reciprocity**

Apeiron*
305, 307

Aquinas, Thomas
Summa Theologica, 205

Aristotle
Absolutism of, 204
Causality, characterisation of, 314
Corrective justice, 128
Distributive justice, 129
Happiness, 116
Justice, problem of, 125, 128, 132
Mean, doctrine of, *see under* Mean, Aristotles doctrine of the
Nature, teleogical interpretation of, 205
Philosophical system of, 110
Politics, 133, 205
Positivism of, 126
Retribution, objection to, 131
Supreme Good, 112-114

*Defined or explained in the *Glossary*

Theology of, 111
Virtues, system of, 18, 117

Atomic bomb, *see* Bomb, Atomic

Atomistic theory
314

Atomists, the
Nature, view of, 205
Causality, modern notion of, 311-312

Augustine, Saint*
Legal philosophy of, 134-135

Austin, John
Coercion, 274
Duty, relationship with legal right, 276-278
International law, 283
Jurisprudence, analytical, 271-272, 278
Law, formulation of, 275
Political society, 280
Sovereignty, 281-283

Authoritarian Community
305

Authorities, state
God's agents, as, 75, 77
Resistance against, 150

Authority
Absolute, 199
Militant society, in, 163
Spiritual function of, 161

Autocracy
Democracy, as distinguished from, 23
Distributive justice, according to, 127
Government, as form of, 21

*Defined or explained in the *Glossary*

Ideology of, 109
Militant societal structure, in, 164
Political absolutism, as, *see under* Absolutism, poltical

Autocratic Government, *see* Dictatorship

Autonomy
Freedom, as, 200

Avarice, see Greed

*Defined or explained in the *Glossary*

B

Bacon, Francis
New Natural science, 314

Bakunin, Mikhail
Anarchist doctrine of, 242

Baruch, Book of
Kingdom of God, 67

Bayle, Pierre
Tolerance, principle of, 23

Behaviour, human (delete this entry)
Anarchist's view of social behaviour, 227
Essential tendency, in conflict with, 190
Imputation principle, and, 345, 347
End point of, 332, 334, 345
Object of, 345,
Juristic value judgment of, 210, 216, 218
Value judgment of, 118-119, 232, 139-140, 209, 326, 328
Rationalisation of, 8-10
Moral value of, 184
Nature, rules deduced from, 137
Norms, relationship with, 190-191, 120-121
Positive law, as regulated by, 267
Regulation of, 231, 240
Sciences dealing with 324-325, 330
Science of law, as described by, 362

***Bellum Justum*, see* Just War Theory**

Bentham, Jeremy
Justice, 3

Berkely, George
322

*Defined or explained in the *Glossary*

Bigamy
Holy Scriptures, in, 27

Biology
159

Birth Control
Platonic view of, 95

Blood revenge
Ancient times, in, 8, 328
Collective responsibility, as, 249, 276
Earliest socially organised sanction, as, 233, 254
Holy Scripture, in, 27, 44
Murder as, 313
Primitive law, in, 246

Bohr, Neils
341

Bolshevism
Political absolutism, as, 202

Bomb, atomic
9

*Defined or explained in the *Glossary*

C

Capital Punishment, *see also* Punishment
5, 9, 37

Capitalism
Administration of, 255
Distributive justice, according to, 127
Marxist critique of, 15, 172
Private property, and, 153, 259
Socialism, comparison with, 242-243

Categorical imperative
18

Causal laws
159

Causality, principle of*
Abandonment of, 341
Animism, as instrument of emancipation from, 329-330
Atomistic theory of, 311-314
Chronological sequence of, 318
Divine law, as, 308-309
Earliest statement of, 307
Evolution of, 303
Freedom, relationship with, 345-346
Future events, application to, 28, 321
Grammatical form of, 331, 349
Greek philosophy, reconciliation with, 306
Hume, David, 314-316
Imputation principle
Contrasted with, 139, 331, 333
Compatability with, 346
Malebranche, theory of, 322
Natural science, and, 327, 352

*Defined or explained in the *Glossary*

Nature
Causal order, prevailing in nature as, 314
Determined by, as, 105, 324
Laws of nature, and, 139, 331, 343, 362
Norm, as, 321-322 342
Origin of causal thinking, 303
Physical, 312
Predictability as criterion, 321, 335
Probability, as, 320
Prima causa, incompatible with assumption of, 333
Primitive man, and, 304, 327, 329
Quantum mechanics, and, 319
Retribution, principle of
Separation from, 312, 318-319, 323
Similarity between, 307
Rule of law, as different from, 325
Strict causality, *see* Causality, strict
Universal law of causality, *see* Causality, universal law of
Validity, strict, of, see Causality, strict
Will, divine, as expression of, 321
Will, freedom of see also Freedom of will
Notion of, compatability/harmony with, 335–336, 339
Impossibility of conceiving own will as subject to causality, 340
Will, human, application to, 337-340

Cause and effect
Causality as norm explaining, 323
Chronological order of, 307
Connection between, 312, 316-317, 332
Functional dependency, 318
Human behaviour, as acts of, 347
Human behaviour, as justifying, 9

*Defined or explained in the *Glossary*

Infinite chain of, 317, 332
Jurisprudence, relationship in, 362
Like attracting like, 313
Natural science, in, 362
Nature,
as constituting, 352
as equal in, 305
law of, in, 268
Norm, legal, and, 276, 363
Normative character of, 314, 362-363
Relationship between, 9, 139, 314-315, 330, 354
Religious-metaphysical view of, 325
Retribution, similarity between, 306
Rule of law, in, 269
Thesis that cause must be equal to effect, 316
Wrong and punishment, as, 305, 307, 313

Causality, strict*
Abandonment of, 343
Development of (Absolute causality), 314
Epistemological postulate, as, 342
Exemption to, 343
Inviolability of, 310
Freedom of will, conciliation with, 337, 344
Reality, absence in, 340-341
Realization of, 321
Retribution, principle of, similarity between, 30

Centralization
Application of law, of, 253
Direct administration, as move to, 255
International law, of, 255-256, *see also* International law
Intertribal relations, originally applied to, 254

*Defined or explained in the *Glossary*

Process of, 251-252

Christ, Jesus
Anti-economic attitude of, 50-53, 74
Contradiction in teachings of, 72
Death of, 68-69, 72
Divine mission of, 1
Divorce, teachings on, 29, 46-47
Family, teachings on, 47-48, 51
Judicial power of, 70, 72
Justice as principle of love, 12-13, 45, 53
Marriage, teachings on, 46-47
Messiah, as, 54, 67-68, 72
Moses, teachings of, in antagonism with, 31, 46
Paul the Apostle, teachings of, in antagonism with, 30-31, 73-75
Property, teachings on, 50-51
Retribution, principle of, rejection of, 44-45, 53
Resurrection of, *see* Divine resurrection
Romans, arrest by, 77
Taxes, teaching on, 49-50, 75
Trial of, 207

Christian theology
Law, validity of, 263
Positive law, justification of, 260

Christianity
Justice, in, 25
Scriptural revelation, 29
Metaphysics of, 205

Chronicles, Book of
Punishment in, 38

*Defined or explained in the *Glossary*

Cicero
154

Civil execution
247

Civil law
Criminal law, as distinct from, 128
Development of, 246-247
Penal law, as distinguishable from, 247

Civil procedure
247-248, 279

Civil society
Judge of state, as, 150
Monarchy, absolute, inconsistency with, 205

Class conflict
241

Code of Nature
157

Code Napoléon
299

Coercion
Forcible intereference, as, 237-238, 248
Law, as essential element of, 282, 289-290
Legal sanction as act of, 247-248
Marxist view of, 241
Psychic, 235, 274, 289
Social technique, as, 236
Society without, 239, 242-243
State, as tool of, 281
Techniques of, 235

Coercive order
Binding normative order, as, 262

*Defined or explained in the *Glossary*

History, in, 239
International law, as, 283
Legal order, as, 235-236, 281
Order reliant on voluntary obedience, contrast with, 235, 287
Paradoxes of, 237
Social order, in, 239
Socialist order as, 244

Cognition
Causality and imputation, 342, 346-347
Empirical, 347
Function of, 199
Laws of, 200
Object of, 200-202
Process of, 200
Rational, 347
Relativistic theory of, 200
World, as creator of, 200

Collective responsibility, principle of
Absolute liability, relationship with, 250, 251
Development of, 8, 249, 276
International law, in, 255, 276

Colossians, Epistle of the
Divine retribution, 77
Philosophy, warning against, 80

Collective Responsibility
8, 249

Command
Elements of, 272
Legal obligation, as establishing, 277
Norm, 274
Will, expression of, as, 272, 273

*Defined or explained in the *Glossary*

Common law
267, 279

Commonwealth
Establishment of, 152-153

Communism
Capitalism, fight against, 153
Equality in, 15-16

Comte, Auguste
Cours de philosophie, 159
Society, future of, 162

Condition and consequence, *see* Cause and effect

Conditionism
318

Consciousness
Free will, relationship with, 335-336

Constitution, First
Act establishing, 224
Validity of, 226

Copernican theory*
356

Corrective justice
126

Corinthians, Epistle to the
Divine retribution, 76-77
Faith, 80
Kingdom of God, 79
Love, principle of, 76
Marriage, 73
Wealth, 74

*Defined or explained in the *Glossary*

Cumberland, Richard
Private property, 154-156

*Defined or explained in the *Glossary*

D

Daniel, Book of
Resurrection, 58

Darwin, Charles
159

Davidic Kingdom
Messianic restoration of, 68

Dead, soul of the
233, 306

Death
Dynamic theory of natural law, tendency in, 181
Kingdom of God, absence in, 47, 79
Physiological process, as, 347
Resurrection after, 57-58, 61
Retribution after, 57, 61, 99
Parmenidean ontology, in, 310
Punishment for sin, as, 37, 99

Death penalty, *see* Capital punishment

Decentralization
Centralization, as different from, 255

Delict*
Determination of, 131
Punishment, attracting, 304-305, 313
Responsibility for, 249-250, 276-277
Sanction, as condition of, 248, 244, 252, 275
Sanction, relationship with, 245, 267, 327
Rule of law, as constituted by, 325
Value judgment, derived from, 209

*Defined or explained in the *Glossary*

Determinism
Indeterminism, conflict with, 336-337, 345
Punishment and reward, of, 346
Quantum physics, in, 341-342

Democracy
Argument against, 206, 208
Distributive justice, according to, 127
Good, as, 354
Government, just form of, as, 10, 23, 259
Industrial society, in, 164
Justice, identification with, 298
Nature, in accordance with, 21
Nature, law of, relationship with, 152-153
Relativism, relationship with, 198, 204, 207
Supporters of, 205
Principles of, 202
Value judgment about, 355

Democritus*
Causality, modern notion of, as established by, 311-312, 314
Causality as action and reaction, 313
Social order, view of, 205

Demokritos *see* Democritus*

Descartes, René
322

Desire, natural
Incidental appetites, as distinguished from, 187
Moral obligation grounded upon, 192
Norms of natural law grounded upon, 188

Despotism
Political absolutism, as, 21

*Defined or explained in the *Glossary*

Determinism
Imputation, principle of, and, 346
Indeterminism, antagonism with, 336, 345
Quantum physics, in, 342

Deterrence
Punishment, as, 143, 312
Technique of, 312, 244

Deuteronomy, book of
Blood revenge, 28
Divine law, 32
Divorce, 29
God, judicial power of, 32
God and Israel, relationship between, 31, 35
God, vengeance of, 42
Incest, 29
Polygamy, 27
Religion prior to Yahweh, 57
Responsibility, individual, 30
Retribution, principle of, 39-40, 42

Devil
Countergod, as, 167

Dialectic logic
106, 169, 172

Dictatorship
Platonic philosophy, 96
Political absolutism, as, 201

Diderot, Denis
Code of Nature, or the True Spirit of its Laws, 157

*Defined or explained in the *Glossary*

Díakion, *see* Justice

Dikaiosyne, *see* Justice

Dike
309-310

Distributive justice
Aristotle's formula of, 126-128

Direct administration, *see* Administrative law

Divine justice*
Holy Scriptures, in, 35-36
Illusion of mankind, as, 21
Natural-law doctrine as, 141
Omnipotence of god, conflict with, 25
Paul the Apostle, teachings of, 13
Positive law, relationship with, 31
Retribution, as, *see* Divine retribution
Social life of men, as applicable to, 26
Sophists, denial by, 107
Transcendental world, in, 10-11
Logical, rationalistic cognition, compared with, 13

Divine law
Holy Scripture, in, 31-32
Inviolability of, 309
Retribution, law of, as, 311-312

Divine retribution
Christ's teachings, in, 64-65
Final judgment as, 70
Nature as tool of, 37
Realization of, 233-234

Divine revelation
Types of, 26-7

*Defined or explained in the *Glossary*

Scriptural, 29

Divine resurrection
69

Division of labour
103

Divorce
Christ, teachings of, 46-47
Holy Scriptures, in, 29

Doctrine of ideas
11

Doctrine of justice, *see* Justice, Aristotle's doctrine of

Doctrine of law
326

Doctrine of the mean, *see* Mean

Doctrine of metaxý* *see* Metaxý, doctrine of

Doctrine of revelation, *see* Divine revelation

Driesch, Hans
316

Dual law, doctrine of
289, 299

Duguit, Leon
Social solidarity, doctrine of, 300-301

Duty
Responsibility, relationship with, 276-277
Right, relationship with, 278

Duty, principle of
162

*Defined or explained in the *Glossary*

Dynamic theory of natural law
Norms in, 179
Fundamental thesis of, 181-182
Fundamental norm of, 189, 196-197
Moral obligation, 194
Natural tendencies, 188, 193
Natural norms in, 196

*Defined or explained in the *Glossary*

E

Ecclesiastes, Book of
Dead existing in Sheol, 57
Soul, immortality of, 56

Economic system
Christ's view of, 52
Future of, 162

Education
Comte, Auguste, 161
Platonic view of, 92
Need, as, 194

Effectiveness, principle of
Application of, 263
Basic norm, implied in, 360
International law, as norm of, 263-264
Isolated legal norms, and, 225
Validity of law, as condition of, 224, 226, 290

Ego
Mystical experience, in, 108
Reality, as only existent in, 200

Egotism, human
196

Empiricism, antimetaphysical
Founders of, 205

Empedokles
310-311

Enoch, Book of
Final judgment, 58-59
Kingdom of God, 54, 67

Love, principle of, 81
Sheol, division of, 61-62

Ephesians, Epistle to the
Family, 74
Love, principle of, 81
Marriage, 73
Slavery, 75

Epicurus
314

Epistemology
Kant, of, 200
Politics, relation to, 198

Equal freedom, law of
165

Equal freedom, right of
Concrete rights deduced from, 166

Equality
Corrective justice, as established by, 130
Democracy, as characteristic of, 204
Democracy, as principle of, 202, 206
Distributive justice, as principle of, 126
Freedom, absolute, conflict with, 201
Justice, as, 125-126, 133
Justice, as ideal of, 228
Justice, before the law as, 133, 134
Lawfulness, relationship with, 125-126
Nature, as absent in, 127
Political absolutism, as incompatible with, 201
Relativism, as characteristic of, 204
Society, in, 127

Equality, principle of
Difference to be ignored, 14

*Defined or explained in the *Glossary*

Labour and product, relationship between, 15
Meaning of, 15
Retribution, as variety of, 14

Erinyes
Prometheus, in, 30

Eros
Aristocratic Athenian society, in, 88

Eschatological belief
60

Essential tendency, *see* Natural tendency

Estates
152, 156-157

Ethics
Natural science, move to, 85
Moral norms, as describing situation under, 139
Moral norms, objects described according to, 140
Morals as object of, 358
Natural science, comparison with, 140
Natural science, move to, 85
Natural science, precedence over, 84
Normative social science, as, 331
Norm, valid, as conformity to, 119
Normative social science, as, 331
Objects of, 139
Political theory, close connection to, 198
Values as object of, 358

Ethics, normative
84-85

*Defined or explained in the *Glossary*

Ethics, sphere of
Platonic philosophy, in, 83

Equality, principle of
Communism, in, 15
Differences to be ignored, 14
Meaning of, 15
Relationship between labour and product, 15
Retribution as, 14

Euripides
Democracy, glorification of, 204

Evil
Change against norms, 177
Existence of, 180
Completion, as deprivation of requirements for, 180
Good
Antithesis of, 83
As distinguished from, 167, 178, 180
Dualism with, 85
Transition to, 86
Natural tendency, as frustration of, 183, 186, 188
Norm, as non-conformity with, 184
Non-being, as, 84
Reality, as immanent in, 358
Tendency, as frustration of, 185

Evolution
Notion of, 85
Social law of, 159
Spencer, Herbert, on, 165

Evolution, historic
170

*Defined or explained in the *Glossary*

Evolution, social
Comte, 162-163
Fundamental law of, 160
History as verifying, 163
Militant to industrial type society, from, 164
Progressive, as, 160
Spencer, Herbert, 164

Existence, *see* Reality

Existential tendencies
Distinguishing between good and evil, 186
Nature of, 181-182
Norms/moral laws, as, 185
Realization of, 183
Values required to complete, 193

Exodus, Book of
Divine justice, 32
God and Israel, relationship between, 31-35
God, judicial power of, 33
Responsibility, 30
Retribution, principle of, 38-39, 42
Slavery, 27
Taxes, Christ's teaching on, 50
Commandments, the 32

Ezekiel, Book of
God, judicial power of, 33-34
God as King of Israel, 31
Ressurection, 58
Responsibility, individual, 30
Teleological implication of, 189
Tendencies in, 184-187
Value judgments, 183

*Defined or explained in the *Glossary*

F

Faith
Justice, as, 81

Family
Christ, teachings of, 47-48
Greek religion, in, 88
Paul the Apostle, teachings of, 74

Fascism
Political absolutism, as, 201

Fate
Nature, law of, as identified with, 308
Resurrection, during, 61

Faust
344

Fear
Punishment, interepreted as, 37

Filmer, Robert
Democracy as against law of nature, 153
Natural-law doctrine of, 21, 259

Final judgment *see* Judgment, final*

Force
Coercion, as measure of, 238
State, use of by, 149

Forgiveness
44

Frank, Philipp
316

*Defined or explained in the *Glossary*

Freedom
Autonomy as, 200
Causality, principle of, exception to, 334, 345
Democracy, as characteristic of, 202, 204, 206
Imputation, end point of*, 334, 346
Imputation, principle of, prevailing in society as, 345
Industrial society, in, 165
Justice, and
Ideal of, as, 228
Social principle, as, 4
Natural necessity, antinomy with, 345-346
Normative order, prevailing in society as, 346
Philosophical relativism, restriction under, 201
Relativism, as characteristic of, 204
Right, relationship with, 278
Society, as essential to, 333
State, interference from, 165
Thought, of, 23
Value, as, 5-6, 296

Freedom, absolute
Equality, conflict with, 201
Political, under, 201

Freedom, individual
Democracy, as ultimate end of, 10
Social security, conflict with, 140
Value, as, 165

Freedom, social
Natural necessity, antinomy with, 346

Freedom of thought
Tolerance as, 23

Freedom of will*
Causality, conciliation with, 344, 335, 337-339

*Defined or explained in the *Glossary*

Causality, human will determined by, 335, 337-339
Consciousness, as determined by 335-336
Ego, as part of, 339-340
Feeling of freedom, compared with, 337
Imputation, connection to, 345
Legal responsibility, connection to, 345
Max Planck, *see* Max Planck
Moral responsibility
Connection to, 345
As essential condition of 335
Physics, supported by, 340, 345
Subjective viewpoint, from, 337-338
Universal law of causality, reconciliation with, 334, 335, 337

Freedom, social
Natural necessity, antinomy with, 346

French sociological school
Social solidarity, doctrine of, 298

Friendship
Justice, as, 132

*Defined or explained in the *Glossary*

G

Galatians, Epistle to the
Divine retribution, 77
Jewish law, 73
Justice, 81
Wealth, 74

Galilei, Galileo
314, 322

Gehenna
60

General International Law
369-370

Genesis, Book of
Blood revenge, 27
Creation, divine act of, 37
God, judicial power of, 33
Incest, 29
Marriage, 29
Punishment, 38-39
Revenge, 27

Gerasane demoniac, miracle of the
29

German Empire
Historic evolution, as outcome of, 170

Germanic Historical School
299-300

Germanic World Empire
171

Gideon
31

God
Aristotelian idea of, 110, 113
Causality determined by will of, 322
Command of,
Sovereign authority, as greater than, 149
Norm as, 223
Government of, 153
Israel, relationship with, 31, 34-35
Man, relationship with, 34-35
Nature as manifestation of God's will, 138
Norms, as issued by, 141
Norm that man ought to obey commands of, 260-261
Obedience to as supreme value/basic norm, 354
Prima causa, as, 344
Realization of justice as function of, 10
Revelation of, 26-27, *see also* Divine revelation
Science, as object of, 111
Theodocy of, 168
Thinking of, 112
Witness, presented as, 34
World, as immanent in, 167-168

God, characterisics of
Absolute good, 112
Creator of universe, 159
Infinity, 321
Jealousy, 35
Judicial power, 32-34
Justice, 25, 34, 35, 42, 135
Love, 12

*Defined or explained in the *Glossary*

Omnipotence, 25
Supreme authority, 260, 261
Vengeance, 34, 40-42

God, Kingdom of *see* Kingdom of God*

God, will of,
Incomprehensible, 26-27
Nature as manifestation of, 360
Reason, will of, as indistinguishable from, 167-168

Goethe, Johann Wolfgang von
316, 344

Golden rule
16-17

Good
Aristotle, in works of, 113, 119
Being, as, 84
Change in conformity with norms, as, 177
Empirical reality, relationship with, 112-113
Evil, dualism with, 85
Evil, as distinguished from, 167, 178, 180
Existential completion, as, 180
Happiness, as, 114
Justice, as substance of, 101
Knowledge of, 106-110
Love, as object of, 111
Man, for, 114
Natural tendencies, as realization of, 183
Norm, as being in conformity with, 184
Platonic conception of, 105-106
Realization of natural tendency, as, 186
Reason, as, 168
Socrates conception of, 105
Tendency of, 181, 185

*Defined or explained in the *Glossary*

Good, absolute
Democracy as inconsistent with, 206
God, as, 110, 112
God's will as, 360
Happiness as, 116
Motion, concept of, and, 111-112
Platonic philosophy, aim of, 83
Personification of, God as, 358
Platonic philosophy, as aim of, 83
Religious experience, as object of, 107
Value, immanent in reality as, 199

Government
Body of individuals, as recognition of, 369-370
Control over citizenry, 96
Establishment of, 153
Force, use of, 150
Form of
Nature, in accordance with, 153
Fraud, use of, 95
Function of, 95, 97, 161
God, as instituted by, 264
Industrial society, in, 164
International law, as instituted by, 264
Power of, 151
Propaganda, justification of, 6-7
Rights, maintenance of, 165-166

Government, absolute
Subjects, relationship with, 202

Greed
Private property, as allowing, 158

Greek Empire
171

*Defined or explained in the *Glossary*

Greek philosophy
Nature, explanation of, 305
Social values, affected by, 304

Grotius, Hugo
Nature, law of, definition of, 138
Private property, 153-154
Resistance, right of, 148
Thucydides, and, 155

*Defined or explained in the *Glossary*

H

Hades
Torment in as punishment after final judgment, as, 60
Retribution absent in, 57

Happiness
Aristotle's ethics, as starting point of, 115
Communism, as providing, 158
Good, as, 114
Good, absolute, as, 115-116
Justice, as, 2-4, 291
Natural social order, as guaranteeing, 241
Natural social order, in, 240
Private property, relationship with, 155, 158
Promise as reward for virtue, 114
Virtue, relationship with, 115-116

Health
Private property necessary for, 155

Heaven
Division of the Hereafter, as, 233
Eternal, as, 111
Reward, as, 234

Hegel, Georg Wilhelm Friedrich
History, theology of, 168
Logic of, 169-170
Monarchy, absolute, as in favour of, 205
Philosophy of history, *see* Hegelian philosophy of history

Hegelian philosophy of history
26, 166-167, 170-171

Heisenberg, Werner
Uncertainty relation, 319-320, 341

Hell
Division of the Hereafter, as, 233
Punishment, as, 234

Heraclitus*
306-309, 312-313, 330
Universal law of, 308

Herakleitos, *see* Heraclitus*

Hereafter, The
Division of, 233
Here, The, dualism with, 232-233

Hillel, Rabbi
Retribution, principle of, 65

History
Law, of, 294
Reason, as realization of, 167-168
Religion, as object of, 294
Social evolution, as verifying, 163
Stages of, 171
Theology of, 168

History, Philosophy of
159, 166-168, 170

Hobbes, Thomas
Human nature, 142-143
Law, determination of, 145
Natural law, 142, 151
Natural-law doctrine, 147-148
Nature, law of, 138, 146
Positive law, 144
Resistance, right of, 148

*Defined or explained in the *Glossary*

Honour
147

Human
Sovereign being, as, 286

Human behaviour, *see* Behaviour, human

Human nature
Basic fact of, 192
Distinction between sound and unsound state, 182-183
Essential tendencies required by, 187
Good, as, 157
Inherent quality of, 142
Natural law, as deduced from, 143-144
Natural law, as source of, 142
Natural social order as compatible with, 241
Natural tendencies required by, 188
Needs required by, 192
Perfecting tendencies in, 182
Positive law, as necessitating, 143
Preservation of, 195, 196
Quality of, 142
Shared by all individuals, as, 182
Social reality, as manifestation of, 197
Tendencies as not in accordance with, 189
Tendencies existing in, 187

Humanity, phases of, 163

Human sacrifice, *see* Sacrifice, human

Hume, David
Causality, critique of, 314, 315
Causality, law of, 316, 321-322
Commonwealth, perfect, idea of, 205
Democracy, as in favour of, 204

Metaphysics, destruction of, 205
Of the Original Contract, 205

Historic evolution, *see* Evolution, Historic

*Defined or explained in the *Glossary*

I

Ideal
Intelligence, 344
Metaphysical assumption of, 343

Ideal spirit

Imputation, principle of*
Causality
Compatability with, 347
Contrasted with, 139, 331, 333, 346
Analogous to, 346
Transition from imputation to, 330
Cause and effect, connection between, 332, 328
Consequence imputed to facts and circumstances, 348
Delict and sanction, connection between, 327
Designation, 363
Determinism, conflict with, 345, 346
End point of, 333-334, 345-346
Freedom prevailing in society according to, 345
Law, in, 347
Grammatical form
Statement of, 331
Causality, in contradistinction to, 349
Human behaviour as object of, *see* Behaviour, human
Original meaning of, 347
Prima causa, as, 344
Punishment and reward, of, 335, 346
Social laws, as applicable in, 331
Will, human, end point of normative imputation, as, 345

*Defined or explained in the *Glossary*

Incest
Holy scriptures, in, 29

Indeterminism
Determinism, conflict with, 336, 345
Metaphysical religious view, at base of, 346

Indirect administration, *see* Administrative law

Indirect motivation, see Motivation, indirect

Individual freedom, see Freedom, individual

Individual responsibility
Collective responsibility, development from, 250
Principle of, 249, 276

Industrial society
Code of conduct closest to moral idea, 164
Evolution, as allowing highest form of, 165
Political control in, 164

Industrial state
Hierarchy of, 161

Injustice
125, 307

Intelligence
Divine order, of, 334
Ideal, assumption of, 343, 344
Normative social science, as, 331

Intelligence, absolute
Laplace, Pierre Simon Marquis de, 320

Intent
250

*Defined or explained in the *Glossary*

International disputes
373-374

International law
Application of, 374
Centralisation of, 255-256
Collective responsibility, in, 251, 276-277
Components of, 265
Coercive order, as, 283
Decentralisation of, 255
Monistic theory of, 284-285
National law, relationship with, 203, 280, 283-284, 286-287
National law, as superior to, 264
Norm, basic, of, 265, 360
Sovereignty, relationship with, 203
State relationship with, 204, 370, 286
Technique of, 255
Validity of, 263, 265

International law, norms of
256, 263-265, 286

International law, primacy of, theory of
285

International legal community
Sovereignty of, 286

International legal order
Norms of, 255

Intra-tribal law
254

Involuntary transaction
128-129

*Defined or explained in the *Glossary*

Isaiah, Book of
Divine justice, 36-37
God, judicial power of, 34
God and Israel, relationship between, 31, 34
God and land of the dead, relationship between, 57
Kingdom of God, 54-55

*Defined or explained in the *Glossary*

J

Jealousy
God, of, 35

Jeremiah, Book of
God, judicial power of, 33
Divine justice, 36
Nature as punishment and reward, 39

Jesus Christ, *see* Christ, Jesus

Jewish people
Custom of, 27
Positive law of, 31

Job, Gospel of
Dead existing in Sheol, 57
Retribution, principle of, in, 43
Soul, immortality of, 56

John, Gospel of
Kingdom of God, 69
Reversion, principle of, 63

John the Baptist
Final judgment, view on, 65
Reversion, principle of, 63

Jubet Bona, *see* Positive law

Judge
Corrective justice exercised by, 128
Equality as restoring, 129
Law-creating capacity of, 209
Legal order, function in, 133
People as, 150

Judges, Book of
God as King of Israel, 31
Kingdom of God, 69
Retribution, principle of, 43

Judgment
Human behaviour, of, 210
Interest theory of, 228
Love, principle of, antagonism with, 53-54
Norms, according to, 212

Judgment, fact of
Value judgment, as different from, 212

Judgment, final*
Kingdom of God as arising from, 59-60, 69
Messianic period, at close of, 62
Ressurection as part of, 58-59
Retributory function of, 65-66, 70-72

Judicial decision
Individual norm, as, 279, 367
Norm, as establishing, 359
Validity of, 280

Judicial function
254, 300, 367

Jurist
Norms, as presenting, 268

Juristic value judgments
Analysis of, 210
Basic norm as foundation of, 221
Behaviour and norm, relatonship between, as asserting, 222
Behaviour, of, 218
Customary law system, in, 218
Evaluated ovjectively, as able to be, 229

*Defined or explained in the *Glossary*

Foundation of, 223
Interest theory of, 213
Interest theory of value, application to, 216
Legal norms, applied to, 219
Negative value judgments, 225
Norm, as presupposing, 211
Norm, existence of, as asserting, 225
Relationship between behaviour and norm, as judgment of, 210
Science of law, as admissable in, 229
System of, 222
True or false relative to positive legal order, 210
Verification of, 226

Jurisprudence
Law as object of, 269, 358
Law as system of norms, 267-268
Legal norms, as describing situation under, 139
Legal norms, as object of, 268
Legal norms, objects described according to, 140
Natural science, comparison with, 146, 269
Normative social science, as, 331
Normative theory, as, 269
Norms as objects of, 267
Objects of, 139
Objects of, positive norms as, 360
Rules to describe law, 325
Science of law, as, 266
Sociological, 269
Task of, 287
Values as object of, 358

Jurisprudence, analytical
Delict and sanction, connection between, 275

Law, formulation of, 278

Jurisprudence, normative
270

Jurisprudence, sociological
270-271, 274

Juristic person
Law of, 251
State as, 255
Concept of, 288

Jus talionis*, *see* Retribution, principle of

Just War Theory
283

Justice
Augustine, view of, 135
Basic doctrines of, 11
Categorical imperative as answer to, 18
Christian religion, in, 25, 45
Code of Nature, in, 157
Communist principle of, 16
Democracy, identification with, 298
Denial of absolute justice by sophists, 107
Divine mission of Jesus, as, 1
Economic system, in, 15
Equality, as, 125-126, 228,
Equilibrium as, 307
Faith as, 81
Freedom as ideal of, 4, 228
God, service to, as, 135
Golden rule of, 16-17
Good, relationship with, 101, 104
Happiness as, 2-4, 96, 291
Inexplicability of, 107

*Defined or explained in the *Glossary*

Love, principle of, as, 12, 81
Mesotes, doctrine of, as applied to, 131-132
Messiah, as mission of, 56
Metaphysical-religious view of, 11
Natural-law doctrine, and, 137, 147
Nature, injustice of, 3
Nature of, 101
Norms of, 228-229
Peace, and, 22, 132
Personification of, 128
Positive law, and, 31, 134
Problem of, 9
Primitive sense of, 249
Rationalistic type, 13
Reciprocity, as, 130
Rules of, 126
Social order, as legitimising validity of, 1, 134
Socrates, 98
Soul, relationship with, 104
Spencer, Herbert, 165
State, as function of, 95, 133
Subjectivity of, 296-297, 300
System of, 42
Truth, relationship with, 95-96, 310
Value, absolute, and, 199, 365
Virtue as, 1-2, 117

Justice, absolute, see Divine justice

Justice, Aristotle's doctrine of
132

Justice, distributive, *see* Distributive justice

Justice, law
Determined by, 133
Different from, 295, 302, 364

*Defined or explained in the *Glossary*

Equality, as, 133-134
Lawfulness as, 125-126, 133-134
Obedience to, 6
Separate from, 266
Relationship with, 135

Justice, relativistic philosophy of
Tolerance in, 22

Justice, revenge
Retribution, as, *see also* Retribution, principle of, 12-14, 37, 61, 99, 100, 131, 307

Justice, values of
209, 227, 229

Just War Theory
283

*Defined or explained in the *Glossary*

K

Kant, Emmanuel
Categorical imperative, 18
Innate notion, 303
Philosophy of, 205
Private property, view on, 153
Relativistic epistemology, 200
Resistance of legislative power of state by people, 150
Transcendental logic of, 363

Kepler, Johannes
Natural science, 314

Killing
Prohibition against, 311

Kingdom of God
Absolute justice in, 54, 70
Bodily resurrection and, 59
Community on Earth, as, 55, 67
Messiah, ruled by, 56
Resurrection in, 69
Reversal, principle of, 63
Reward after final judgment, as, 60
Spiritualization of, 67, 78-79

L

Lamarck, Jean-Baptiste
159

Lamentations, Book of
Dead existing in Sheol, 57

Laplace, Pierre Simon Marquis de
320, 343

Law
Apolitical, as, 370
Application of, 251, 253
Coercive order, and, 235-236, 281-282, 289
Command, as, 272-274, 281
Constitutionality of, 366
Creation of, 245, 282, 292, 300
Complex of norms as regulating 218
Divine origin, *see also* Divine law, 31
Dynamics of, 245, 278
Force, relationship with, 237
Formulation of, 275
Function of, 132
History of, 294, 299
Human behaviour, and, 367-368, 346-347
Ideological concept, as, 227
Judgment of, 209, 366
Jurisprudence as object of, 358
Nature, ability to be deduced from, 141
Necessity of, 239
Norms, reference to, 139, 227
Obedience to, 6, 162-263
Peace, as instrument of, 147, 237-238
Politics, as different from, 365
Reason, relationship with, 144-145

Roman, 135
Specific technique of, 244, 255
Static theory of, 278
State, relationship with, 227, 281-282, 289-290, 292-293
Structural analysis of, 294
Substantive, as, 279
Systems of, 141
Technical development of, 250-251, 253
Universal, 312
Validity of, 257-261, 263-265, 269-270, 290
Will of legislator, as, 273

Law, justice and
Determining, 133
Different from, 295, 297, 302, 364
Identical with, 126
Separation of, 266
Relationship with, 135

Law, legal
Punishment for crime, 347
Social norm, as

Law of nature, *see* Nature, laws of

Law-making process
Politics, relation to, 365

Law, moral, *see* Moral law

Law, Pure Theory of
266

Law, religious, *see* Religious law

Law, science of
Animism within, 288
Evaluation of law, 367

*Defined or explained in the *Glossary*

Justice, as removed from, 266, 366
Jusristic value judgments as admissable in, 229
Law, as evaluating, 294, 366-367
Object of, 289, 360-362
Politics, as separated from, 375
Social Science, as, 325

Law, statics of
Fundamental relationship of, 245

Law, values of
Justice, value of, as different to, 227
Normative theory, in, 226
Objective value, as, 226

Law and society
Social means, as, 236
Social order, as, 135, 289
Social orders, as differing between, 236
Social technique, as, 238-239, 244, 248, 289
Sociology of, 271, 294

Lawfulness
Equality, relationship with, 125-126
Justice as, 125-126, 133
Positive law, conformity to, as, 126

Laws, social
Imputation, application of 332

Lazarus
61-62

Legal authorities
Function of, 326
Norm-creating function of, 219, 220, 366

Legal community
State, as, 253

*Defined or explained in the *Glossary*

Legal dispute
373-374

Legal duty
Value judgment, derived from, 209

Legal function
Political function, as different to, 372, 369
Political function, dichotomy with, 373

Legal institution
Value judgment, as object of, 209

Legal instrument
371-372

Legal norm
Application of, 248
Existence of as presupposing, 225
Value constituted by, 365

Legal obligation
276-277

Legal order
Basic norm of, 221, 280, 364
Coercion in, 236, 244
Effectiveness of, 224-226, 268, 290
Empidokles, 311
Equally applicable to humans and animals, as, 305
Justice of, 127, 227, 295
Nature, as governing, 304
Norms, hierarchy of, 246
Personification of juristic person as, 254
Personification of , 293
Positive norms, as system of, 221
Social order, as, 235
Social orders, comparison with other, 236

*Defined or explained in the *Glossary*

State, as, 293
System of norms, as, 226, 133
Validity of, 134, 283, 287, 290
Values consisting in conformity with, 141
Value judgment, as object of, 209

Legal organs
Conditioning facts, as determining, 252

Legal positivism
Natural-law doctrine, as opposed to, 360
Law, validity of, 263

Legal reality
Natural reality, as different to, 362

Legal recognition
Constitutive character of, 370

Legal responsibility
327

Legal right
Value judgment, derived from, 209

Legal rule
Herakleitos, 308
Value judgment, as object of, 209

Legal science
Function of, 327

Legal security*
368

Legal value
Political values, as distinguished from, 365

Legality, principle of
15

*Defined or explained in the *Glossary*

Legislation
German historic school, view of, 299
Law as created by, 245
Norm, as establishing, 359

Legislative acts
Norms, as creating, 219

Legislative authority
Activity of, value judgment on, 209
Nature as, 137
Positive law to natural law, as adapting, 151
Resistance against, 150
Will of, 272-274

Legislative function
Administrative function, relationship with, 254
Political principles, as determined by, 366

Legislative organ
Function of, 300

Legislative procedure
Norm, creation of, 217
Parliamentary democracy, in, 216

Legislative reform
Dangerous, as, 151

Legislature
Function of, 200
General norms, as creating, 221
Lawmaker, as, 126
Legal norms created by, 220

Leibniz, Gottfried Wilhelm
205, 322

*Defined or explained in the *Glossary*

Leucippus
Anti-metaphysical theory of atoms, inventor of, 205

Leukiposs
311-312

Leviticus, Book of
God and Israel, covenant between, 31, 35
God, vengeance of, 40-41
Incest, 29
Marriage, 29
Punishment, 39
Retribution, principle of, in, 42-43
Slavery, 27

Lex posterior derogat priori*
215

Liability, absolute
Negligence, as case of, 250
Law, in, 250-255

Liberalism
Freedom as ideal of justice according to, 228
Industrial society, in, 164

Lie
'True' lie, 95

Life
Value, as highest, 164-165
Tendency towards, 181

Locke, John
Absolute monarchy, opposition to, 21, 204
Commonwealth, power of, 152
Democracy as just form of government, 259
Law of causality, 322

*Defined or explained in the *Glossary*

Private property as limiting absolute power, 156
Resistance against authority under natural-law doctrine, 150
Resistance of sovereign power, 149

Logic
Hegel, G.W.H, of, 169

Logic, dialectic
170-171

Logical atomism
Dynamic view of existence, in opposition to, 175

Logos
Herakleitos, 308

Louis XIV
Absolute monarchy of, 201

Love
Happiness, as source of, 2
Object of, 111

Love, principle of
Justice, as, 12, 45
God, and, 53
Retribution, principle of
Antagonism with, 30-31, 45, 53, 79
Compatability with, 76
Paul the Apostle, teachings of, 76

Luke, Gospel of
Christ, anti-economic view of 51-52
Christ, arrest of by Romans, 77
Divine retribution, 64
Family, 47-49

*Defined or explained in the *Glossary*

Final judgment, 65, 70
Justice, Christ's teaching on, 53
Kingdom of God, 66-67
Love, principle of, 45
Present world, Christ's view of, 63
Reversion, principle of, 63
Resurrection of Christ, 69
Taxes, Christ's teaching on, 49

*Defined or explained in the *Glossary*

M

Mach, Ernst
316

Malebranche, Nicolas
321-322

Malachi, Book of
Final judgment, 34, 60

Mark, Gospel of
Divorce, 29
Kingdom of God, 66-67
Present world, Christ's view of, 63
Reversion, principle of, 63
Taxes, Christ's teaching on, 49

Marriage
Christ, teachings of, 46-47
Greek religion, in, 88
Holy Scriptures, in, 27, 29-30
Kingdom of God, absence in, 67
Paul the Apostle, teachings of, 73

Marx, Karl
Dialectic logic of, 171-172
History, interpretation of, 166, 358
Historic materialism of, 171
Justice, idea of, 15-16
Science as political instrument, 357

Marxian Socialism
Anarchism, as, 242
Natural social order, 241
Political theory of, 242

Matrimony, *see* Marriage

Matthew, Gospel of
Christ as King of Israel, 68
Christ, death of, 72
Family, 47-49
Final judgment, 65-66, 69-71
Justice, Christ's teachings on, 46, 53
Kingdom of God, 66-67
Marriage, 47, 67
Present world, Christ's view of, 63
Private property, 50-52
Retribution, divine, 64
Retribution, principle of, 44-45
Taxes, 49-50

Mayer, Robert
316

Mean, Aristotles doctrine of the
Bipartite scheme, replacement with, 121
Justice, 132
Modification of, 120
Moral virtue, as, 119-120
Positive law/morality, as justifying, 125
Principle of, 18-20, 117-118
Psychic reality, as referring to, 119

Mesótes doctrine, see Mean, Aristotles doctrine of the
Application of, 121-123
Corrective justice, application to, 131-132
Moral good, as unable to determine, 124
Procedure of, 125
Shortcomings of, 122, 124-125

Messianic King
Christ as, 54, 68

*Defined or explained in the *Glossary*

Divine mission of, 1, 56, 67
Final judgment, as carrying out, 70
Kingdom of God, as ruler of, 56

Messianic Kingdom *see* Kingdom of God*

Metaphor, anthropomorphic*
State as juristic person, 255

Metaphysics
Aristotle, of, 110, 112, 205
Christian religion, of, 205
Immovable, as, 111

Metempsychosis
310

Metaxý, doctrine of
86, 88

Micah, Book of
Final judgment, 34

Monarchy
Democritus' view on, 205
Government of God, as, 153
Leibniz, defended by, 205
Ideal government, as, 205

Monarchy, absolute
Autocracy of, 21
Civil society, as inconsistent with, 204
Nature, as against, 152
Political absolutism, as, 201
Supporters of, 205

Money
Christ's teachings on, 50-52

*Defined or explained in the *Glossary*

Moral law
Human behaviour interpreted according to, 346
Reward for merit, 347
Social norm, as 346

Moral responsibility
Relativism, 22

Morality
Norms, reference to, 139
Positive law, relationship with, 284
Problem of, 9
Responsibility constituted by, 345
Systems of, differing, 141
Technique of, 244

Morality, Christian
197

Morality, law of,
Deity, will of, 315

Moral law
Natural tendencies as, 186
Perfecting tendencies as, 182, 185
Equal freedom, law of, 165

Moral nihilism
179

Moral norm
Coercive, as, 274
Inducement to conform to, 114
Nature, laws of, deduced from, 165
Prescribing omission, 349
Regulating behaviour, as, 244
Social orders, comparison to norms of other, 236
Sphere of validity, 345

*Defined or explained in the *Glossary*

Omission, as providing for, 349
Validity, 342

Moral obligation, theory of
190-193

Moral order
Relative validity of, 179
Social orders, as different to other, 236

Moral principles
Natural law, as forming, 258
Positive law, conformity with, 257

Moral responsibility
Relativism, 22

Moral systems
Sanctionless norms, as motivating behaviour through, 232

Moral values
Human behaviour applicable to, 184
Natural-law doctrine, aiming at, 184
Quantification of, 118

Morals
Ethics, as object of, 358

Morelly, Étienne-Gabriel
Code of Nature, or the True Spirit of its Laws, 157
Nature, law of, 158-159

Mosaic law
Marriage in, 27
Christ's teachings, antagonism with, 30-31, 46

Moses
Covenant with God on behalf of people, 34-35

*Defined or explained in the *Glossary*

Divine law, communicator of, 32
God, as declaring reign of, 31-32
Law of, *see* Mosaic law
Marriage, view on, 30
Retribution, principle of, 42

Motion, concept of
Good, absolute, and, 112
Movable and immovable, antagonism between, 111

Motivation, direct
Morality, as technique of, 244

Motivation, indirect
244, 253

Movapxia, *see* Monarchy

Murder
Forbidden, as, 236, 347
Norm, as violation of, 190
Revenge for, 313

Mysticism
108

*Defined or explained in the *Glossary*

N

Nation
Absolute right to govern of, 171
Autocratic government as basic value of, 202
State as, 170

National legal order
Validity of, 265

National socialism
Political absolutism, as, 202

Natural law*
Absolute necessity replaced by statistical probability, 320
Basic norm of, 194
Causality as fundamental form of, 319
Creation of, 245, 309
Function of, 150
Functional dependency of, 318
Government established in conformity with, 151
Human nature, relationship with, 143-144
Justice under, 228
Metaphysical doctrine of law, 326
Norms of, 188, 214
Positive law
antagonism with, 138, 214, 259
dualism with, 298, 300-301
as deriving validity from, 148, 258
Reality, explanation of, 321
Retribution, as law of, 311
Standard of, 187, 189
Task of, 193
Validity of, 260

*Defined or explained in the *Glossary*

Wild, John, as understood by, 175

Natural law, doctrine of
Aim of, 148
Animism of, 141
Basic norm of, 258, 260
Communism, defence against, 157
Democracy, relationship with, 152-153
Description of, 20
Differentiation of good and evil as essential to, 178
Essential element of, 174
Foundation of, 175
Good and evil, as distinguishing between, 185-186
Government and, 21, 152
Influential, as being, 159
Justice, definition of, 147
Legislative reform, opposition to, 151
Moral value, aiming at, 184
Nature as legislator, view of, 137
Norms of, 165, 178, 360
Positive law, dualism with, 142, 144-145, 297-298
Private property and, 153, 156
Religious character of, 138
Resistance, right of, 148, 150
Science, in contradistinction with, 139, 142
Tendencies, observation of, 176
Usefulness of, 173
Validity of law, 263

Natural law, dynamic theory of
Basic thesis of, 178
Fundamental norm of, 196-197
Description of, 20

*Defined or explained in the *Glossary*

Government systems based on, 21
Nature, in, 326
Values and facts, confusion of, 176, 178

Natural necessity
Social freedom, antinomy with, 345-346

Natural science
Animism, departure from, 288
Causality, principle of, and 139, 346, 352
Changes, as describing, 177
Development of, 342
Ethics, comparison with, 84, 140
Function of, 174
Jurisprudence, comparison with, 140, 269
Object of, 111, 140, 269, 362
Original pattern for, 305
Politicisation of, 356
Realizations of tendencies in, 176-177
Retribution, principle of, and, 309
Social science, comparison with, 324, 330-331
Task of, 287
Universe, conception of, 303

Natural social order
239-241

Natural tendency
Accidental tendencies, as distinguished from, 186, 189
Desire, manifested as, 187-188
Frustration of, 183, 186
Moral obligation grounded on, 192
Needs shared by all, as, 193
Preservation of human life, and, 190
Norms, natural, as basis for, 196
Realization of, 183, 186

*Defined or explained in the *Glossary*

Nature
Animism of, *see under* Animism, 137-138, 288
Atomistic view of, 205
Causal laws, as determined by, 159, 165, 352
Definite intentions of, 157
Determinate structure of, 182
Divine will, as manifestation of, 141, 170, 360
Equality as absent in, 127
Greek philosophy, in, 305
Human behaviour as element of, 324, 330, 345
Injustice of, 3
Interpretation of,
Primitive man, by, 233, 303-304, 327-328
Metaphysical-religious interpretation of, 138, 258, 358
Normative, 176
Normative to causal, from, 330
Teleological, 137, 176, 205
Legislator, as, 137, 141, 258
Movable, as, 111
Necessity prevailing in, 333
Natural law in, 20, 326
Private property, relationship with, 154-155, 158
Punishment, used by God for, 39
Reality, as distinguished from, 189
Religious and ethical speculation, freedom from, 85
Society, as part of, 141, 311
System of facts, as, 20, 258
Tendencies in, 177, 182

Nature, law of
Atomistic view of, 312
Causality as fundamental form of, 318
Causality, laws of, as, 352, 362

*Defined or explained in the *Glossary*

Causality, strict, absence of, 341
Exceptions to, 323
Fate, identified with, 308
Hobbes, 146
Human behaviour interpreted according to, 345
Human nature as deduced from, 144
Moral law, confusion with, 177
Morelly, Étienne-Gabriel, 158
Norm, social, as, 166
Retribution, principle of, relationship with, 309, 312
Rule of law, comparison with, 141, 268, 325-326
Scientific, 139
Sociability as, 158
Social norm, as, 106
Societies, as differing between, 146
Will, divine, as, 199, 315

Nature, philosophy of
305

Nature, state of
Social order, as suspension of, 241

Nature, universal law of
Law of state, emancipation from, 305

Nazism
Basic value, absolutization of, 202

Necessity
310, 345

Necessity, absolute
Causality interpreted to mean, 334, 345-346
Cause and effect having character of, 315, 321-322, 330

*Defined or explained in the *Glossary*

Statistical probability, replaced by, 320

Necessity, natural
Social freedom, antinomy with, 346

Need
Examples of, 194
Value as satisfying, 192

Needs, natural
Desires, as distinct from, 192-193
Right to be realised, as having, 194
Satisfaction of,195

Negligence*
Culpability, principle of, as element of, 251

Nehemiah, Book of
Tax, 50

Nómimon*, see* Law

Nómos, *see* Positive law

Norms
Abolishment of, 215
Act whose meaning is, 326
Application of, 133, 245, 368
Authority, as prescribed by, 146
Behaviour, relationship with, 20, 119-121, 139, 210, 232, 231
Causality, principle of, as, 322, 342
Categorical, 348
Command, comparison with, 274
Common law, of, 267
Conflict of, 122
Conformity with, 140, 277, 184
Constitution, of, 262

*Defined or explained in the *Glossary*

Constitution, first, as prescribing creation of, 223
Courts, as established by, 220
Creation of, 217-218, 245, 267, 316, 325, 326, 358, 361, 364, 366
Judicial decision, by, 367
Creating act, as differentiated from, 215
Custom, as giving rise to, 218
Dynamic theory of law, presupposed by, 189
Earliest, 328
Efficacy of, 267-268
Ethics as conformity to, 118
Existence of, 179, 212, 216-217, 219, 362
Fact, relationship with, 174, 180, 218, 359, 361
Freedom from state interference as, 165
Function of, 270
Fundamental norm, 349
God, as created by, 180, 141, 223, 321
God, obedience to, of, 260-261
Human act, as specific significance of, 180
Human life, preservation of, of, 189, 195, 197, 181, 190
Human nature, founded on tendencies immanent in, 187
Hypothetical basic, 223-224
Idea of, 191, 232
Ideological concept, as, 227
Individual, 279-280
International law, of, 286, 255-256
Judgment based on conformity with, 212, 222
Jurisprudence, and, 130, 271
Jurist, as presented by, 268
Juristic thinking, presupposed in, 223
Juristic value judgment, as presupposed by, 211

*Defined or explained in the *Glossary*

Justice, as, 102, 228-229
Legal, *see* Legal norm
Legal order as system of, 133, 221-222, 226
Legislative acts, as created by, 219
Meaning of, 230
Moral, *see* Moral norm
Moral theory, presupposed by, 195
'Natural' as meaning conformity with, 151
Natural law, of, 178, 188, 194
Natural law, void if contradictory to, 144
Nature, as deduced from, 141, 258, 260, 360
Nonpositive, 364
Necessity of, 273
Obligation, as creating, 191
Omission, providing for, 347-348
Perfecting tendencies, as, 182, 185
Positive norm *see* Norm, positive
Positive law, of, 214, 229, 257
Primitive law, in, 246
Reality, as immanent in, 182
Religious, 274, 309, 347
Retribution *see* Retribution, norm of
Restrictions, as, 328
Social order, of, 196
Socialism, of, 242
Theology, as prepposed by, 261
Types of, 358
Value as conformity with, 139, 140
Value, as constituting, 179, 353, 361
Value judgments presupposed by, 183
Will, as expression of, 214-217, 258

Norm, basic
Anarchist's view of, 227
Constitution, based on, 360-361
God, obedience to, as, 354

*Defined or explained in the *Glossary*

Hypothetical, 224
Legal order, of, 221, 364
Presupposed, as, 226

Norms, general
252, 279-280

Norms, hierarchy of
220, 222, 246, 279-280, 366, 367

Norms, legal
Behaviour, as determining, 210, 361
Behaviour in relation to, 226
Constitution as, 225
Custom, as created by, 217, 361
Creation of, 214, 216, 219-220, 251, 279, 360
Delict and sanction, as establishing relationship between, 245, 276
Existence of, 214, 219, 227
Function of, 275
Hierarchy of, 217-218, 221
Interpretation of, 367-368, 371
Jurisprudence as object of, 268
Lawfulness as conformity with, 216
Legal duty, as establishing, 277
Organ and subject, as regulating behaviour of, 244
Rules of law, as distinct from, 268, 363
Sanctions, providing for, 289
Social orders, comparison to norms of other, 236
Types of, 267
Validity of, 225, 270, 280, 287
Validity, sphere of, 342, 345
Value judgments about, 363
Will, as expression of, 212

*Defined or explained in the *Glossary*

Norm, moral
Ethics as describing situation under, 139
Omission, prescribing, 348-349
Validity, sphere of, 345
Non-observance of norm does not constitute exception to validity, 342
Vice as non-conformity with, 119
Virtue as conformity with, 119

Norms, natural
Factual tendencies, as grounded in, 188
Natural tendency as basis for, 196
Reality, structure of, as embedded in, 183

Norms, political
368

Norms, positive
Creation of, 221, 326, 358-359
Description of, 359
Jurisprudence, as objects of, 360
Validity of, 359
Value judgments constituting norm, 326

Norms, religious
Sanctions laid down by, 236

Norm, social
Behaviour, human
Facts other than, reference to, 347
Interpreted according to, 328, 346
Prescribing, 347-348
Nature, law of, as, 166
Normative social science describing, 331
Primitve people as acting in conformity with, 234
Violation of, 234

*Defined or explained in the *Glossary*

Norms, validity of
Validity of as limited, 214-222
Validity, non-observance not affecting, 342
Validity, objective, as claiming, 353

Normative order
329, 331, 358

Normative sciences
358

Normative theory
Jurisprudence as, 269

Novatores*
Opposition to, 151
Responsibility constituted by, 345

Numbers, Book of
Adultery, 28
Dead existing in Sheol, 57
God, judicial power of, 33
God as King of Israel, 31
Punishment, 38-39
Reward, 39

*Defined or explained in the *Glossary*

O

Objectivity, principle of
356

Obligation
Human feeling, as, 192
Individuals idea of, 191
Motive, as, 192
Norm, prescrived by, 190
Normative meaning of, 192
Normative sense of, 191
Right, relationship with, 194

Obligation, theory of
191, 193

Offence, see delict

Onesimus
27

Opposites
307

Oriental Empire
171

Ovid, Publius Ovidius
240

Obedience, voluntary
Anarchism, in, 242
Motivation, as form of, 235
Natural social order, in, 240
Unrealistic, as, 243

*Defined or explained in the *Glossary*

P

Pacta sunt servanda*
265

Par excellence
248, 300

Parliament
Constitution as giving power to, 218
Decision of, 212

Parliamentary democracy
Legislative procedure of, 216
Norm, creation of, 217

Parmenides
310

Paul the Apostle
Arrest
Christ' teachings, antagonism with, 13, 31
Jewish law, view of, 73
Justice, idea of, 76-77, 81
Kingdom of God, spiritualisation of, 78
Positive law, recognition of, 75
Teachings of,
Authority, on, 75,
Faith, 80-81
Family, on, 74
Marriage, on, 73
Slavery, 27, 74-75
Taxes, on, 75
Wealth, on, 74
Romans, arrest by, 77

*Defined or explained in the *Glossary*

Paul, Saint
Teachings of, 264

Peace
Interests of, 147
Law, as instrument of, 132, 237-238

Pederasty
Ancient Athenian culture, in, 88
Platonic Eros, as, 90

Penal law

Philip of Hesse
Bigamy of, 27

Philippians, Epistle to the
Justice, 81
Wealth, 74

Philosophical absolutism
Cognition, subject of, 199-201
Political absolutism, parallel with, 202, 204-205
Reality, absolute, belief in, 198

Philosophical relativism
Antimetaphysical empiricism, as, 199
Cognition, subject of, 200-201
Democracy, relationship with, 204
Reality, view of, 198
Right, absolute, absence of, 207
Value judgments under, 206

Philosophy
Ancient Greek, 304
Politics, relationship with, 198

Philosopy, positivistic
Reality as in flux, 175

*Defined or explained in the *Glossary*

Physics
Planck, Max, *see* Planck, Max, 34
Predicting occurrences, impossibility of, 343
World, ideal picture of *see* Physical world picture

Physical world picture
Causality, strict principle of, compatibility with, 340, 341, 343
Determinism in, 342
Human imagination, product of, 344

Pilate, Pontius
1, 207

Planck, Max
Causality
Abandonment of, 341
Freedom of will, harmonizing with 335-339
Strict principle of, 343
God, belief in, 344
Physics, 340
Uncertainty principle, 338

Plato
Autocracy as ideal form of government, 204
Dialogues, 98
Doctrine of ideas, 11-12, 100-101
Education, view on, 92
Family life, 88
Eros as shaping, 87
Good, conception of, 105-107, 114
Happiness and justice, 2, 3, 6
Justice, 103
Literary form of, 93
Mysticism of, 108-109
Political passion of, 90-91

*Defined or explained in the *Glossary*

Pragmatism of, 96
Science, relationship with, 94
Society of, 103, 162
Soul, doctrine of, 100
State, view of, 102, 160
Truth and lawfulness, conflict between, 7
Worldview of, 82

Plato, plays of
Epistle II, 92, 107
Epistle VII, 12, 90, 106-108
Gorgias, 100
Laws, 95-96, 100, 173, 291
Meno, 97
Phaedo, 100
Phaedrus, 106
Symposium, 88, 97, 106
Republic, 101-102, 105, 160

Plato's ideal state
95, 160,

Platonic truth
94

Platonic academy
91-92

Platonic eros
Condemnation by Athenian society, 88
Desire of, 90
Dion, love for, 91
Justification of, 89
Spiritualisation of, 89

Platonic justice
6-7, 91, 103, 107

*Defined or explained in the *Glossary*

Platonic philosophy
Evil in, 83
Goal of, 83
Government, role of, 95-96
Justice in, 95-96
Principal thesis of, 91
Science, as differing from, 94
Soul, conception of, 104
Truth, conception of, 94-95
World, structure of, 85

Platonic philosophy, dualism of
82, 84-85-86, 89

Pluralism
200, 204

Philosopher
State, as ruler of, 108

Philosophy, Ancient Greek
304

Poison, ordeal by
28

Political absolutism, *see* Absolutism, political

Political community
Law as order of, 133

Political control
163

Political disputes
373-374

Political function
Legal function, as different to, 369, 372-373

*Defined or explained in the *Glossary*

Political recognition
Declaratory character of, 369-370

Political relativism
Characteristics of, 204
Democracy as, 198, 204, 207
Philosophical relativism, parallel with, 204
State under, 202, 204

Political science
Politics, separation from, 357
Politics, science of, as different to, 356

Political values
Legal value, as distinguished from, 365

Politics
Absolutism in, 201
Law, as differentiated from, 365
Philosophy, relation to, 198
Political science, as object of, 356
Science, relationship with, 357
Subjective value judgments, as based on, 355
Values, as presupposing assumption of, 350, 356

Politics, science of
Political science, as different to, 356

Polygamy
Holy Scriptures, in, 27, 29-30

Positive law
Application of, 245
Christ's rejection of, 44-45, 53
Coercive order, as, 131
Constitution of, 360
Contents of, 229
Creation of, 279, 296, 298

*Defined or explained in the *Glossary*

Distributive justice, applicable according to, 128
Divine justice, relationship with, 31, 81
Essence of, 44
Function of, 101, 166
Good, as providing for, 151
Human nature, as necessitated by, 143
Involuntary transaction punishable by, 129
Law and justice, separation of, 302
Lawfulness as conformity with, 126, 150
Mesótes formula as justifying, 125
Morality, relation to, 254
Norms, creation of, 245
Norms of, 229
Norms, as complex of, 214
Objective law, binding if in conformity with, 300-301
Paul the Apostle, recognition by, 75
Private property, relationship with, 156
Pure theory of law, as object of, 267
Rejection of, 44-45, 53
Relative human justice, identical to, 81
Retribution, principle of, as corresponding with, 14
Science of, 262
Science of law, as describing, 365
State, as authority on, 147
Supreme sovereign order, as, 261
Technique of, 42
Validity of, 144, 364
Validity, principle of, 280

Positive law, justice
Determining, 134
Natural law as requiring, 147
Relationship with, 31

*Defined or explained in the *Glossary*

Validifying, 134

Positive law and natural law
Adaptation, 151
Antagonism, 259
Conflict, 145
Deriving validity, 258-259
Difference, 214
Doctrine justified by, 145
Dualism, 297-298, 300-301
Inferior, 144
In conformity with, 145
In contradistinction to, 138
Presumption, 147
Requirement, 148
Strength, 150
Validity, 142
Written version, 146

Positive legal order
Juristic value judgments, 210
Justification of, 260
Hierarchical structure of, 261-262
Validity of, 262, 360

Positivism
Aristotle, 126
Dualistic theory of, 179
Natural-law doctrine, comparison with, 174
Values, 179

Positivism, relativistic
Relative values under, 179

Positivistic value theory
179

*Defined or explained in the *Glossary*

Postulate of purity
294

Power
Renunciation of, 153

Prevention
Punishment, as justification for, 312

Primitive law
Characteristics of, 255
Decentralised, as, 251
Technique of self-help, as characterised by, 246

Primitive legal order
Absolute liability as prevailing in, 250
Centralization of, 254
Determination of issues, 252-253
Developed legal order, as distinguished from, 248
Individual responsibility, principle of, as against, 249

Primitive man
Animism of, 137, 328
Causality, absent in thinking of, 303
Gods of, first, 233
Nature, interpretation of, 37, 233, 303, 305, 327-329
Punishment and reward, interpretation of, 37
Social norms, conformity with, 234
Social order of, 239

Primitive society
249, 327

Principle of effectiveness, *see* Effectiveness, principle of

Principle of uncertainty
319-320

Private law
Public law, dichotomy with, 370-371

Private property
Abolition of, 172, 241
Absolute right to, 156-157
Christ, teachings of, 50
Communism as violation of justice, declaring, 166
Divine right, as, 153
Economic system based on, 155
Evolution of, 154
Future of, 162
Legal order based on, 247-248
Natural law, and, 153
Nature, as against, 157-158
Nature, as corresponding with, 21, 259

Progressive evolution, law of
163, 165

Proletariat
242

Prometheus
310

Propaganda
6-7

Property
50

*Defined or explained in the *Glossary*

Prophecy
321

Protagoras
204, 312

Proverbs, Book of
Divine justice, 36
Forgiveness, 44

Psalms, Book of
Divine law, 32
Divine justice, 35
God, judicial power of, 33
God and Israel, relationship between, 31, 35
Soul, immortality of the, 56-57

Public law
370-372

Pufendorf, Samuel von
Conflict between positive and natural law, 145-146
Natural law, on, 138, 144, 147
Nature, law of, 143
Resistance of civil sovereignty, 149
Resistance, right of, 148

Punishment
Adultery, for, 28
Blood revenge, as, 27
Causally determined, as, 346
Coercive measure, as, 246
Determination, 9, 129-130
Fate, as, 308
Final judgment, following, 58, 60, 65, 71
Hell as, 234
Holy Scriptures, in, 38-39

*Defined or explained in the *Glossary*

Imputation to crime, 346, 332-334, 346, 347
Nature as tool of, 39, 311
Norm of retribution, in, 328-329
One punishment for one offence, 317
Platonic conception of, 99
Primitive man, belief of, 329
Retribution, as, 65, 131, 304
Rule of law, as, 325
System of justice, placement in, 42
Social technique, as, 234
Wrong, connection to, 306, 307, 313-314, 315

Pure theory of law
Animism, emancipation from, 288, 293
Austin, John, analytical jurisprudence of, as different to, 281
Coercion, 274
Dynamics of law, 278
International law, 283, 285
International law, importance of, 287
International law, national law, relationship to, 284
Jurisprudence as distinguishing between types of, 269
Law, approach to, 294
Law and justice, separation of, 302
Law as coercive order, 289
Norm, characterisation of, 277
Positive law, limited to, 267, 271
Right, concept of, 278
Rule of law, formulation of, 275
Sovereignty, 286
State, view of, 282

Pythagorean doctrine
Essence of, 99

*Defined or explained in the *Glossary*

Justice as reprocity, 130

*Defined or explained in the *Glossary*

Q

Quantum mechanics
Freedom of will, 345
Causality, law of, reconciliation with, 319

Quantum physics
Determinism, 342
Uncertainty relation, 338, 340, 341 *see also* Uncertainty principle

R

Rabbi Hillel
Retribution, principle of, 65

Reality
Cause and effect, interpreted as, 342
Completion, tendency towards, 181
Conception of, 159
Dynamic view of, 175, 185
Empirical view of, 85
Evil as immanent in, 358
First attempt to grasp, 305
Flux, in, as, 175
History, as, 159
Natural law, as explained by, 321
Natural norms embedded in, 183
Nature, as distinguished from, 189
Perfection of, 168
Philosophical absolutism, in, 198
Science, as object of, 358
Scientific explanation to structure of reality, 335
Society, as, 159
Structure of, scientific explanation to, 335
Tendential character of, 175-177
Tendencies immanent in, 185
Tendencies in, 181
Traits involved in, 190

Reality, absolute*
Human knowledge, existing independent of, 198
Philosophical absolutism, in, 167

*Defined or explained in the *Glossary*

Reality, social
Contradiction inherent in, 171
Human nature, as manifestation of, 197
Ideology conditioned by, dualism with, 227

Reality, value
Different from, 352
Immanent in, 159-160, 168-169, 172, 358
Relationship with, 174, 178, 211
Separation from, 199
Subordinate to, 84

Reason
Absolute values, as incompatible with, 10-11, 21
God, as, 168
Human, 182
Law, as determining content of, 145
Universal, 308
Will of, 166-168

Reciprocity, *see* Retribution, principle of

Reichebach, Hans
319

Reincarnation
Phythagorean doctrine, in, 99

Relativism
Absolutism, antagonism with, 207
Moral responsibility and, 22

Relativity, theory of
200, 339

Religion
Absolute good as object of, 106-107
Collective responsibility in, 8

*Defined or explained in the *Glossary*

Norm of, 347
Science, relation to, 344
Social reality, as mirroring, 234
Sociology of, 294

Religious law, *see* Law, religious
Human behaviour interpreted according to, 346
Penance for sin, 347
Social norm, as 346

Religious order
234, 236

Religious though
Nature as freeing itself from, 85

Responsibility
Duty, relationship between, 276-277
Holy scriptures, in, 30
Legal, 327
Normative order, constituted by, 345

Resurrection
Body, of, 79
Eschatological belief, separation from, 60
Jewish theology, in, 63
Justice as instrument of, 57, 58, 61
Kingdom of God, essential element of, 69, 79
Marriage following, 67
Paul the Apostle, view of, 78

Retribution, norm of
Causality, principle of, origin in, 329
Condition and consequence connected according to principle of imputation, 328

Retribution, principle of *
Animals, applicable to, 39
Aristotle's objection to, 131

*Defined or explained in the *Glossary*

Causality, law of, essentially same as, 307
Causality, law of, separation from, 312
Cause equal to effect, 306
Chronological sequence of, 318
Corrective justice, at variance with, 130
Death, exercised after, 61-62, 99-100
Deity, as will of, 309
Divine justice, as, 35, 75, 77
Divinity, as emanating in, 233
Early Hebrew Society, in, 37
Empedokles, fundamental notion of philosophy of, 310
Equilibrium as specific function of, 307
Essence of justice, presented as, 13
Fate, relationship with, 61, 308
Final judgment, following, 70, 72
Goddess of, 309-310
God's justice, 35
God's will, as manifestation of, 76-77
Hebrew society, in, 37
Holy Scripture, in, 42-43
Justice, as, 13, 37
Love, principle of, antagonism with, 30-31, 79
Metempsychosis as specific ideology of, 310
Natural law, as, 311
Nature interpreted according to, 317
Norms, inducing conformity with, 114
Opposition to, 44
Origin in desire for revenge, 131
Penal sanction, as purpose of, 247
Positive legal order, in, 14
Primitive man's social consciousness dominated by, 304
Primitive social order, within, 233
Principle of reversion as example of, 63-64

*Defined or explained in the *Glossary*

Punishment and reward as tools of, 39, 42, 315
Realization of, 233
Rejection by Christ, 12, 44, 53
Social order, as regulating, 231
Unescapableness of, 310
Universal law as, 312
Thesis that only like things can affect like things, 305

Retribution, norm of
Causality, principle of, origin of, 329
Condition and consequence connected according to principle of imputation, 328
Will expressed in, 317

Revelation
Scriptural, 29

Revelation, doctrine of
26

Revenge
Blood revenge, *see* Blood revenge
Function of soul after death, as, 306
Goddess of, 309
Prohibition of, 44
Retribution as, 131
Spirits, of, 234

Reversion, principle of
Retribution, principle of, as example of, 63-64

Reversal, doctrine of
86

Revolution
Communist, 172
Juristic interpretation of, 224-225

*Defined or explained in the *Glossary*

Reward
Causal determination of human behaviour, 346
Death, after, 99
Desired event interpreted as, 37
Divine, 314
Fate, as, 308
Final judgment, following, 60
Happiness as, 114
Heaven, as, 234
Holy Scriptures, in, 39-40
Indirect motivation, as technique of, 235
Interpreted as, 37
Imputation, principle of, 332-334, 346, 347
Merit attracting, 313
Merit, connection to, 306, 315
Merit, relationship to, 131
Norm of retribution, in, 328, 329
Primitive man, belief of, 329
Resurrection as, 58
Retribution, according to, 131, 304
Sanction, as, 235, 328
Social technique, as, 234
System of justice, placement in, 42

Reward and punishment, principle of*, see* Retribution, principle of

Right
Duty, relationship with, 278
Essential tendency as, 187
Equal freedom, of, 166
Just allotment of, 127
Legal, 277
Obligation, as different to, 194
Physical integrity, of, 166
Positive law, as determined by, 128

*Defined or explained in the *Glossary*

Private property, of, 248

Rights, individual
Duties, as resulting from, 162

Roman Empire
49-50, 135-136, 171

Romans, Epistle to the
Divine retribution, 77
Faith as justice, 81
Love, principle of, 76
Kingdom of God, 79
Paul the Apostle, teachings of, 73-75

Roman juriprudence
Justice in, 147

Roman law
Customary law, as, 299
Unjust, as, 135

Rousseau, Jean-Jacques
Distinction between "general will" and "will of all", 298
Liberty, renunciation of, 152

Rule
Command, as, 272, 342
Determining what a just rule is, 127
Social order, of, 231

Rule of law*
Description, 325
Formulation of in Pure Theory of Law, 275-276
Jurisprudence, statements of, as, 268
Legal norm, as distinct from, 268, 363
Nature, law of, as compared with, 268

*Defined or explained in the *Glossary*

Ruling class
Comte, Auguste, of, 160-161

*Defined or explained in the *Glossary*

S

Sacrifice
God, as offering to, 36
Human, 195

Samuel, Book of
God, judicial power of, 33

Sanction
Blood Revenge, 328
Conduct, as regulating, 231-232
Delict, connection to, 131, 244, 246, 252, 267, 275-276, 277, 327
Directed against, 249, 276
Execution of, 253
Fear of, motivation provided by, 290
Guaranteeing normal state of things, 312
International law, of, 283
Legal orders, as differing between, 131
Norm, application to, 245
Norms, provided for by, 348
Paradoxical, as, 237
Prevention, justified as means of, 312
Primitive law, in, 246
Religious, 233
Religious norms, as laid down by, 236
Sanction, purpose of, 247
Social order, of, 232-234

Sanction, coercive
Act of, 237, 248, 289
Element of, 274
Force, necessity of, 235
Measures, 244

Satan, Kingdom of
Final judgment, punishment following, 70
Roman Empire as, 49-50

Savigny, Friedrich Carl von
299

Science
First principle and causes, of, 110
Modern, 307
Platonic philosophy, as differing from, 94
Political instrument, as, 357
Politics, as independent from, 350, 355
Politics, separation from, 356-357
Reality, as object of, 358
Religion, relation to, 344
Statements as conditional propositions, 354
Value judgments, excluded from, 364
Value judgments in, 352
Value, presupposition of, 351

Science, law of
Object of, 364
Politics, as separate from, 365
Positive law, as describing, 365

Science, legal, *see* Legal science

Science, natural, *see* Natural science

Science, social *see* Social Science

Security
Highest value, as, 296

Self-help
Abolishment of, 253

Senses, human
342

*Defined or explained in the *Glossary*

Sensous perception
86, 342

Sham problem
293, 346

Sheol
Division of, 61-62
Punishment by eternity, in, 58

Sin
Bad luck, as engendering, 306
Unforgiveable, 66

Slavery
Holy scriptures, in, 27, 74-75
Norm of preservation of human life, as incompatible with, 197

Social contract
286, 291

Social optimism
240

Social order
Coercive, as, 239
Differing, as, 235-236
Freedom, individual, and, 4
Function of, 231
Happiness, as assuring, 3
Human behaviour, as regulating, 231
Individual freedom, and, 4
Justice, and, 1-3
Justice, as establishing, 16-17
Legal order, as, 235
Nature, immanent in, 239
Norms of, 196
Primitive, 233, 239, 304

*Defined or explained in the *Glossary*

Religious character of, 233
Sanctions of, 232, 234-235
State as, 293

Social pessimism
240

Social security
Freedom, personal, conflict with, 140

Social Science
Aim of, 330
Animism in, 288
Imputation, principle of, 346
Natural science, comparison with, 324-325, 330
Normative, 331
Object of, 363
Politics, and, 94

Social solidarity, doctrine of
299-301

Socialism
Absolutization of basic value of, 202
Authoritative character of, 242
Autocratic government, as basic value of, 202
Crime prevention, 244
Collective responsibility, 8
Economic organisation of, 242
Equality as ideal of justice, 228
Establishment of, 172
Norms of, 242
Totalitarianism, tendency towards, 243

Socialist doctrine
Needs, as guaranteeing everyone satisfaction of, 194

*Defined or explained in the *Glossary*

Socialist order
Coercive order, as, 244

Socialist state
Coercion as necessary in, 243
Direct administration of, 255
Violations of order in, 243

Society
Division into classes, 241
Equality in, 127
Free society, 239
Future of, 161-162
Industrial, 163
Metaphysical-religious interpretation of, 358
Militant, 163
Militant structure of, 164-165
Nature, used by primitive man to explain, 305
Normative order, as, 331
Organisation of, 102-103
Politics, separation from, 358

Society, political
Establishment of, 152-153

Sociology
159, 271

Socrates
Family life of, 88
Good, conception of, 105
Justice, view of, 98

Science
Platonic philosophy, as differing from, 94

Science, modern
Cause and effect, of, 307

*Defined or explained in the *Glossary*

Science, normative
331

Social order
Primitve, 304

Socialism
Collective responsibility in, 8

Society
Normative order, as, 331
Primitive 327-328, see also Primitive man

Sodom
70

Solomon, psalms of
God as King of Israel, 31

Solomonic judgment
2

Solipsism
200, 204

Sophists
Divine justice, denial of, 107
Relativism of, 204
312

Sophocles
Antigone, 148

Soul
Dead, of, 57, 306
Death after, 99
Death, continuing after, 305
Embodied in other being, as, 311
Immortality of, *see* Soul, immortality of
Motion, as cause of, 306

*Defined or explained in the *Glossary*

Platonic conception of, 100, 104
Retribution, as object of, 100
State, analogy with, 104
Transition from evil to good, 86
Tripartite structure of, 104
World, of, 305

Soul, immortality of
Jewish belief in, 56-57
Resurrection, belief in, as superseding, 62-63,
Kingdom of God, in, 79
Platonic conception of, 97

Sovereign
Law as command of, 281
State, as highest organ of, 283
State, as substitute for legal concept of, 282

Sovereign power
Austin, John, 271
Resistance against/right of, 148-149

Sovereignty
International law, relationship with, 203
International legal community, of, 286
Human, 286
Rights of, 151
State, as characteristic of, 264, 283
State, deification of, as serving purpose of, 203
State, of, 285-286

Spencer, Herbert
Concrete rights, 166
Evolutionary ethics of, 164-165
Fundamental law of social evolution, 160
Justice, formula of, 165
Law of equal freedom, 165
Moral philosophy of, 165

*Defined or explained in the *Glossary*

Political programme of, 166
Principles of Sociology, 159
Progresssive evolution, law of, 163
Social law of evolution, 159

Spinoza
Democracy, view on, 205

Spirit
Ideal, assumption of, 343, 344

State
Absolute entity, as, 202-203
Anarchy, as absent in, 242
Austin, John, in, 280
Centralization, 283-284
Coercive, as, 282
Coercive machinery, as, 172
Coercive order, as, 239, 281, 287
Community as, 290, 291-293, 369-370
Constituted by, 281
Constitution of ideal state, 103
Deification of, 170-172, 203
Democratic theory of, 204
Detterent to inherent evil of human nature, as, 143
Development of, 255
Devil, as, 172
Elements of, 283
Force, use of, 149
Function of, 166
Honour as determining, 147
Ideal, 95, 161
Individual soul, analogy with, 104
Just order of, 90
Justice as function of, 133
Justice, as unable to to exist without, 135

*Defined or explained in the *Glossary*

Law, dualism with, 227, 282, 289
Law, relationship with, 281, 290, 292-293
Lawfulness, as determining, 147
Legal community, as, 203, 253
Legal order, as, 221, 282, 293
Legal person, as, 371
Membership of, 170
Mutual relations of states, 265
Nature, law of, as determining requirements of, 146
Necessity of, 239, 241
Peace as essence of, 132
Personification of, 282
Philosopher as ruler of, 108
Plato, justification by, 87
Power behind law, as, 152, 156, 227
Purpose of, 156
Regulation, 95
Relativization of, 204
Retribution, as apparatus of, 101
Right over individual, 170
Social order, as, 293
Soul, individual, analogy with, 104
Sovereign, as, 264, 285-286
Value, absolute, as, 305

State order
Technique of, 312

State, organs of
282, 292, 372-373

Statism
164

Statute
Application of, 262

*Defined or explained in the *Glossary*

Constitution, relationship with, 245
Enactment of, 273
Individul norms, as regulating creation of, 366
Will of legislator, as, 273

Statutory law
Constitution, validifed by, 220
General norms, as, 221

Suicide
5, 184, 190

Syllogism
*Condition per quam,** 215, 219
*Condition sine qua non,** 215, 219

*Defined or explained in the *Glossary*

T

Taxes
Holy Scripture, in, 49-50, 75

Ten Commandments
30, 32

Tendencies
Human and non-human, differentiation between, 188-189

Tendencies, factual
Natural norms as grounded in, 188

Thales of Miletus
305, 307

Theodicy
25, 168, 358

Theology
Basic norm of, 261
History of, 168
Limitation, as, 320
Normative social science, as, 331
Object of, 294
Science, as highest form of, 111
Theodicy as central problem of, 168
World, interpretation of, 180, 314

Theoretical anarchism, doctrine of
239-240

Thessalonians, First Epistle to
Marriage, 73
Paul the Apostle, letters of, 76

Thessalonians, Second Epistle to
Divine retribution, 77
Labour, 74

Thucydides
155

Timothy, Second Epistle to
Christ, judicial power of, 70
Slavery, 75
Wealth, 75

Tolerance, principle of,
22-23

Tort, *see* Delict

Torture
188

Totalitarianism
Political absolutism, as, 201-202
Socialism as having tendency towards, 243

Totalitarian government
Absolutism of, 202

Totemism
311

Treaty
International law, as created by, 203
International law, of, 265

Transcendental authority
315

Trust
God, in, 39
Determinant of, 150
Strife, in, 311

*Defined or explained in the *Glossary*

Truth,
Absolute, as, 199, 207-208
Duality of, 97
Justice, identical to, 310
Justice, relationship with, 95, 96
Platonic conception of, 97
Platonic philosophy, in, 95-97
Relative, as, 199
Search for, 350
Value, as, 6, 351

Transaction, voluntary
128-129

*Defined or explained in the *Glossary*

U

Ultimate end
Necessary assumption, as, 354

Uncertainty principle
338, 341, 342

United States Supreme Court
373

Universe
Absolute authority, as created by, 199
Conception of, 303
Fundamental principle, to explain, 305
Governed monarchically, as, 305
Realms of, 85
Unity, explanation in terms of, 305

Universal law, *see,* Divine law

Uzziah, King
38

*Defined or explained in the *Glossary*

V

Validity, principle of
280

Value
Anarchist's view of, 226, 227
Facts, as, 178-179, 211-212
Freedom (individual), 165
General theory of, 229
Good, absolute, immanent in reality as, 199
Human life as highest, 164, 189, 197
Interest, as function of, 211
Interest theory of, 216, 227
Justice, of, 209, 229
Legal norm, as constituted by, 365
Need, as satisfying, 192-194
Negative, 180
Normative theory of, 212-227
Norm, as conformity with, 139-140
Norm, as constituted by, 353, 361
Norm, connection with, 179
Objective, as, 230
Obligation as moving individual towards, 192
Politics, relationship with, 199, 350, 356
Realization of, 179
Reality, as different from, 352
Reality, as immanent in, 141, 159-160, 168-169, 172, 174, 180-182, 184, 199, 358
Reality, relationship with, 178-179, 211
Reality unable to be deduced from, 140
Relative, as, 179, 199, 206
Science, as absent in, 350
System of values, 7

*Defined or explained in the *Glossary*

Value, absolute
Democracy, as inconsistent with, 206
God, obedience to, as, 354
God's will as, 167
Justice as, 365
Justice as conformity with, 199
Norm, as, 353
Subjecive, as, 230, 355
Reality, as inherent in, 167
Relationship between object and norm, as, 212

Value judgment
Behaviour, of, 209, 213, 220
Cause and effect, relationship between, of, 352
Cognitive act, as, 211
Consciousness, as based on, 199
Facts, as, 183
Judgments of fact, as different from, 212
Law, of, 209
Lawmakers, by, 210
Legal norms, concerning, 363
Matters of fact, as, 218
Natural-law doctrine, in, 174
Object of, 209, 211
Politics, in, 356
Positivism, in, 174
Presupposed basic norm, based on, 226
Science, in, 351, 364
Social behaviour, of, 232
Subjectivity of, 174, 295-296, 350, 355
Reality, statements about, as differing from, 351-353, 355, 358, 361, 363-364
Relativism of, 206
Truth, as equated with, 159
Validity of, 354
Valuation, as act of, 212, 230

*Defined or explained in the *Glossary*

Values, conflict of
Answer presented as objective value, 8
Differing viewpoints in respect of, 7
Freedom as highest value, 5-6
Honour of nation as highest value, 4
Lawfulness as value, 7
Life as highest value, 4
Social security as value, 6
Subjectively determined, as, 5-6
Truth as value, 6-7
140-141

Values of law
Definition of, 209
Existence of, 229
Interest theory, in, 213, 216, 226
Judgments which assert, 210
Objective, as, 229

Vengeance
God, of, 40-42, 77

Vice
Greed as source of, 158

Virtue
Aristotle's method for determining, 118
Friendship, of, 132
Happiness, relationship with, 114, 116
Lawfulness as perfect virtue, 126
Mean between two vices, as, 117-120, 122-124
Moral, 117, 119
Moral order, conformity with, as, 124
Norm, as conforming with, 119, 121
Social, 126
Vice, relationship with, 19

*Defined or explained in the *Glossary*

Virtues, system of
18

Voting procedure
298

*Defined or explained in the *Glossary*

W

War
Herakleitos, 308
Killing in, 5
Legitimacy of, 197
Nature, tension of opposites in, 307
Sanction of international law, as, 283

Wealth
Kingdom of God, reversal in, 63
Paul the Apostle, view of, 74

Welfare
Conflict between national and individual, 140

Wild, John
Behaviour as judged according to norms, 184
Completion, concept of, 180
Dynamic theory of natural law, 178, 182
Existential tendencies, 185
Moral obligation, theory of, 190, 193
Natural law, understanding of, 175
Natural needs, 194-195
Obligation, theory of, 191-192
Plato's Modern Enemies and the Theory of Natural Law, 175
Tendencies, 186-188

Will, of god *see* God, will of

Will, human
Causal determination of, 337-340
Cognition, primacy over, 84
Establishment of, 20-21
Freedom of *see* Freedom of will
Just, as, 298

*Defined or explained in the *Glossary*

Knowledge, relationship with, 95
Nature, divine will inherent in, 141
Nature endowed with, 137
Normative imputation, as end point of, 345
Norm as created by act of, 214-218
Norms of human behaviour, as establishing, 20-21
Prima causa, as, 344
Reason, of, 166

Winkler, Benedictus
Legislative reform, opposition to, 151

Wisdom of Sirach, the
Forgiveness, 44
Retribution, 57

Witness, God as
34

World
Completion, as moving towards, 183
Ethical terms, explanation in, 84
Fundamental principle of, 305
God, relationship with, 167-168
Human cognition, as created by, 200
Law governing, 321
Platonic view of, 85
Reason, as governed by, 166
Religious view of, 170
Soul of, 305
Theological interpretation of, 180, 314

World-spirit, *see* Reason

World state
256

Wrong, *see* Delict

*Defined or explained in the *Glossary*

Y

Yahweh *see* God

Z

Zechariah, Book of
Christ as King of Israel, 68

Zephaniah, Book of
Divine justice, 36
God as King of Israel, 31
Final judgment, 34

Zurechnung, see imputation

Introduction to the Glossary

The authors intend the Glossary to supplement the Index, to clarify terms, and to make concepts more accessible to readers. While no work of writing can be entirely original, this aphorism is particularly true of dictionaries and glossaries. The authors have tried to frame the glossary entries in terms that are particularly relevant for the subject matter of *What is Justice?,* but they have checked them against and often relied on standard sources, such as the Concise Oxford Dictionary,[3] Butterworths New Zealand Law Dictionary,[4] and a number of helpful but anonymous entries in Wikipedia.

[3] Angus Stevenson and Maurice Waite *Concise Oxford English dictionary* (12th ed. ed, Oxford University Press, Oxford, 2011).

[4] Peter Spiller and GW Hinde *Butterworths New Zealand law dictionary* (7th ed. of Hinde & Hinde's law dictionary ed, LexisNexis NZ, Wellington, NZ, 2011).

Glossary

Aetios

Sometimes referred to as Aetius, Aetios was an Eastern Roman eunech official and one of the most trusted advisers of Empress Irene of Athens during the 8th century BCE.

Animism

Animism is the belief that all natural things, such as plants, animals and rockshave living souls and can influence human events.

Anthropomorphic metaphor

Using a thing with human characteristics to symbolize another thing. A key example in *What is Justice?* is the concept of a state as a juristic person.

***Apeiron*/ἄπειρον**

Apeiron is a Greek word meaning that which is unlimited, or boundless. In *What is Justice?,* it refers to the cosmological theory created by Anaximander in the 6th century.

Augustine, Saint

Also known as Augustine of Hippo, Saint Augustine was a philosopher and theologian from the 4th century. Saint Augustine's two main texts *City of God* and *Confessions* were highly influential in the development

of medieval philosophy and theology.

Bellum iustum

Jus bellum iustum (or *justum)* is also known as the Just War Theory. The theory contends that war, although not desirable, is not always the worst outcome. The doctrine attempts to justify war morally through a series of criteria. These criteria are split into two categories: *Jus ad bellum* and *jus in bello* "the right to go to war" and the "right conduct in law" respectively.

Causality

Kelsen uses the term "principle of causality" to refer to the concept of cause and effect. He uses "law of causality" and "principle of causality" interchangeably, and sometimes often simply refers to causality as a concept.

An example is seen on page 330 of *What is Justice?*, where Kelsen talks about the first formulation of the law of causality and then goes on to refer to it as the "principle" of causality. There is no difference in meaning between the two. Kelsen uses "causality" in contexts similar to where others might use "causation".

Civitas Dei

City of God, a Treatise by Saint Augustine. *See*, next entry.

City of God, Saint Augustine

A highly influential treatise on Christian philosophy written by Saint Augustine. *See also* Augustine, Saint.

Conditio per quam

(Latin, condition by means of which). *Conditio per quam* is the operating condition in a particular cause and effect relationship; it is the condition that causes the particular effect.

Conditio sine qua non

(Latin, condition without which not) a *conditio sine qua non* is an indispensable or requisite condition in a cause and effect relationship. As an essential condition, a *conditio sine qua* can be contrasted with a *conditio per quam,* which is the condition that causes the effect. See *Conditio per quam*.

Copernican theory

The Copernican system was a theory proposed by the Polish astronomer Nicolaus Copernicus (1473-1543). The theory proposed that the sun is the centre of solar system, orbited by the planets, including the earth.

Delict

Kelsen uses "delict" to refer to an act or omission that is wrong according to a norm, generally a legal norm. The most obvious example of a delict is a crime, but Kelsen uses "delict" also to refer to tort and other wrongs, such as breaches of contract. Kelsen's use of "delict" should be distinguished from "delict" in Scottish law, where a delict is closely equivalent to a tort in the common law.

Democritus

Democritus was an influential pre-Socratic Greek philosopher. At page 205 and 311-314 of *What is Justice?,* Kelsen uses the Roman and Greek spellings "Democritus" and "Demokritos" to refer to the same person.

Demokritos, *see* Democritus

Divine justice

Means the same thing as "absolute justice". An example can be found on page 26 of *What is Justice?* where Kelsen uses the two terms interchangeably.

Duguit, Léon

Léon Diguit was a French scholar known for his theory of the state and its relationship to state administration.

Epistemology*

The branch of philosophy that is commonly referred to as the theory of knowledge. Epistemology is primarily concerned with the scope and nature of knowledge.

Estates

In this context "estate" refers to the estate of a realm, that is, a class or order forming part of a body politic.

Before the French Revolution, society was commonly conceived as three hierarchical estates of the Clergy, the Nobility and the Commoners. In Britain the three estates were the Lords Spiritual, the Lords Temporal and the Commons. The presence of a "fourth estate" first emerged in the 18th century, meaning a political force outside the three officially recognised estates. Ordinarily, the term "fourth estate" refers to the media as a political force independent of the orthodox estates.

Existentialist philosophy

Existentialist philosophy emphasizes individuals' unlimited free will, choice, and responsibility and their ability to determine their own development. The theory rejects any notion of determinism and promotes personal choice and responsibility without the need for religious or legal rules.

General International law, *see* International law, general

German Historical School

The German Historical School of legal philosophy emerged in the nineteenth century. It was rooted in the theories of Friedrich Carl von Savigny (see Savigny, Friedrich Carl von) and Gustav Hugo. The German Historical School's jurisprudential theory is in opposition to theories of legal positivism.[5] *See also* Popular spirit.

Heraclitus

Heraclitus (c. 535- 475 BCE) was a pre-Socratic Greek philosopher who influenced the fields of ethics, epistemology, cosmology and metaphysics. He is famous for his theory that the only true reality is the reality of change, the idea that "all things are in flux and nothing is stable".[6]

Hume, David

David Hume (1711-1776) was a Scottish philosopher, most famous for his theory of causality. Humism and Humean ethics are evidence of Hume's lasting influence on

[5] Suri Ratnapala *Jurisprudence* (2nd ed, Cambridge University Press) at 310.

[6] *Complete Dictionary of Scientific Biography* (Charles Scribner's Sons, a part of Gale, Cengage Learning, 2008) vol 6 Heraclitus of Ephesus.

philosophical ideas.

Imputation

Kelsen uses the term "imputation" to describe normative relationships between conditions and consequences, for example the relationship between delict and sanction. Delict and sanction are connected normatively because where a delict has occurred the relevant sanction ought to be executed.

On the other hand, causality refers to conditions and consequences connected by facts such as the laws of nature.

International law, general

In his references to international law, Kelsen frequently distinguishes between general and particular international law (*see*, international law, particular). General international law can be created only by custom and is binding on all members of the international community.

International law, particular

Particular international law is created by treaty and is binding only on the states that are signatories to the treaty, though it is occasionally argued that certain norms of multilateral treaties deserve respect as general international law.

Jus talionis

Refers to the principle of retribution, or the law of talion. The English word talion is derived from this term, meaning a retaliation authorized by law, in which the punishment corresponds in kind and degree to the injury.

Kant, Immanuel

The 19th century German philosopher Immanuel Kant was a leader in many fields of philosophy, a number of which are directly relevant to legal philosophy in general and to analytical jurisprudence in particular. Kelsen particularly draws on Kant's work on epistemology.

Kingdom of God

The Kingdom of God is not another term for "heaven". Kelsen refers to heaven descending to Earth as the Kingdom of God on judgment day. The Kingdom of God is the same as the Messianic Kingdom in Jewish belief.

Law

When referred to with no qualification, "law" means "positive law"

Laws of nature, *see* Nature, laws of

Legal security

The concept of "legal security" as used in *What is Justice?*is more commonly referred to as "legal certainty". "Legal certainty" is the principle that stipulates that subjects of a legal order must be able to regulate their conduct according to the legal order. The principle requires law to meet minimum standards of accessibility and clarity.

Lex posterior derogat priori

(Latin, the later law abrogates or repeals the earlier law). A later law overrules an earlier inconsistent law.

Natural law

Kelsen uses natural law to mean moral law as opposed to laws of nature. In modern times, natural law refers to law that complies with the moral principles of the speaker, as opposed to the laws of god.

Nature, laws of

Laws of *science* such as the law of gravity. Laws of nature can be proven by the scientific method. Laws of nature are different from *natural* law, which comprises laws that satisfy principles of morality.

Metaxý

Defined in Plato's Symposium as "in-

between" or "middle-ground".

Negligence

From the perspective of the common law, absolute liability and liability for negligence are separate categories. Kelsen argues that from certain conceptual perspectives the mental element of each is the same.

Objective approach

In his discussion of the interpretation of contracts Kelsen describes what is known as the objective approach to contract formation at common law. The courts will look to the objective, rather than the subjective intentions of the parties to determine whether a contract has been formed. Broadly speaking, the subjective intention is the intention that a party actually has, whereas objective intention is the intention that a party's words and actions appear to others to indicate.

Pacta sunt servanda

(Latin, agreements must be kept) *Pacta sunt servanda* is a fundamental principle of general international law, which stipulates that states are bound by, and must fulfil, their international treaty obligations.

Par excellence

(French, by excellence) "Par excellence"

refers to a thing that is the best of its kind or the ultimate in a selection. Kelsen uses the phrase "par excellence" to express the idea that the coercive act of a sanction is the archetype of a consequence because it is not the condition of any other coercive act.

Particular international law, *see* International law, particular

Plato's ideal state

In his book *The Republic,* The Greek Philosopher, Plato (427-347) advanced theories about an ideal state. In an ideal state judges would have full discretion to decide cases on the basis of their merits. This approach would achieve the maximum degree of justice in any individual case, as opposed to decisions based on positive rules of law, which, while more predictable, may appear unjust in individual cases.

Rule of law

Kelsen uses "rule of law" in a sense different from the more common sense of that expression. In the more common sense, "rule of law" refers to certain standards that are obligatory for laws to be acceptable. Lon Fuller famously proposed eight standards for an acceptable law. These standards included that the law is of general application, is promulgated, is prospective not retrospective, and has a minimum of

clarity.[7]

Fuller uses a fictional story of King Rex, who is unable to rule effectively, to illustrate the indispensability of these standards. The authors of this index call this common sense of "rule of law", "Rule of Law, legal principle of".

Kelsen does not use "rule of law" as part of a joined-up idiosyncratic expression. He uses the term "rule" in its ordinary sense, to mean a "rule", not of, for example, morality, but of law. He uses the term to distinguishes rules of law from other types of rules. However, because of the density of his discussion, it can appear as though Kelsen is using "rule of law" in the more general sense.

"Rule of law" in *What is Justice?* is used to describe the distinction between Rechts-norm and Rechts-satz in German. A rule of law (Rechts-satz) is a description of the law, while legal norms (Rechts-norm) are prescriptive. While a rule of law may be true or false, a legal norm can only be valid or invalid, using "valid" in the sense in which Kelsen uses "valid" in this context.

The *Index* of *What is Justice?* refers to the sense of rule of law as Rule of Law (as description of norm). Kelsen defines this on page 325 of *What is Justice?* where he says that "A rule of law is, for instance, the statement that, if a man has committed a

[7] Lon Fuller *The Morality of Law* (Revised ed, Yale University Press, 1969) at 39.

crime, a punishment ought to be inflicted upon him; or the statement that, if a man does not pay a debt, contracted by him, a civil execution ought to be directed against his property".

Savigny

Friedrich Carl von Savigny (1779-1861) was a German jurist who was one of the founders of the German Historical School.[8] He was also influential as a legal historian.

Sham problem

What is Justice? uses "sham problem" to describe a pretended or illusory problem.

Theodicy

The defense of God's goodness and omnipotence despite the acknowledgment of the existence of evil.

Totalitarianism

A centralized and dictatorial system of government that demands complete subservience to the state by its subjects.

Trust

The *Index* uses "trust" in a substantive sense that Kelsen might have understood rather

[8] Ratnapala, above n 11, at 310.

than in a strict common law sense where a "trustee" holds the legal title to and enjoys full legal rights over the subject matter or property of a trust while at the same time being bound to act for the benefit of the beneficiary, who holds the "beneficial" interest in the property.

μοναρχία

Monarchy

Valid, validity

Questions of validity, that is, validity of constitutions, of laws, of actions of officials, and of actions of judges, are major themes in *What is Justice?*. In discussing these themes Kelsen and his translator for the most part employ the common English words "valid" and "validity". And yet much of this writing is opaque. One reason is that, while a common word, "validity" has several meanings, and Kelsen does not always make it clear which he means. A second reason is that although Kelsen's usage is correct as to the strict meaning of the English words, he sometimes uses "valid" and "validity" in a manner that, at least in the experience of the authors of this glossary, is not standard among legal writers. A standard dictionary definition of "valid" is:[9]

[9] Stevenson and Waite, above n 3.

1 (Of reason, objection, argument, etc) sound, defensible, well-grounded; 2a (Law) sound and sufficient, b executed with proper formalities, (*valid contract, the marriage was held to be valid*); c legally acceptable (*valid passport*); hence or cognomen, validity.

In the context of works of legal philosophy written in English one would expect meaning 2a to be one meaning of valid, and probably its primary meaning. For instance, we might say that a statute is valid because, inter alia, the majority of legislators who were present and who voted, voted to adopt the statute.

In contrast, consider a rule in a statute where the statute was passed with due formality, but where the particular rule is defective in some way or other: perhaps it is ambiguous, or perhaps it contradicts another rule in the same or in a different statute. While we would recognise such a rule as being deficient, we would probably not say that it is not valid. That is, to deploy the words of dictionary definition number 1, quoted above, while we might agree that the rule is not sound, defensible, or well-grounded, we would probably not impugn the rule as not valid. Kelsen, however, does use "valid" and "validity" in this kind of context, as well as in the context of constitutional or formal validity. Indeed, one sometimes finds both meanings employed in *What is Justice?* in the same discussion. This usage can be confusing, but readers who are alert to the problem can

usually work their way through it.

Yahweh

Yahweh is a form of the Hebrew name for God used in the Bible. Kelsen refers to "God" in the Holy Scriptures as "Yahweh".