CHAPTER 3: THEORIES OF LAW

	NATURALIST	POSITIVIST	SOCIOLOGIST
THEORY	a legal theory that recognises law of nature/ moral law believes that laws must be good and just to govern human relation. It's the nature of every human being to know from his conscience what is righteous and therefore lawful. They believe that human laws are defined by morality, and not by an authority figure like a government king. NATURALIST: OVERLAP THESIS all forms of natural law theory supports the necessary relation between the concepts of law and morality.	Positivists believe that only positive law is law. Positive laws are laws that have been established by the authority of the state (sovereign). Positivists are blind to values. Positive law has nothing to do with ideal or just law, it has no regard to goodness or badness or the law. Recognize only positive facts and excludes considerations towards concepts of jurisprudence. POSITIVIST: SEPARABILITY THESIS Positivism is not concerned with whether law is moral, just or unfair.	Law is wholly concerned with its effect and results on society rather than treating law as will of god or command of the sovereign as law exists for the needs of the society. Main concern of socialist is Interpreting the law in the social context, to bring good to the society. Law regulates all kinds of relationships in a society and controls the behavior of its members. Hence, it is considered as a form of social control. Law is not only about legality and punishment.
JURIST	→ BLACKSTONE	→ JOHN AUSTIN ◆ Law is a command made by a political sovereign. ◆ Rule is only legally valid	→ ROSCOE POUND ◆ Law is an instrument of social engineering. Its

Legal Theory

Marek Zirk-Sadowski, Mariusz Jerzy Golecki, Bartosz Wojciechowski

Legal Theory:

Law's Community Roger Cotterrell, 1995 Law's Community offers a distinctive analysis of law identifying political and moral problems that are fundamental to contemporary legal theory. It portrays contemporary law as institutionalized doctrine emphasizing ways in which legal modes of thought influence wider currents of understanding and belief in contemporary Western societies Exploring relationships between law and sociology as contrasting and competing fields of knowledge Law s Community develops ideas from social theory to identify key problems for legal development in particular those of restoring moral authority to law and of elaborating a concept of community that can guide legal regulation The analysis leads to radical conclusions among them that law s functions need reconsideration at the most general level that a unitary state legal system as portrayed in traditional kinds of legal theory may no longer be adequate in complex contemporary societies and that law should be reconceptualized as a diverse but co ordinated plurality of systems sites and forms of regulation Legal Theory Brian Bix, 2004 Modern legal theory contains a wide range of approaches and topics from economic analysis of law to feminist legal theory to traditional analytical legal philosophy to a range of theories about justice This healthy variety of jurisprudential work has created a problem students and theorists working in one tradition may have difficulty understanding the concepts and terminology of a different tradition This book works to make terminology and ways of thinking accessible This dictionary covers topics from the autonomy of law to the will theory of rights from autopoiesis to wealth maximization and from John Austin to Ludwig Wittgenstein The most important concepts and ideas are presented in a simple dictionary format There are also many longer entries where the initial definition gives an accessible explanation but the entry goes on to give more detailed information about the history of an idea and the debates currently surrounding it

Understanding Jurisprudence Raymond Wacks,2021 Understanding Jurisprudence provides an illuminating and engaging introduction to the central questions of legal theory It is the perfect starting point for those new to the subject

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 Research Handbook on Critical Legal Theory Emilios Christodoulidis, Ruth Dukes, Marco Goldoni, 2019 Critical theory characteristically linked with the politics of

theoretical engagement covers the manifold of the connections between theory and praxis This thought provoking Research Handbook captures the broad range of those connections as far as legal thought is concerned and retains an emphasis both on the politics of theory and on the notion of theoretical engagement The first part examines the question of definition and tracks the origins and development of critical legal theory along its European and North American trajectories The second part looks at the thematic connections between the development of legal theory and other currents of critical thought such as Feminism Marxism Critical Race Theory varieties of post modernism as well as the various turns ethical aesthetic political of critical legal theory The third and final part explores particular fields of law addressing the question how the field has been shaped by critical legal theory or what critical approaches reveal about the field with the clear focus on opportunities for social transformation Epistemic Uncertainty and Legal Theory Brian Burge-Hendrix,2008-01-01 Crossing the usual boundaries of abstract legal theory this book considers actual charter systems legal systems with explicitly posited moral political rights as well as cases in constitutional adjudication It shows the worth of careful reflection on methodological and meta theoretical issues for a comprehensive account of a present day legal system which is fast becoming the norm

Studies in Islamic Legal Theory Bernard G. Weiss, 2002 This volume contains ground breaking studies on such matters as the early development of legal theory in Islam the emergence of us l al figh theory vis a vis practice various controversies among Muslim theorists the construction of juristic authority reformist concepts and the role of gaw cid and the Legal Academy MaksymilianDel 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 **Poznań School of Legal Theory** Paweł Kwiatkowski, Marek Smolak,2021-02-08 This book grew out of the conviction that the original concepts of the Pozna School of Legal Theory are still perfectly suited for application in the era of moral pluralism and multicentric legal systems Moreover the legal theoretical proposals put forward by the circle of Pozna legal theorists and supported by firm methodological foundations

have not by any means lost their value Although each of the authors tackles issues from different perspectives there is a discernible unity in their approaches expressed in the conviction that modest analysis makes more sense than ambitious analysis of the concept of law or the nature of law The Pozna School has made several valuable contributions to contemporary legal theory its works have drawn from Polish philosophy of language and therefore embedded its theoretical and legal considerations in the Polish philosophical culture it created an original model method which consists of considering ideal situations in which dependencies are not disturbed by the influence of other factors and it treats the human being as a The Blackwell Guide to the Philosophy of Law and rational person and thus as a cognizing subject and a rational agent 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 Evidence - Evidence in Legal Theory Verena Klappstein, Maciej Dybowski, 2022-01-03 This book addresses theoretical problems concerning legal evidence. The concept of evidence is expected to fulfill a number of distinct roles in science and philosophy but also in legal theory and law some of which are complementary while others are conflicting In their profession lawyers have to deal with evidence and proof Yet the legal concept of evidence is constantly changing and the debate concerning the distinction between a legal concept of evidence the ordinary concept of evidence and the concept of evidence in science is far from being settled What is more the problem of evidence is central to both epistemology and the philosophy of science and by extension to our academic thinking on law In short legal theorists interest in evidence may include such diverse objects as a bloody knife sensory data linguistic entities or psychologically recognized beliefs The book surveys selected theoretical roles that the concept of evidence plays and explores their relations and interconnections The content is divided into three parts investigating 1 evidence in epistemology and the philosophy of science which focuses on evidence methodologies and the problem of proof in legal scholarship 2 evidence in legal theory and legal philosophy where particular attention is paid to the interplay between evidence legal reasoning and the binding force of such reasoning and 3 evidence in law where theoretical problems pertaining to witnesses expert opinions explanations of the accused statistical evidence and neuroscientific evidence are examined 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 A Legal Theory Without Law Ernst-Joachim Mestmäcker, 2007 Ernst Joachim Mestmäcker reviews Richard Posner's and Friedrich A von Hayek's legal theories Both are famous for their contributions to law and economics They are however adversaries in their concepts of law and how it is to be informed by economics Posner finds the only scientific legal theory in the external economic analysis of law With Friedrich von Hayek the role of rules of conduct and legislation is to be determined by the principles that govern a free and competitive order There are contrary to Posner important contributions from legal scholarship legal history and comparative law

Feminist Legal Theory (Second Edition) Nancy Levit, Robert R.M. Verchick, 2016-01-15 In the completely updated second edition of this outstanding primer Nancy Levit and Robert R M Verchick introduce the diverse strands of feminist legal theory and discuss an array of substantive legal topics pulling in recent court decisions new laws and important shifts in culture and technology The book centers on feminist legal theories including equal treatment theory cultural feminism dominance theory critical race feminism lesbian feminism postmodern feminism and ecofeminism Readers will find new material on women in politics gender and globalization and the promise and danger of expanding social media Updated statistics and empirical analysis appear throughout At its core Feminist Legal Theory shows the importance of the roles of law and feminist legal theory in shaping contemporary gender issues Unedited summary from book cover to Critical Legal Theory Ian Ward, 2012-10-02 Introduction to Critical Legal Theory provides an accessible introduction to the study of law and legal theory It covers all the seminal movements in classical modern and postmodern legal thought engaging the reader with the ideas of jurists as diverse as Aristotle Hobbes and Kant Marx Foucault and Dworkin At the same time it impresses the interdisciplinary nature of critical legal thought introducing the reader to the philosophy the economics and the politics of law This new edition focuses even more intently upon the narrative aspect of critical legal thinking and the re emergence of a distinctive legal humanism as well as the various related challenges posed by our new world order Introduction to Critical Theory is a comprehensive text for both students and teachers of legal theory jurisprudence and related subjects Modern Legal Theory & Judicial Impartiality Ofer Raban, 2012-09-10 This book argues that at the core of legal philosophys principal debates there is essentially one issue judicial impartiality Keeping this issue to the forefront Raban's approach sheds much light on many difficult and seemingly perplexing jurisprudential debates Modern Legal Theory and Judicial Impartiality offers a fresh and penetrating examination of two of the most celebrated modern legal theorists HLA Hart and Ronald Dworkin The book explains the relations between these two scholars and other theorists and

schools of thought including Max Weber Lon Fuller and the law and economics movement offering both novices and experts an innovative and lucid look at modern legal theory The book is written in an engaging and conversational style tackling highly sophisticated issues in a concise and accessible manner Undergraduates in jurisprudence and legal theory as well as more advanced readers will find it clear and challenging 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 Multicentrism as an Emerging Paradigm in Legal Theory Marek Zirk-Sadowski, Mariusz Jerzy Golecki, Bartosz Wojciechowski, 2009 The contemporary legal theory is gradually departing from traditional theory of the hierarchical legal system Some authors announce the supposed death of the concept of law within the state The so called multicentrism might become an attractive alternative to the traditional monocentric approach The essence of multicentrism may be characterized as coexistence of many adjudicating bodies especially courts whose verdicts are equally effective within the national legal system Such a situation takes place e g within the European legal area where multicentrism could be perceived as the existence of sensitive liaisons entanglements and relations of dependence between the European Court of Human Rights in Strasbourg the European Court of Justice in Luxemburg and national especially constitutional courts in member states The coexistence of many centres of adjudication may thus become a constant feature of the system of regional and global law The Legal Theory of Carl Schmitt Mariano Croce, Andrea Salvatore, 2013-10-11 The Legal Theory of Carl Schmitt provides a detailed analysis of Schmitt's institutional theory of law mainly developed in the books published between the end of the 1920s and the beginning of the 1930s By reading Schmitt's overall work through the lens of his institutional turn the authors offer a strikingly different interpretation of Schmitt's theory of politics law and the relation between these two domains The book argues that Schmitt's adhesion to legal institutionalism was a key theoretical achievement based on serious reconsideration of the main flaws of his own decisionist paradigm in the light of the French and Italian institutional theories of law In so doing the authors elucidate how Schmitt was able to unravel many of the impasses that affected his previous conceptual framework The authors also make comparisons between Schmitt and other leading legal theorists H Kelsen M Hauriou S Romano and C Mortati and explain why the current legal debate should take into serious account his legacy Globalisation and Legal Theory William Twining, 2000-03 The text makes the case for a revival of general jurisprudence in response to globalisation

Adopting the Beat of Term: An Mental Symphony within Legal Theory

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