

Legal Theory, the Common Law Mind and the Making of the Textbook Tradition

DAVID SUGARMAN

I THE COMMON LAW MIND: THE NATURE OF THE BEAST

The common law frame of mind continues to overshadow the way we teach, write and think about law. Its categories and assumptions are still the standard diet of most first-year law students; and they continue to organize law textbooks and case-books. Stated baldly,¹ it assumes that although law may appear to be irrational, chaotic and particularistic, if one digs deep enough and knows what one is looking for, then it will soon become evident that the law is an internally coherent and unified body of rules. This coherence and unity stem from the fact that law is grounded in, and logically derived from, a handful of general principles; and that whole subject-areas such as contract and torts are distinguished by some common principles or elements which fix the boundaries of the subject. The exposition and systematization of these general principles, and the techniques required to find and to apply them and the rules that they underpin, are largely what legal education and scholarship are all about.

Its message is reassuring. In any particular situation there is such a thing as the one true rule of law. Students can tease it out from the mass of competing alternatives, once they have learnt the technique. And that technique asserts that law (i.e. case-law) is a unified and internally coherent whole. In this way law is a species of science. It is objective, neutral and apolitical. Knowing the law is largely defined as learning this technique and the basic (overwhelmingly case-law) rules of 'core' subject-areas such as contract, torts and so on. Of course, the claim that law is unified and coherent does not simply depend upon the assertion that the law is ultimately grounded in a small number of general principles. It is also sustained by a battery of distinctions - common law/statute law, law/politics, law/state, law/morality, legal/empirical, technique/substance, form/substance, means/ends, private law/public law, law/history, law/theory - that make it more tenable to regard law as 'pure' and 'scientific'. The common law becomes the nucleus of legal education and scholarship.

Legal Theory And Common Law

Maksymilian Del Mar, Michael Giudice



Legal Theory And Common Law:

Legal Theory and Legal History Alfred William Brian Simpson, 1987-01-01 **Legal Theory and Common Law** William L. Twining, 1986-01-01 *Oliver Wendell Holmes, Jr., Legal Theory, and Judicial Restraint* Frederic R. Kellogg, 2006-12-11 Oliver Wendell Holmes Jr is considered by many to be the most influential American jurist The voluminous literature devoted to his writings and legal thought however is diverse and inconsistent In this study Frederic R Kellogg follows Holmes s intellectual path from his early writings through his judicial career He offers a fresh perspective that addresses the views of Holmes s leading critics and explains his relevance to the controversy over judicial activism and restraint Holmes is shown to be an original legal theorist who reconceived common law as a theory of social inquiry and who applied his insights to constitutional law From his empirical and naturalist perspective on law with its roots in American pragmatism emerged Holmes s distinctive judicial and constitutional restraint Kellogg distinguishes Holmes from analytical legal positivism and contrasts him with a range of thinkers **Legal Reasoning, Legal Theory and Rights** Martin P. Golding, 2017-07-05 This book is a selection of articles and chapters published over Martin Golding s academic career Golding s approach to the philosophy of law is that it contains conceptual and normative issues and in this volume logical issues in legal reasoning are examined and various theories of law are critically discussed Normative questions are dealt with regarding the rule of law and criminal law defenses and the concept of rights and the terminology of rights are analyzed Much of Golding s work is critical historical as well as constructive This volume will prove an informative and useful collection for scholars and students of the philosophy of law Legal Theory and the Legal Academy Maksymilian Del Mar, 2017-07-05 The third in a series of three volumes on Contemporary Legal Theory this volume deals with four topics 1 the role of legal theory in the legal curriculum 2 the teaching of legal theory 3 the relationship of legal theory to legal scholarship and 4 the relationship of legal theory to comparative law The focus of the first two topics is on the common law world where the debates over the aims and proper place of legal theory in the study of law have traversed a good deal of ground since John Austin s 1828 lecture *The Uses and the Study of Jurisprudence* These first two parts offer a selection of the most important papers including surveys as well as pedagogical viewpoints and particular course descriptions from analytical critical feminist law and literature and global perspectives The last three decades have seen just as many changes for legal scholarship and comparative law These changes such as the rise of empirical legal scholarship have often attracted the attention of legal theorists Within comparative law the last thirty years have witnessed intense methodological reflection within the discipline the results of these reflections are themselves properly recognised as legal theoretical contributions The volume collects the key papers including those by Neil MacCormick Mark Van Hoecke Andrew Halpin William Ewald and Geoffrey Samuel The Legal and Regulatory Aspects of Islamic Banking Abdul Karim Aldohni, 2012-05-23 During the last ten years the Islamic banking sector has grown rapidly at an international level as well as in individual jurisdictions including

the UK Islamic finance differs quite substantially from conventional banking using very different mechanisms and operating according to a different theory as it is based on Islamic law Yet at the same time it is always subject to the law of the particular financial market in which it operates This book takes a much needed and comprehensive look at the legal and regulatory aspects which affect Islamic finance law and examines the current UK and international banking regulatory frameworks which impact on this sector The book examines the historical genesis of Islamic banking looking at how it has developed in Muslim countries before going on to consider the development of Islamic banking in the UK and the legal position of Islamic banks within English law The book explores company contract and some elements of tax law and traces the impact it has had on the development of Islamic banking in the UK before going on to argue that the current legal and regulatory framework which affects the Islamic banking sector has on certain occasions had an unintended adverse impact on Islamic banking in the UK The book also provides an overview of the Malaysian experience in relation to some of the main legal and regulatory challenges in the context of Islamic banking and finance

Globalisation and Legal Theory William Twining, 2000-03 The text makes the case for a revival of general jurisprudence in response to globalisation

Common Law and Liberal Theory James R. Stoner, 1992 In this book James Stoner's purpose is to recover the common law basis of American constitutionalism American constitutionalism in general he argues and judicial review in particular cannot be fully understood without acknowledging their roots in both common law and liberal political theory But for the most part the common law underpinnings of constitutionalism have received short shrift

International Legal Theory Nicholas Onuf, 2009-05-07 Nicholas Onuf's *International Legal Theory Essays and Engagements* 1966 2007 is a collection of the author's articles and book reviews from the period including some previously unpublished material The book records the author's efforts to address important problems in international legal theory and to engage other scholars who were also addressing these problems As well as demonstrating Onuf's own constructivist contribution to the theoretical dimension of international law and international relations each piece is preceded by a short introduction which highlights the wider themes and developments which have occurred in the field of international law in the last forty years

Hegel and Legal Theory Drucilla Cornell, Michel Rosenfeld, David Gray Carlson, 2014-02-25 The first collection of essays directed towards jurisprudence with a Hegelian theme The editors are committed to the idea that Hegel is the future source of great energy and insight within the legal academy

The Blackwell Guide to the Philosophy of Law and Legal Theory Martin P. Golding, William A. Edmundson, 2008-04-15 The Blackwell Guide to the Philosophy of Law and Legal Theory is a handy guide to the state of play in contemporary philosophy of law and legal theory Comprises 23 essays critical essays on the central themes and issues of the philosophy of law today written by an international assembly of distinguished philosophers and legal theorists Each essay incorporates essential background material on the history and logic of the topic as well as advancing the arguments Represents a wide variety of perspectives on current legal theory

Legal Theory and the Social Sciences Maksymilian

Del Mar, Michael Giudice, 2017-07-05 Ever since H L A Hart's self description of The Concept of Law as an exercise in descriptive sociology contemporary legal theorists have been debating the relationship between legal theory and sociology and between legal theory and social science more generally There have been some who have insisted on a clear divide between legal theory and the social sciences citing fundamental methodological differences Others have attempted to bridge gaps revealing common challenges and similar objects of inquiry Collecting the work of authors such as Martin Krygier David Nelken Brian Tamanaha Lewis Kornhauser Gunther Teubner and Nicola Lacey this volume the second in a three volume series provides an overview of the major developments in the last thirty years The volume is divided into three sections each discussing an aspect of the relationship of legal theory and the social sciences 1 methodological disputes and collaboration 2 common problems especially as they concern different modes of explanation of social behaviour and 3 common objects including most prominently the study of language in its social context and normative pluralism **The Methodology of**

Legal Theory Michael Giudice, Wil Waluchow, 2017-07-05 The last decade has witnessed a particularly intensive debate over methodological issues in legal theory The publication of Julie Dickson's Evaluation and Legal Theory 2001 was significant as were collective returns to H L A Hart's Postscript to The Concept of Law While influential articles have been written in disparate journals no single collection of the most important papers exists This volume the first in a three volume series aims not only to fill that gap but also propose a systematic agenda for future work The editors have selected articles written by leading legal theorists including among others Leslie Green Brian Leiter Joseph Raz Ronald Dworkin and William Twining and organized under four broad categories 1 problems and purposes of legal theory 2 the role of epistemology and semantics in theorising about the nature of law 3 the relation between morality and legal theory and 4 the scope of phenomena a general jurisprudence ought to address Jurisprudence (Legal Theory) Dr Chandrani Shashikant Bagadi, 2023-07-12

Jurisprudence is the basis of all law Jurisprudence is the living science of Law Jurisprudence deals with the knowledge of the law and legal principles As it is the basis of law it is necessary to reach students It is solid foundation of knowledge and it also includes critical understanding Jurisprudence and Legal Theory Author has taught Jurisprudence for many years Author has tried to reach students in easy language Jurisprudence is the base of all subjects Author has tried his best to reach students through his book It includes all schools concepts sources Academically also it is useful for LL B LL M NET SET exam and research students This book aim is to give knowledge of what is law and explain the principles of Jurisprudence and Legal Theory to students advocate society and researchers As this is my effort to publish First Edition I therefore welcome if there are any suggestions to improve this book *Frontiers of Legal Theory* Richard A. Posner, 2004-03 The most exciting development in legal thinking since World War II has been the growth of interdisciplinary legal studies Judge Richard Posner has been a leader in this movement and his new book explores its rapidly expanding frontier *Feminist Legal Theory* (Vol. 2) Frances Olsen, 1995-10 A collection of previously published articles *The Concept of Ideals in Legal Theory* Sanne

Taekema,2002-12-31 Talk about law often includes reference to ideals of justice equality or freedom But what do we refer to when we speak about ideals in the context of law This book explores the concept of ideals by combining an investigation of different theories of ideals with a discussion of the role of ideals in law A comparison of the theories of Gustav Radbruch and Philip Selznick leads up to a pragmatist theory of legal ideals which provides an interesting new position in the debate about values in law between legal positivists and natural law thinkers Attention for law s central ideals enables us to understand law s autonomous character while at the same time tracing its connection to societal values Essential reading for anyone interested in the role of values or ideals in law **African Legal Theory and Contemporary Problems** Oche

Onazi,2013-11-26 The book is a collection of essays which aim to situate African legal theory in the context of the myriad of contemporary global challenges from the prevalence of war to the misery of poverty and disease to the crises of the environment Apart from being problems that have an indelible African mark on them a common theme that runs throughout the essays in this book is that African legal theory has been excluded under explored or under theorised in the search for solutions to such contemporary problems The essays make a modest attempt to reverse this trend The contributors investigate and introduce readers to the key issues questions concepts impulses and problems that underpin the idea of African legal theory They outline the potential offered by African legal theory and open up its key concepts and impulses for critical scrutiny This is done in order to develop a better understanding of the extent to which African legal theory can contribute to discourses seeking to address some of the challenges that confront African and non African societies alike

Essays in Legal Theory Robert Summers,2013-11-11 As I explain in the introduction this is the third in a series of collections of my previously published essays in legal theory All of the essays here but three have been revised for this volume I now wish to record my gratitude and indebtedness to various persons I am most indebted and grateful to my wife Dorothy Kopp Summers to whom I dedicate this book I also wish to record my gratitude for his interest and patience to Hendrik Jan van Leusen of Kluwer Academic Publishers He strongly encouraged me to put this collection together and without his efforts it certainly would not have appeared in this timely fashion I also wish to thank his successor Sabine Wesseldijk for assistance In the course of my academic career I have benefitted greatly from the many Cornell Law School students serving as my research assistants I have also been privileged to have the fine aid of many Cornell Law School secretaries and administrative assistants Foremost here is Mrs Pamela Finnigan who has so ably seen this collection put together from start to finish **Legal Positivism in American Jurisprudence** Anthony J. Sebok,1998-10-28 This work

represents a serious and philosophically sophisticated guide to modern American legal theory demonstrating that legal positivism has been a misunderstood and underappreciated perspective through most of twentieth century American legal thought

Reviewing **Legal Theory And Common Law**: Unlocking the Spellbinding Force of Linguistics

In a fast-paced world fueled by information and interconnectivity, the spellbinding force of linguistics has acquired newfound prominence. Its capacity to evoke emotions, stimulate contemplation, and stimulate metamorphosis is really astonishing. Within the pages of "**Legal Theory And Common Law**," an enthralling opus penned by a highly acclaimed wordsmith, readers embark on an immersive expedition to unravel the intricate significance of language and its indelible imprint on our lives. Throughout this assessment, we shall delve into the book's central motifs, appraise its distinctive narrative style, and gauge its overarching influence on the minds of its readers.

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