Index

The A Priori Foundations of the Civil Law (Reinach), 2–3, 7–8, 14, 26. *See also* phenomenological method
  gifts in, 255
  law in, 54–57
  legal concepts in, 54–57
  liberties in, 189–190
  morality in, 54–57
  personhood in, 178
  phenomenological method in, 169, 186
  positive law in, 159–164
  private law theory in, 2–3
a priori legal concepts, 14. *See also* positive law
  being and, 85
  causation, 156, 158–159
    normative theories of, 159
    omissions liability, 159
  in civil law, 150–152
    truths about, 151–152
  cognition and, 85
  conceptual approach to, 82–87
  definitions of, 84–86
  enacting and, 45–47
  essential propositions in, 86, 89–94
    conceptual jurisprudence, 89–90
    in contract law, 91, 93
    establishment of essence in, 90–91
    intuition and, 92–93
    ontologism of, 89–90
    positive law and, 90, 93
  fulfillment of obligations, 82–83, 96, 101–102
  in German Basic Law, 87–88
  under German constitution, 87–88
  giving voice and, 45–47
  Kant on, 85–86
  legal wrongs, 155–156
  necessary propositions in, 86–89
    plausibility of, 88
    positive law and, 87
    prohibitions for, 88
  non-positive propositions in, 94–104
    fulfillment of obligations and, 96
    minimal preconditions for, 103–104
    morally-based legal propositions, 96–98, 101–102
    ontological classifications of, 98–99
    positive law and, 94–96, 100–101
    pre-supposed legal propositions, 94–96
    uncertain legal propositions, 98–101
  normative disputes under, 154–155
  ontology of, 85–86, 156–157
    for essential propositions, 89–90
    of non-positive propositions, 98–99
  plausibility of, 86–87
    of essential propositions, 92–93
    of necessary propositions, 88
  private law and, 102, 129–140, 144, 146–147, 150–152
    interpretations of, 142–145
  problems with, 83–85
  for Reinach, 27–28
  revisability as distinct from, 84
  temporality of law and, 222–225
    positive law and, 223–225
  thinking and, 85
absolute claims, 212–213
absolute rights, 15, 39–41
  allowing as, 209
  claims as distinct from, 192–193, 206–207
  commanding and, 213
  enacting and, 213
  essential features of, 204
  granting and, 213

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

absolute rights (cont.)
liberties compared to, 189–190
liens and, 208
positive law and, 208
promising and, 208, 213
references to other persons and, 208
relative rights compared to, 207–208
rights over rights, 205
rights to perform actions, 205
rights to things, 205
sources of, 208
acceptance, as performative act
in contract formation
characteristics of, 318–320
juridical acts and, 318–319
Necessity of Agreement Axiom and, 319
of gifts, 260–263
as bilateral act, 260, 262–263, 273–274
as illocutionary act, 261–263
intuition in, 261, 264
as social act, 261–263
as unilateral act, 260
of promises, 32–33, 287–290
conditions for, 290
non-communicative, 287–289
non-intentional, 287–289
as social act, 287–288, 323
as speech act, 287–288
actio in personam, 40
actio in rem, 40
agency law, 142–143
agents, persons as, 176–177
allowing
as absolute right, 209
of liberties, 208–211
contradictions in, 210
forbidding and, 210–211
as social act, 209
transferring and, 209–210
altruism, in private law, 129
American Legal Realism, 3
anti-psychologism, 70–76
Frege and, 71–72
Husserl, E., and, 71–72
jurisprudence and, 75
Aristotle, 107
asset partitioning, 142–143
attunement, in social act theory, 182, 185–186
Auer, Marietta, 129
Augustine, 221–222
Austin, John, 254. *See also* performative verbs
on gifts, 255–256, 264
on transference of ownership, 263–264
How to Do Things with Words, 28, 255–256, 260
illocutionary acts and, 255–256
Reinach and, 28–30
speech act theory and, 1, 170
authentic social acts, 182–183
Avenarius, Richard, 60, 68. *See also* Pragmatists

Baldwin, Carliss, 143
Basic Law, in Germany, 87–88
being, *a priori* legal concepts and, 85
Being and Time (Heidegger), 242, 244
Beling, Ernst, 6, 115–117
schemas for, 117–119
bestimmen. *See* giving voice
BGB. *See Bürgerliches Gesetzbuch*
Brentano, Franz, 112–113, 220, 227
bundle theory, for property rights, 42, 136
Bürgerliches Gesetzbuch (BGB), 120
Burkhardt, Armin, 255–256

Carnap, Rudolf, 9
causation, as legal concept, 156, 158–159
normative theories of, 159
omissions liability, 159
charity acts, 270
Chrudzimsk, Arkadiusz, 255–256
civil law
a priori legal foundations in, 150–152
truths about civil law, 151–152
contract law and, 23–24
history of, 152
phenomenology and, 23–24
private law theory and, 126, 131–132, 144
representation in, 137
rights in rights and, 135
Reinach and, 4
theory of representation under, 137
claims
absolute, 212–213
absolute rights as distinct from, 192–193, 206–207
elements of, 193
legal correlatives for, 192–194
converse relations, 194
duties of non-interference, 194–196
liberties as distinct from, 192, 212
liens and, 208
obligations and, 194
property rights and, 201
temporality of law for, 221
Clark, Kim, 143
cognition. *See also* thinking
a priori legal concepts and, 85
Collected Writings of Adolf Reinach (Stein), 8–9
collective promises, 292
commanding, as performative act, 210

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

absolute rights and, 213
common law, private law theory and, 132, 134–135
rights in, 135
computational theory of mind, 68–69
conceptual jurisprudence, 89–90
conditional promises, 235
Confessions (Augustine), 221–222
Conrad, Theodor, 6, 106, 115
Conrad-Martius, Hedwig, 8–10
consciousness
legal, 249–250
temporality of law and, 239–240, 245
Husserl, G., on, 249–250
consequentialism, 35–37, 128–129
constitution, of Germany
a priori legal concepts under, 87–88
as legal being of legal community, 244–247
contextualism, property law and, 130
contract law, contract formation and
acceptances as part of
characteristics of, 318–320
juridical acts and, 318–319
Necessity of Agreement Axiom and, 319
architecture of, 305–306
asset partitioning and, 142–143
conceptual approach to, 305–306
contractual conscription and, 305
contractual subscription and, 311, 313
enabling forms in, 308–313
acceptance models, 308–309
contract-enabling norm, 309
for marriage contracts, 310–311
theoretical possibilities with, 312–313
essential propositions in, 91, 93
juridical acts and, 313–316
acceptances and, 318–319
deontic effects, 315, 320, 323–324
essential explanatory dependency in, 315
offers and, 315, 317
morality of, 312–313
monistic approaches to, 312
moral effects, 313
Necessity of Agreement Axiom and, 312
Necessity of Agreement Axiom, 18, 305–308, 324–326
acceptance of contracts and, 319
contents in, 307–314
modal-dependence, 307
morality of, 312
promises and, 320–321
unilaterality in, 307–308
offers in, 313–320
characteristics of, 316–317
firm, 325
irrevocable, 325
juridical acts and, 315, 317
phenomenology and, 23–24
in civil law, 23–24
efficient breach in, 23–24
positive, 305–306
positive law and, 313–314, 318–319
promises and, 34, 36, 320–326
customs and, 320
Necessity of Agreement Axiom and, 320–321
contract theory. *See also* contract law
Ockham's razor and, 32
promising and, 34, 36
contracting. *See also* contract law
in performative acts, 29–30
contractual conscription, 305
contractual subscription, 311, 313
conviction, convictions and
negative, 110–111
in negative states of affairs, 108
positive, 110–111
corporate personality, 178
Critical Legal Studies movement, 3
Critical Theory, 56
Crosby, John, 267

Darwin, Charles, 57, 60
evolutionary psychology and, 59–60
Darwinism, natural selection, 54
Daubert, Johannes, 6, 107
on state of affairs, 112–114
declarative utterances, 28–29
deontologism, 128–129
Descartes, Rene, 32
determinations, in temporality of law, 231, 238–239
Dinani, Maryam Ebrahimi, 273
directed obligations, 281
Doctrine of Right (Kant), 167
document acts, 260
double negative judgments, 110
duration, temporality of law and, 219–220, 228, 230
continuum as distinct from, 229–230
duties of non-interference, 194–197
Duxbury, Neil, 179
Dworkin, Ronald, legal realism and, 3

Economics Studies movements, 3
enabling forms, in contract formation, 308–313
acceptance models, 308–309
contract-enabling norm, 309
for marriage contracts, 310–311
theoretical possibilities with, 312–313

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

enacting, as performative act, 45–48, 172
a priori legal concepts and, 45–47
absolute rights and, 213
positive law and, 47–48
as social act, 47–48
Environment of Evolutionary Adaptedness, 68
Essence and Systematics of Judgment (Reinach), 116
essential propositions, 86, 89–94
conceptual jurisprudence, 89–90
in contract law, 91, 93
establishment of essence in, 90–91
intuition and, 92–93
ontologism of, 89–90
positive law and, 90, 93
essentialism, 190–191
ethics, state of affairs and, 109
evolutionary psychology
analysis of, 76
anti-psychologism and, 70–76
Avenarius and, 60, 68
computational theory of mind and, 68–69
conceptual approach to, 57–60
Darwin and, 59–60
Environment of Evolutionary Adaptedness, 68
foundations of, 60
legal theory and, 58–59
logic in, 61
Mach and, 60, 68
mathematics in, 61, 63
metaphysical realism and, 64, 69
modern, 59–60
natural selection and, 57, 64–69
ontological elements of, 71
nominalism of, 67–68
ontology of, 64–69
natural selection and, 71
positive law and, 59
Pragmatists and, 60
Psychologismus-Streit and, 61–63
Frege and, 61
psychologism and, 61, 64–65, 67
World War I as end of, 76
species relativism and, 64
existentialism, 9–10
experience, phenomenology of, 28
for phenomenological method, application to objects, 169–170
in phenomenological method, 168
explicit performatives, 258

false representation, 182–183
Ferrari, Don, 108
fiduciary law, 137
firm offers, 325
Formal Causality principle, 107
formalism. *See* legal formalism
Foundations of Arithmetic (Frege), 61, 63
free law, 26
Frege, Gottlob, 61, 63
anti-psychologism and, 71–75
Freud, Sigmund, 61
Fried, Charles, 290, 322–323
Fundamental Ontology (Heidegger), 220

gehören. *See* hearing
Geiger, Moritz, 6
general theory of law, 26
generative grammar theory, 13–14
German Civil Code
Conrad on, 115
phenomenology and, 24
promising under, 31, 34
property rights under, 42–45
temporality of law and, 238–239
Germany. *See also* German Civil Code
a priori legal concepts in, 87–88
Basic Law in, 87–88
Bürgerliches Gesetzbuch in, 120
constitution of
a priori legal concepts under, 87–88
as legal being of legal community, 244–247
property rights in
under Civil Code, 44–45
private law and, 45
revocation of, 44–45
transference models, 43–45
transference of rights, 43–44
waiving of, 44–45
Uniform Commercial Code, 133
gifts, gifting and
in *The A Priori Foundations of the Civil Law*, 255
acceptance of, 260–263
as bilateral act, 260, 262–263, 273–274
as illocutionary act, 261–263
intuition in, 261, 264
as social act, 261–263
as unilateral act, 260
Austin on, 255–256, 264
on transference of ownership, 263–264
charity acts and, 270
conceptual approach to, 254–257
definition of, 257–258
document acts and, 260
explicit performatives and, 258
in *How to Do Things with Words*, 260

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

as illocutionary act, 254–260, 273
acceptance as, 261–263
intuition and
acceptance of gifts and, 261, 264
Ownership View of Gift and, 266–267
in transference of ownership, 264–265
nature of, 257–260
overview of, 273–274
positive law and, 255
primitive performatives and, 258
scope of, 257
social act theory and, 255–260, 273
acceptance and, 261–263
speech act theory and, 254–256, 269
Strawson on, 257–260
by transference of ownership, 263–270
Austin on, 263–264
intuition as part of, 264–265
Ownership View of Gift in, 266–270
shortcuts in, 267
target of gifts, 266
Vendler on, 255–256
waiving of property rights and, 256–257, 271–272
Waldron on, 270–273
wills and, 259–260
Gilbert, Margaret, 17, 277–282
on intuitions, 279–282
claims and, 281–282
directed obligations, 281
Inevitability Point, 279–281, 301
promissory obligations, 281–282
on promises, 277–278, 282–287
authors of, 291–297
content of, 297–301
fourth dogma for, 301–302
Immoral Promises dogma, 278–279, 301–302
Moral Requirement dogma, 279, 282, 301–302
No Willing dogma, 278–279, 288, 301–302
three dogmas approach, 278–282
giving voice *(bestimmen)*, as performative act, 45–48
a priori legal concepts and, 45–47
etymology of, 46–47
as social act, 47–48
Goldsmith, Timothy, 59
good faith purchase, 141–142
transfer of property and, 133–134
granting, as performative act, 172, 183
absolute rights and, 213
Green, Mitchell, 254, 268

Hancher, Michael, 254, 262
Hansmann, Henry, 138–139, 142
Hart, H. L. A., legal realism and, 3
hearing *(gehören)*, as performative act, 38–45, 306–322
etymology of, 39
temporality of law and, 232
theory of property and, 38–39
Hegel, Georg Wilhelm Friedrich. *See* Neo-Hegelianism
Heidegger, Martin, 220
Being and Time, 242, 244
Husserl, E., and, 9
on temporality of law, 242–243
Hershovitz, Scott, 56
Hildebrand, Dietrich von, 6, 9–10
Hobbes, Thomas, 183–184
Hohfeld, Wesley, 15. *See also* absolute rights; claims; liberties
essentialism for, 190–191
jural relations and, 157
on legal power, 192
on liberties, 189–190, 213–214
Reinach compared to, 190–192
on rights
as collections, 131
ontology of rights, 211–213
"Some Fundamental Legal conceptions as applied in Judicial Reasoning," 189–190
holism, private law theory and, 145–146
How to Do Things with Words (Austin), 28, 255–256, 260
Hume, David, 34–35, 112, 278–279
Husserl, Edmund
anti-psychologism and, 71–75
criticism of Brentano, 227
Heidegger and, 9
on inner time consciousness, 227
Logical Investigations, 6–9, 62, 113, 115
in Munich Circle, 112–113
on phenomenological method, 168–169
on phenomenology, 6
of law, 219–220
Prolegomena, 62
psychologism and, 61–62, 64
Reinach influenced by, 6–7, 9, 26
on temporality of law, 223, 242
transcendental idealism and, 9
on transfer or property, 268
Yearbook for Philosophy and Phenomenology Research, 7–8, 26
Husserl, Gerhart, 16
on temporality of law, 219–220, 242–251
abstract time of works of art and law, 244–245
detemporalization of law, 245–247
legal consciousness and, 249–250

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

Husserl, Gerhart (cont.)
legal validity and, 244, 246
philosophical influences on, 243–244
retention and, 245
temporalization of experiential law, 247–248

idealism. *See* transcendental idealism
idealist thought, in phenomenological method
phenomenological idealist thought, 168
transcendental idealist thought, 168
illocutionary acts
Austin and, 255–256
gifts as, 254–260, 273
acceptance of, 261–263
Immoral Promises dogma, 278–279, 301–302
Imperial German Code of Civil Procedure, 7
inauthentic social acts, 182–183
individual promises, 292
individualism, in private law, 129
Inevitability Point, 279–281, 301
information, theory of, 142
Ingarden, Roman, 9–10, 107
on state of affairs, 114
intuition
essential propositions and, 92–93
gifts and
acceptance of, 261, 264
Ownership View of Gift and, 266–267
in transference of ownership, 264–265
Gilbert on, 279–282
claims and, 281–282
directed obligations, 281
Inevitability Point, 279–281, 301
promissory obligations, 281–282
private law theory and, 125–126
state of affairs and, 108
theory of ownership and, 265
theory of representation and, 138
irrevocable offers, 325

James, William, 60–61. *See also* Pragmatists
joint commitment account, for promises, 282–287, 297–301
personal commitments, 283–284
rescinding of commitments, 284
Jones, Owen, 59
judgment theory, 106–107
definitions in, 107–108
negative judgment, 109–112
jural relations, 157
juridical social acts
contract formation and, 313–316
acceptances and, 318–319
deontic effects, 315, 320, 323–324
essential explanatory dependency in, 315
offers and, 315, 317
in phenomenological method, 170–173, 182
representation and, 183–184
jurisprudence
anti-psychologism and, 75
conceptual, 89–90
phenomenological method and, 170
speech act theory and, 170
state of affairs and, 115–119
jurisprudence of interests, 26
justice, law as distinct from, 109

Kanger, Helle, 194
Kanger, Stig, 194
Kant, Immanuel
on *a priori* legal concepts, 85–86
Doctrine of Right, 167
Neo-Kantianism, 26–27
on phenomenological method, 166–167
private law theory and, 2
space and time theory for, 241
on temporality of law, 224
Kant Studies, 8–9
Kantorowicz, Hermann, 115
Kelsen, Hans, 48
on temporality of law, 231
Kennedy, Duncan, 129
knowledge production, *a priori* legal concepts and, 158
Kocourek, Albert, 131
Kraakman, Reinier, 138–139, 142
Kripke, Saul, 87

law, laws and. *See also* phenomenology of law; *specific topics*
justice as distinct from, 109
negative states of affairs and, 119
reasonable doubt and, 119
philosophy of law, 169–170
"right law," 171–172
Law and Economics, 56
Lawrence v Fen Tigers, 154
legal abilities, 192
legal acts, temporality of, 233–241
promising and promises, 234–238
speech act theory and, 233
legal conceptualism, 4–5
a priori legal concepts, 14
conceptual approach to, 52–54
legal realism and, 56
legal consciousness, 249–250
legal correlatives

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

for claims, 192–194
converse relations, 194
duties of non-interference, 194–196
for liberties, 192–194, 203–208
absolute rights and, 203–205
ad hoc status, 197
duties of non-interference, 196–197
as no-claims, 196–200
reification of negations, 197
relative rights and, 203–205
for violation of same-content requirements, 197–200
legal formalism
property law and, 130
Reinach and, 4
legal oughts, 160
legal personality, legal personhood and, 174. *See also* persons
legal phenomenology. *See* phenomenology of law
legal power
definitions of, 192
legal abilities as distinct from, 192
Legal Realism
American Legal Realism, 3
Dworkin and, 3
Hart and, 3
legal concepts and, 56
phenomenology and, 26
private law theory and, 127–128, 131
legal validity, 244, 246
legal wrongs, 155–156
liabilities, legal
omissions, 155
primary, 155
liberties
absolute rights compared to, 189–190, 203–208
lack of legal correlatives for, 203–205
allowing of, 208–211
contradictions in, 210
forbidding and, 210–211
as social act, 209
transferring and, 209–210
claim rights as distinct from, 192, 212
conceptual approaches to, 189–190
Hohfeld on, 189–190, 213–214
lack of legal correlatives for, 203–208
absolute rights and, 203–205
relative rights and, 203–205
legal correlatives for, 192–194
ad hoc status, 197
duties of non-interference, 196–197
as no-claims, 196–200
reification of negations, 197
for violation of same-content requirements, 197–200
ontology of, 211–213
privileges as distinct from, 196
property rights and, 200–203
absolute obligations and, 202–203
number of, 201–202
rights *in personam*, 200
rights *in rem*, 200
transfer of, 202
Reinach on, 189–190
transfer of, 213
for property rights, 202
liens, 208
linguistics, *nemo dat* principle and, 133–134
Lipps, Theodor, 6, 26, 61
on promises, 278–279
psychologism and, 62
Reinach and, 28, 115
theory of moral obligations, 35
logic, in evolutionary psychology, 61
Logic (Lotze), 113
Logical Investigations (Husserl, E.), 6–9, 62, 113, 115
logical thinking, positive law compared to, 75
Lotze, Hermann, 113
Lyons, Davis, 194

Mach, Ernst, 60, 68. *See also* Pragmatists
marriage contracts, 310–311
Massin, Olivier, 130, 265, 274
material necessity, 112
mathematics, in evolutionary psychology, 61, 63
Meinong, Alexius, 113
Mertens, Karl, 278
metaphysical realism, evolutionary psychology and, 64, 69
metaphysics
private law theory and, 4
Reinach and, 1
private law and, 4
moral obligations. *See* obligations
Moral Requirement dogma, 279, 282, 301–302
morality, moral theory and
in *The A Priori Foundations of the Civil Law*, 54–57
of contract law, 312–313
monistic approaches to, 312
moral effects, 313
Necessity of Agreement Axiom and, 312
personhood and, 179–180
phenomenological method and, 170–171
positive law and, 171
"right law" and, 171–172

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

morality, moral theory and (cont.)
positive law and, 56, 160–162
legal oughts and, 160
normativity for, 161
obligations of, 162
sources of morality, 161–162
morally-based legal propositions, 96–98, 101–102
Mulligan, Kevin, 255–256
Munich Circle, 112–113
Munich Realists, 9. *See also* Reinach, Adolf Bernhard Philipp

natural law theory
phenomenological method and, 171–172
phenomenology and, 26–27
private law and, 129
Reinach and, 4
temporality of law and, 220–224
natural selection, 54
evolutionary psychology and, 57, 64–69
ontological elements of, 71
necessary propositions, 86–89
plausibility of, 88
positive law and, 87
prohibitions for, 88
Necessity of Agreement Axiom (NOA), 18, 305–308, 324–326
acceptance of contracts and, 319
contents in, 307–314
modal-dependence, 307
morality of, 312
promises and, 320–321
unilaterality in, 307–308
negation, in state of affairs
analysis of, 119–121
conceptual approach to, 106–107
conviction in, 108
judgment theory and, 106–107
definitions in, 107–108
negative judgment, 109–112
law's reliance on, 119
negative judgments, 111
double negative judgments, 110
judgment theory and, 109–112
negative conviction of positive state of affairs, 110–111
positive conviction of negative state of affairs, 110–111
positive convictions, 110–111
positive states of affairs and, 113
reasonable doubt and, 119
reification of, 197
terminology for, 107–109
negative conviction of positive state of affairs, 110–111
negative judgments, 111
double negative judgments, 110
judgment theory and, 109–112
negative conviction of positive state of affairs, 110–111
positive conviction of negative state of affairs, 110–111
positive convictions, 110–111
nemo dat principle
good faith purchase and, 141–142
linguistics and, 133–134
representation and, 137–138
transfer of property and, 132–134, 138
Neo-Hegelianism, 26–27
Neo-Kantianism, 26–27
New Private Law, as legal school, in private law theory, 3–5, 13, 146
No Willing dogma, 278–279, 288, 301–302
NOA. *See* Necessity of Agreement Axiom
Nolan, Donal, 155–156
nominalism, private law and, 131
non-institutional norms, positive law and, 162–164
private rights, 163–164
public rights, 163
unilateralism and, 164
non-moral demands, of positive law, 160–162
juridical elements of, 161
normativity for, 161
non-positive propositions, 94–104
fulfillment of obligations and, 96
minimal preconditions for, 103–104
morally-based legal propositions, 96–98, 101–102
ontological classifications of, 98–99
positive law and, 94–96, 100–101
pre-supposed legal propositions, 94–96
uncertain legal propositions, 98–101
norms, norming and, temporality of law and, 231–232
notion of participation, 107

objects
sphere of natural objects, 151
state of affairs as distinct from, 108
obligations, moral
absolute, 202–203
claims and, 194
directed, 281
fulfillment of, 82–83, 96, 101–102
Lipps on, 35
positive law and, 162
promising and, 30–32, 34–35
promissory, 281–282
temporality of law and, 221
Ockham's razor, 32

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

offers, in contract law, 313–320
  characteristics of, 316–317
  firm, 325
  irrevocable, 325
  juridical acts and, 315, 317
omissions liability, 159
On Assumptions (Meinong), 113
ontology
  of *a priori* legal concepts, 85–86, 156–157
    for essential propositions, 89–90
    of non-positive propositions, 98–99
  of evolutionary psychology, 64–69
    natural selection and, 71
  of liberties, 211–213
  of personhood, 174
  of phenomenology, 48–49, 106–107
  of rights, 211–213
  for state of affairs, 118–120
  of temporality of law, 221–222, 224
    for time and space, 227
ordering, as performative act, 210
organizational law, 142–143
The Origin of Species (Darwin), 57, 60
OVG. *See* Ownership View of Gift
ownership, theory of
  intuition and, 265
  Massin on, 265
  possession compared to, 131–132
  property law and, 130–132
  reconstruction of, 265
Ownership View of Gift (OVG), 266–270
owning, as performative act, 38–45
  absolute rights, 39–41
  actio in personam, 40
  actio in rem, 40
  in phenomenological method, 172
  positive law and, 41–42
  rights over/to things, 39–41
  as social act, 41–42

paradox of movement, 241
passive representation, 139
passive social acts, 170, 184
Patel v Mirza, 154
perceiving, perception and, as performative act, 232
performative utterances, 28–29
  explicit, 258
  primitive, 258
performative verbs, as legal concept, 25, 28–30. *See also* owning; promising
  acceptance of promise, 32–33
  classes of, 30
  commanding, 210
    absolute rights and, 213
  contracting in, 29–30
  declarative utterances in, 28–29
  enacting as, 45–48
    a priori legal concepts and, 45–47
    absolute rights and, 213
    positive law and, 47–48
    as social act, 47–48
  giving voice as, 45–48
    a priori legal concepts and, 45–47
    etymology of, 46–47
    as social act, 47–48
  granting as, 172, 183
    absolute rights and, 213
  hearing as, 38–45, 306–322
    etymology of, 39
    temporality of law and, 232
    theory of property and, 38–39
  ordering, 210
  perceiving as, 232
  performative utterances in, 28–29
  private law theory and, 29–30
  questioning as, 232
  representing as, 172
  speaking as, 30–38
    etymology of, 37, 39
    in private law theory, 38
    right to, 41
  transferring as, 172, 183
  truth value for, 29
personality, 174
  corporate, 178
personation, 185
persons, personhood and, 15
  in *The A Priori Foundations of the Civil Law*, 178
  as agents, 176–177
  analysis of, 186–187
  definition of, 174
  inter-personal encounters, 176–177
  personation and, 185
  in phenomenological method, 174–181
    ambivalence for, 174–175
    as bearers of entitlements and burdens, 176
    as bearers of legal statuses, 177
    as bearers of status-mediated claims and obligation, 177
    conceptual development of persons, 174
    incoherence of, 180
    juristic notions, 175–176
    limitations of, 178–179
    moral judgments on, 179–180
    ontology of, 174
    positive law and, 177–178
    social act theory and, 176–177, 179

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

persons, personhood and (cont.)
speech act theory and, 174
synthetic truths about, 179–180
philosophical views on, 176
social act theory and
experiencing of social acts, 177–178
in phenomenological method, 176–177, 179
Pfänder, Alexander, 6
phenomenological idealist thought, 168
phenomenological method, 168–173
phenomenology
contract law and, 23–24
in civil law, 23–24
efficient breach in, 23–24
of experience, 28
free law and, 26
general theory of law and, 26
Husserl, E., on, 6, 28
jurisprudence of interests and, 26
legal language of, 25–30
legal realism and, 26
natural law theories and, 26–27
Neo-Hegelianism and, 26–27
Neo-Kantianism and, 26–27
ontology of, 48–49, 106–107
positive law and, 26–27
private law and, 23–25, 126–127
in *The A priori Foundations of the Civil Law*, 24–25
performative verbs concept, 25
property law and, 24
under German Civil Code, 24
realist, 4, 9–10
in pre-war era, 16
sociological jurisprudence and, 26
state of affairs and, 112–114
of transcendence, 28
phenomenology of law
conceptual approach to, 219–220
Husserl, E., on, 219–220
Reinach on, 219–220
Troller on, 219
Philosophical Investigations (Wittgenstein), 32
philosophical positive law, 120–121
philosophy of law, in phenomenological methods, 169–170
Plato, 5–6, 107
Platonism, 75
positive contract law, 305–306
positive convictions, 110–111
of negative state of affairs, 110–111
positive law, 4
in *The A Priori Foundations of the Civil Law*, 159–164
a priori legal concepts and, 152–159
essential propositions and, 90
knowledge production and, 158
necessary propositions and, 87
non-positive propositions and, 94–96, 100–101
contract formation and, 313–314, 318–319
enacting and, 47–48
evolutionary psychology and, 59
gifts and, 255
Husserlian logical thinking compared to, 75
morality and, 56, 160–162
legal oughts and, 160
normativity for, 161
obligations of, 162
sources of, 161–162
non-institutional norms and, 162–164
private rights, 163–164
public rights, 163
unilateralism and, 164
non-moral demands of, 160–162
juridical elements of, 161
normativity for, 161
owning and, 41–42
personhood and, 177–178
phenomenological method and, 171, 173
morality and, 171
personhood and, 177–178
representation and, 181–182
phenomenology and, 26–27
philosophical, 120–121
temporality of law and, 221–222
as *a priori* legal concept, 223–225
abstraction from, 223
induction from, 223
validity of, 150
positive states of affairs, 111
negative conviction of, 110–111
negative state of affairs and, 113
Pragmatists, 60
pre-supposed legal propositions, 94–96
primary duty, in private law, 155
primary liabilities, in private law, 155
primitive performatives, 258
private law theory
in *The A Priori Foundations of the Civil Law*, 2–3, 24–25
a priori legal concepts and, 102, 129–140, 144, 146–147, 150–152
interpretations of, 142–145
analysis of, 146–147
civil law and, 126, 131–132, 144
representation in, 137
rights in rights and, 135
common law and, 132, 134–135
rights in rights in, 135

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

complex structure of, 140–146
as deep structure, 140–141
intuitive access to, 143–145
modularization of, 143–144
conceptual approach to, 125–127
holism and, 145–146
intuition and, 125–126
Kant and, 2
Kennedy on, 129
legal realism and, 127–128, 131
methodological approach to, 127
natural law and, 129
nemo dat principle
good faith purchase and, 141–142
representation and, 137–138
transfer of property and, 132–134, 138
New Private Law school in, 3–5, 146
performative verbs and, 29–30, 38
phenomenology and, 23–25, 126–127
performative verbs concept, 25
polarization within, 125, 127–129
consequentialism and, 128–129
deontologism and, 128–129
external perspectives as element of, 127–129
individualism and altruism in, 129
internal perspectives as element of, 127–129
legal realism and, 127–128, 131
nominalism and, 131
reductionism and, 127–128, 145–146
primary duties in, 155
primary liabilities in, 155
promising in, 38
property rights and, 45, 130–136
contextualism and, 130
formalism and, 130
ownership and, 130–132
public law and, 144–145
Reinach and, 12–15, 125–127
in *The A Priori Foundations of the Civil Law*, 2–3, 14
a priori legal concepts for, 14
legal concepts for, 12–13
metaphysics and, 4
New Private Law school, 4–5, 13
representation in, 136–140
in civil law, 137
in fiduciary law, 137
intuition and, 138
nemo dat principle and, 137–138
passive, 139
rights in rights and, 135
under civil law, 135
under common law, 135
transfer of property in, 130–136
bundle of rights theory and, 136
good faith purchase and, 133–134, 141–142
nemo dat principle, 132–134, 138
under Uniform Commercial Code, 133
private rights
in *Doctrine of Right*, 167
positive law and, 163–164
privileges, liberties as distinct from, 196
Prolegomena to Pure Logic (Husserl, E.), 62
promising
promises and, as performative act, 30–38, 118 (*See also* obligations)
absolute rights and, 208, 213
acceptance of, 32–33, 287–290
conditions for, 290
non-communicative, 287–289
non-intentional, 287–289
as social act, 287–288, 323
as speech act, 287–288
authors of, 291–297
binding nature of, 32–36
collective, 292
commanding and, 210
conceptual approach to, 277–278
conditional, 235
with conditional content, 235
consequentialism and, 35–37
content of, 297–301
contracts and, 34, 36, 320–326
customs and, 320
Necessity of Agreement Axiom and, 320–321
declaration of will and, 36
definitions of, 31
dissolution of promises, 34
etymology of, 37–38
fourth dogma of, 301–302
under German Civil Code, 31, 34
Gilbert on, 277–278, 282–287
authors of promises, 291–297
content of promises, 297–301
Immoral Promises dogma, 278–279, 301–302
Moral Requirement dogma, 279, 282, 301–302
No Willing dogma, 278–279, 288, 301–302
three dogmas approach, 278–282
Hume on, 34–35, 278–279
individual, 292
joint commitment account of, 282–287, 297–301
personal commitments, 283–284
rescinding of commitments, 284
Lipps on, 278–279
modifications of, 236–237
Ockham's razor and, 32

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

promising (cont.)
ordering and, 210
in phenomenological method, 172
in private law theory, 38
as reliance, 36
second-order, 296
as social act, 32, 237, 287–288, 323
temporality of law and, 232
temporality of legal acts and, 234–238
theory of obligations and, 30–32, 34–35
unconditional, 290, 295–296
utilitarian theory and, 35–37
promissory obligations, 281–282
property rights, property law and
claims and, 201
in Germany
under Civil Code, 44–45
private law and, 45
revocation of rights, 44–45
transference rights models, 43–45
waiving of rights, 44–45
hearing and, 38–39
liberties and, 200–203
absolute obligations and, 202–203
number of, 201–202
rights *in personam*, 200
rights *in rem*, 200
transfer of, 202
organizational law, 142–143
phenomenology and, 24
under German Civil Code, 24
private law theory and, 45, 130–136
contextualism and, 130
formalism and, 130
ownership and, 130–132
Reinach on, 42–45
bundle theory, 42
under German Civil Code, 42–43, 45
as legal power, 43–44
private law and, 45
as social power, 43–44
waiving of, 256–257, 271–272
psychologism. *See also* anti-psychologism
evolutionary psychology and, 61, 64–65, 67
Husserl, E., and, 61–62, 64
Lipps and, 62
Psychologismus-Streit, 53–54
evolutionary psychology and, 61–63
Frege and, 61
psychologism and, 61, 64–65, 67
World War I as end of, 76
public law, 126
private law theory and, 144–145
public rights, positive law and, 163
punctual temporal phenomena, 228–229
Pure Theory of Law (Kelsen), 48

questioning, as performative act, 232
Quine, W. V. O., 142

Rauterberg, Gabriel, 142–143
Raz, Joseph, 321–322
realism, metaphysical, 67
metaphysical, 64, 69
realist phenomenology, 4, 9–10
pre-War era, 16
reasonable doubt, negative state of affairs and, 119
reductionism, private law and, 127–128, 145–146
Reinach, Adolf Bernhard Philipp. *See also* performative verbs; phenomenological method; phenomenology; *specific topics*
The A Priori Foundations of the Civil Law, 2, 7–8, 15–16, 26
private law theory in, 2–3
a priori legal concepts for, 27–28
American Legal Realism and, 3
anti-psychologism and, 70–76
Austin and, 28–30
civil law and, 4
conceptual approach to, 1–5
conversion to Christianity, 8
death in World War I, 8
educational and training, 5–6, 26, 115–118
Husserl, E., as influence on, 6–7, 9, 26
legal writings, 116
Essence and Systematics of Judgment, 116
essentialism for, 190–191
Hohfeld compared to, 190–192
legal conceptualism and, 4–5, 15–18
conceptual approach to, 52–54
legal formalism and, 4
legal philosophy for, 13–15, 76
on liberties, 189–190, 213–214
Lipps and, 28, 115
metaphysical realism theory for, 67
metaphysics and, 1
in private law, 4
methodological approach to, 5
natural law theory and, 4
phenomenology and, 1, 9
ontology for, 106–107
realist, 4, 9–10
on phenomenology of law, 219–220
philosophical legacy of, 1–5, 9–12, 166–168
decline of, 2–3
legal philosophy, 1–5, 76

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

philosophical method for, 9–12
methodological approach, 10–12
private law theory and, 12–15, 125–127
in *The A Priori Foundations of the Civil Law*, 2–3, 14
a priori legal concepts in, 14
legal concepts in, 12–13
metaphysics and, 4
New Private Law school, 4–5, 13
social act theory and, 1–2, 25–28
speech act theory and, 1
on temporality of law, 220–242
World of Legal Forms and, 5
relative rights
absolute rights compared to, 207–208
liberties and, 203–205
typology of, 206
representation, theory of, 15
in phenomenological method, 181–186
authentic social acts, 182–183
efficacy of, 183
false representation, 182–183
inauthentic social acts, 182–183
juridical social acts and, 183–184
limitations of, 184–186
personation, 185
positive law and, 181–182
speech act theory and, 184
in private law, 136–140
in civil law contexts, 137
fiduciary law and, 137
intuition and, 138
nemo dat principle and, 137–138
passive representation, 139
representing, as performative act, 172
retention, in temporality of law, 245
revisability, *a priori* legal concepts as distinct from, 84
"right law," 171–172
rights. *See also* absolute rights; claims; *specific topics*
Hohfeld on, 131
ontology of rights for, 211–213
to perform actions, 205
private, 163–164
in *Doctrine of Right*, 167
public, 163
relative
absolute rights compared to, 207–208
liberties and, 203–205
typology of, 206
rights in rights, 205
rights over/to things, 39–41, 205
temporality of law and, 240
to speaking, 41
universal, 204
rights *in personam*, 200
rights *in rem*, 200
rights in rights, 135
under civil law, 135
under common law, 135
in private law, 135
rights over things, temporality of law and, 240
rights to things, 205
rule of law, 154
Russell, Bertrand, 9

Salice, Alessandro, 274
Scheler, Max, 6, 9–10
on personhood, 176
schemas, 117
for Beling, 117–119
Schuppe, Wilhelm, 36, 234–235, 278–279
Searle, John, 170, 254, 290
second-order promises, 296
Shannon, Claude, 142
Sichelman, Ted, 136, 142
Smith, Barry, 255–256, 260
Smith, Henry, 264
Smith, Stephen, 146, 150–151
social act theory. *See also* juridical social acts; temporality of law
acceptance of promises, 287–288
allowing of liberties as, 209
enacting in, 47–48
gifts and, 255–260, 273
acceptance of, 261–263
giving voice and, 47–48
owning and, 41–42
personhood and
experiencing of social acts, 177–178
in phenomenological method, 176–177, 179
phenomenological method and, 169–171
active social acts, 184
attunement in, 182, 185–186
authentic social acts, 182–183
external states for, 170
inauthentic, 182–183
internal states for, 170
juridical social acts, 170–173, 182–184
passive social acts, 170, 184
personhood and, 176–177, 179
spontaneous, 170
promising as, 32, 237, 287–288
public law and, 126
Reinach and, 1–2, 25–28
space and time in, 225–226, 229–230
speech act theory and, 1–2, 29
Sociobiology (Wilson), 59
sociological jurisprudence, 26

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

"Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" (Hohfeld), 189–190
space and time, theory of
  Kant on, 241
  social acts and, 225–226, 229–230
  temporality of law and, 225–230
    ambiguity of, 226–227
    as continuum, 227–230
    ontology of, 227
    punctual temporal phenomena, 228–229
    social acts and, 225–226, 229–230
speaking, as performative act, 30–38
  etymology of, 37, 39
  in private law theory, 38
  right to, 41
speaking *(versprechen)*, as performative act, 30–38
species relativism, 64
speech act theory
  Austin and, 1, 170
  gifts and, 254–256, 269
  personhood and, 174
  phenomenological method and, 170, 172
    conceptual analysis of, 170
    general jurisprudence and, 170
    origins of, 170
    personhood and, 174
    representation and, 184
  Reinach and, 1
  social act theory as foundation of, 1–2, 29
  temporality of legal acts and, 233
sphere of natural objects, 151
spontaneous social acts, 170
Stammler, Rudolf, 220–221
state of affairs. *See also* negation
  characteristics of, 108–109, 111–112
  Daubert on, 112–114
  ethics and, 109
  Ingarden on, 114
  intuition in, 108
  jurisprudence and, 115–119
  Meinong on, 113
  negative evidence in, 110
  objects as distinct from, 108
  ontology for, 118–120
  phenomenology and, 112–114
  positive, 111, 113
  temporal states for, 109
Stein, Edith, 8–10
  on personhood, 176
Stettenheimer, Anna (Reinach), 7–9, 116
Stevens, Robert, 155–156
Strawson, John, 254, 256
  on gifts, 257–260
Stumpf, Karl, 112–113
synthetic truths, about personhood, 179–180

temporality of law
  a priori legal concepts and, 222–225
    positive law and, 223–225
  analysis of, 241–242, 250–251
  Augustine on, 221–222
  for claims, 221
  conceptual approach to, 219–220
  consciousness and, 239–240, 245
    Husserl, G., on, 249–250
  definition and scope of, 225
  duration and, 219–220, 228, 230
    continuum as distinct from, 229–230
  expansion of, 227–229
  German Civil Code and, 238–239
  Heidegger on, 242–243
  Husserl, E., on, 223, 242
  Husserl, G., on, 219–220, 242–251
    abstract time of works of art and law, 244–245
    on detemporalization of law, 245–247
    on legal consciousness, 249–250
    on legal validity, 244, 246
    philosophical influences on, 243–244
    on retention, 245
    on temporalization of experiential law, 247–248
  Kant on, 224
  of legal acts, 233–241
    promising and promises, 234–238
    speech act theory and, 233
  natural law and, 220–224
  for obligations, 221
  ontology of, 221–222, 224
    for time and space, 227
  paradox of movement and, 241
  positive law and, 221–222
    as *a priori* legal concept, 223–225
    abstraction from, 223
    induction from, 223
  for rights over things, 240
  Schuppe on, 234–235
  social acts and, 230–233
    Brentano on, 232
    through determinations, 231, 238–239
    hearing as, 232
    Kelsen on, 231
    norms and, 231–232
    perceiving as, 232
    promising as, 232
    questioning as, 232
    time and space and, 225–226, 229–230

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

social meaning of, 219
Stammler and, 220–221
time and space in, 225–230
ambiguity of, 226–227
as continuum, 227–230
ontology of, 227
punctual temporal phenomena, 228–229
social acts and, 225–226, 229–230
theory of information. *See* information
theory of mind. *See* computational theory of mind
theory of representation. *See* representation
theory of space and time. *See* space and time
thinking, *a priori* legal concepts and, 85
transcendence, phenomenology of, 28
transcendental idealism, 9, 16
transcendental idealist thought, 168
transfer of property
Husserl, E., on, 268
in private law, 130–136
bundle of rights theory and, 136
good faith purchase and, 133–134, 141–142
nemo dat principle, 132–134, 138
under Uniform Commercial Code, 133
transference of ownership, gifts by, 263–270
Austin on, 263–264
intuition as part of, 264–265
Ownership View of Gift in, 266–270
shortcuts in, 267
target of gifts, 266
transferring, as performative act, 172, 183
of liberties, 213
for property rights, 202
Troller, A., 219
truth values
for performative verbs, 29
in phenomenological method, 173
synthetic truths, 179–180

UCC. *See* Uniform Commercial Code
uncertain legal propositions, 98–101
unconditional promises, 290, 295–296
Uniform Commercial Code (UCC), 133
unilateralism, 164
universal rights, 204
utilitarian theory, 35–37

Vendler, Zeno, 254–256
versprechen. *See* speaking
Vincent v Lake Erie Transportation Co., 163

Waldron, Jeremy, on gifts, 270–273
Weinrib, Ernest, 153, 163–164
will, declarations of, 36
gifts and, 259–260
Wilson, Edward O., 59
Wittgenstein, Ludwig, 9, 32
World War I
Psychologismus-Streit and, 76
Reinach's death in, 8
Wundt, Wilhelm, 61

Yearbook for Philosophy and Phenomenology Research (Husserl, E.), 7–8, 26
Yun-chien Chang, 131–132

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 14:26:38, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009446013.017