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**ESSAYS IN
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CLARENDON



PAPERBACKS

Essays In Jurisprudence And Philosophy

Brian Burge-Hendrix



Essays In Jurisprudence And Philosophy:

Essays in Jurisprudence and Philosophy H. L. A. Hart, 1983-11-24 This important collection of essays includes Professor Hart's first defense of legal positivism his discussion of the distinctive teaching of American and Scandinavian jurisprudence an examination of theories of basic human rights and the notion of social solidarity and essays on Jhering Kelsen Holmes and Lon Fuller

Essays in Jurisprudence and Philosophy Herbert Lionel Adolphus Hart, 1983 These essays which cover a wide range of topics were written by Professor Hart between 1953 and 1981 and first appeared in a variety of different books and journals

Oxford Essays in Jurisprudence, Second Series Alfred William Brian Simpson, A. W. Brian Simpson, 1973 These essays deal with central and controversial issues in jurisprudence This volume emphasizes legal theory and the collection will be of interest to students of and others involved with political philosophy as well as law students and philosophers

Essays in Jurisprudence and Ethics Frederick Pollock, 1882

Philosophy of Law John Finnis, 2011-04-07 John Finnis has been a central figure in the fundamental re shaping of legal philosophy over the past half century This volume of his Collected Essays shows the full range and power of his contributions to the philosophy of law The volume collects nearly thirty papers on the foundations of law's authority major theories and theorists of law legal reasoning revolutions rights and law and the logic of law making The essays collected include Finnis' recent appreciations and root and branch critiques of Hart's legal and political theories his engagements with other central figures and works in the field including Dworkin's Law's Empire Raz on authority and coordination Coleman Leiter and Gardner on legal positivism and naturalism Aquinas as founder of legal positivism Weber on the fact value distinction and legitimation Unger on indeterminacy in law Posner on intention and economics Kelsen and courts on revolutions game theory and rational choice theory with misinterpreters of Hohfeld on rights logic John Paul II on voting for unjust laws analogy's role in legal reasoning the distribution of constitutional authority in the Empire and its dissolution the judicial opportunism of separation of powers doctrine in the Australian constitution the architecture of Blackstone's Commentaries restitution in civil wrongs and many other aspects of law and legal theory Several papers bring to bear his extensive work as a constitutional adviser and lawyer on persistent problems of constitutional theory Previously unpublished papers include two on critical or post modern legal theory and an introduction reflecting on legal philosophy's development and future

More Essays in Legal Philosophy Robert S. Summers, 1971-01-01

Meta-theory of Law Mathieu Carpentier, 2022-10-04 This book is devoted to the theory of legal theory also referred to as the meta theory of law The aim of this emerging discipline is to determine the objectives aims and methods of legal theory and to establish the conditions of possibility as well as the validity criteria for theoretical discourse on law The contributions in this book provide an overview of these aspects through different perspectives and approaches The very purpose of legal theory has been disputed and the subject area is currently subject to increasing cross fertilization between different and sometimes diverging traditions Meta theory of Law assesses these emerging trends by

questioning two basic objects of legal theory the nature and the science of law The Invisible Origins of Legal Positivism

W.E. Conklin, 2012-12-06 Conklin's thesis is that the tradition of modern legal positivism beginning with Thomas Hobbes postulated different senses of the invisible as the authorising origin of humanly posited laws Conklin re-reads the tradition by privileging how the canons share a particular understanding of legal language as written Leading philosophers who have espoused the tenets of the tradition have assumed that legal language is written and that the authorising origin of humanly posited rules norms is inaccessible to the written legal language Conklin's re-reading of the tradition teases out how each of these leading philosophers has postulated that the authorising origin of humanly posited laws is an unanalysable externality to the written language of the legal structure As such the authorising origin of posited rules norms is inaccessible or invisible to their written language What is this authorising origin Different forms include an originary author an a priori concept and an immediacy of bonding between person and laws In each case the origin is unwritten in the sense of being inaccessible to the authoritative texts written by the officials of civil institutions of the sovereign state Conklin sets his thesis in the context of the legal theory of the polis and the pre polis of Greek tribes The author claims that the problem is that the tradition of legal positivism of a modern sovereign state excises the experiential or bodily meanings from the written language of the posited rules norms thereby forgetting the very pre legal authorising origin of the posited norms that each philosopher admits as offering the finality that legal reasoning demands if it is to be authoritative **Natural Law and Thomistic Juridical Realism**

Petar Popovic, 2022-02-04 This book proposes a rather novel legal philosophical approach to understanding the intersection between law and morality It does so by analyzing the conditions for the existence of a juridical domain of natural law from the perspective of the tradition of Thomistic juridical realism In order to highlight the need to reconnect with this tradition in the context of contemporary legal philosophy the book presents various other recent jurisprudential positions regarding the overlap between law and morality While most authors either exclude a conceptual necessity for the inclusion of moral principles in the nature of law or refer to the purely moral status of natural law at the foundations of the legal phenomenon the book seeks to elucidate the essential properties of the juridical status of natural law In order to establish the juridicity of natural law the book explores the relevant arguments of Thomas Aquinas and some of his main commentators on this issue above all Michel Villey and Javier Hervada It establishes that Thomistic juridical realism observes the juridical phenomenon not only from the perspective of legal norms or subjective individual rights but also from the perspective of the primary meaning of the concept of right ius namely the just thing itself as the object of justice In this perspective natural rights already possess a fully juridical status and can be described as natural juridical goods In addition from the viewpoint of Thomistic juridical realism we can identify certain natural norms or principles of justice as the juridical title of these rights or goods The book includes an assessment of the prospective points of dialogue with the other trends in Thomistic legal philosophy as well as with various accounts of the nature of law in contemporary legal theory **New**

Constitutional Horizons Cormac S. Mac Amhlaigh, 2022-03-21 We live in a pluralist world of multi level law and governance More than ever before multiple legal systems and governing authorities at different levels sub state state supranational international are recognized as applying to and claiming authority over the affairs of the same sets of individuals and institutions Yet our constitutional theories fail to adequately capture this pluralist state of affairs This book examines some of the key conceptual and theoretical puzzles which the contemporary state of multilevel pluralism poses for our constitutional theories It offers fresh perspectives on these questions by addressing the pluralism of norms and authorities from the viewpoint of legality and legitimacy respectively proposing novel solutions for pluralizing constitutional theory in the light of contemporary multilevel governance Our turbulent times are on a steady trajectory of ever more pluralism of law and governance to tackle the defining social and political problems of our age including populism pandemic and climate change and this book provides an essential intervention in debates on how to pluralize constitutional theory to better understand and perhaps more importantly legitimize the tools to address these increasingly shared problems **The Architecture of Rights** David Frydrych, 2021-10-13 What is a right What if anything makes rights different from other features of the normative world such as duties standards rules or principles Do all rights serve some ultimate purpose In addition to raising these questions philosophers and jurists have long been aware that different senses of a right abound To help make sense of this diversity and to address the above questions they developed two types of accounts of rights models and theories This book explicates rights modelling and theorising and scrutinises their methodological underpinnings It then challenges this framework by showing why the theories ought to be abandoned In addition to exploring structural concerns the book also addresses the various ways that rights can be used It clarifies important differences between rights exercise enforcement remedying and vindication and identifies forms of legal rights claiming and rights invoking outside of institutional contexts *Kelsenian Legal Science and the Nature of Law* Peter Langford, Ian Bryan, John McGarry, 2017-05-16 This book critically examines the conception of legal science and the nature of law developed by Hans Kelsen It provides a single dedicated space for a range of established European scholars to engage with the influential work of this Austrian jurist legal philosopher and political philosopher The introduction provides a thematization of the Kelsenian notion of law as a legal science Divided into six parts the chapter contributions feature distinct levels of analysis Overall the structure of the book provides a sustained reflection upon central aspects of Kelsenian legal science and the nature of law Parts one and two examine the validity of the project of Kelsenian legal science with particular reference to the social fact thesis the notion of a science of positive law and the specifically Kelsenian concept of the basic norm Grundnorm The next three parts engage in a critical analysis of the relationship of Kelsenian legal science to constitutionalism practical reason and human rights The last part involves an examination of the continued pertinence of Kelsenian legal science as a theory of the nature of law with a particular focus upon contemporary non positivist theories of law The conclusion discusses the increasing distance of

contemporary theories of legal positivism from a Kelsenian notion of legal science in its consideration of the nature of law

Epistemic Uncertainty and Legal Theory Brian Burge-Hendrix, 2016-12-05 Crossing the usual boundaries of abstract legal theory this book considers actual charter systems legal systems with explicitly posited moral political rights such as those of Canada and the United States 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 The author explicitly connects the ongoing Methodology Debate within legal philosophy to constitutional adjudication and Canadian law By drawing out the implications of the Methodology Debate and the challenge of giving a proper account of constitutional adjudication in a general theory of law the study examines how a descriptive morally and politically neutral legal theory can deal with epistemic uncertainty uncertainty about the actual status of moral political legal provisions and their jurisprudential function in a thoroughgoing manner It also demonstrates the merits of a minimalist version of Legal Positivism with regard to the practical importance of charters in charter systems and societies Juristic

Concept of the Validity of Statutory Law Andrzej Grabowski, 2013-06-24 This book presents the theory of the validity of legal norms aimed at the practice of law in particular the jurisdiction of the constitutional courts The postpositivist concept of the validity of statutory law grounded on a critical analysis of the basic theories of legal validity elaborated up to now is introduced In the first part of the book a contemporary German nonpositivist conception of law developed by Ralf Dreier and Robert Alexy is analysed in order to answer the question whether the juristic concept of legal validity should include moral standards or criteria In the second part a postpositivist concept of legal validity and an innovative model of validity discourse based on the juristic presumption of the validity of legal norms are proposed The book is a work on analytical legal theory written from a postpositivist detached point of view 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 Law and Utilitarianism** Guillaume Tusseau, 2024-10-03 The Research Handbook

on Law and Utilitarianism sheds light on contemporary legal culture and the ways in which it interacts with theories of justice Guillaume Tusseau brings together an interdisciplinary range of scholars to analyse the utilitarian standpoint on legal

disciplines and legal governance as well as the contribution of utilitarian arguments to current legal debates Law, Truth, and Reason Raimo Siltala, 2011-07-29 This book is an innovative contribution to analytical jurisprudence It is mainly based on the distinct premises of linguistic philosophy and Carnapian semantics but also addresses the issues of institutional philosophy social pragmatism and legal principles as envisioned by Dworkin among others Wrblewski's three ideologies bound free legal and rational and Makkonen's three situations isomorphic semantically vague normative gap of judicial decision making are further developed by means of 10 frames of legal analysis as discerned by the author With the philosophical theories of truth serving as a reference the frames of legal analysis include the isomorphic theory of law Wittgenstein Makkonen the coherence theory of law Alexy Peczenik Dworkin the new rhetoric and legal argumentation theory Perelman Aarnio social consequentialism Posner natural law theory Fuller Finnis and the sequential model of legal reasoning by Neil MacCormick and the Bielefelder Kreis At the end some key issues of legal metaphysics are addressed like the notion of legal systematics and the future potential of the analytical approach in jurisprudence *Encyclopedia of Ethics* Lawrence C. Becker, Charlotte B. Becker, 2013-10-18 The editors working with a team of 325 renowned authorities in the field of ethics have revised expanded and updated this classic encyclopedia Along with the addition of 150 new entries all of the original articles have been newly peer reviewed and revised bibliographies have been updated throughout and the overall design of the work has been enhanced for easier access to cross references and other reference features New entries include Cheating Dirty hands Gay ethics Holocaust Journalism Political correctness and many more *Interpretation without Truth* Pierluigi Chiassoni, 2019-06-12 This book engages in an analytical and realistic enquiry into legal interpretation and a selection of related matters including legal gaps judicial fictions judicial precedent legal defeasibility and legislation Chapter 1 provides an outline of the central theoretical and methodological tenets of analytical realism Chapter 2 presents a conceptual apparatus concerning the phenomenon of legal interpretation which it subsequently applies to investigate the truth in legal interpretation issue Chapters 3 to 6 argue for a theory of legal interpretation pragmatic realism by outlining a theory of interpretive games revisiting the debate between literalism and contextualism in contemporary philosophy of language and underscoring the many shortcomings of the container retrieval view and pragmatic formalism In turn Chapter 7 focusing on comparative legal theory advocates an interpretation sensitive theory of legal gaps as opposed to purely normativist ones Chapter 8 explores the connection between judicial reasoning and judicial fictions casting light on the structure and purpose of fictional reasoning Chapter 9 provides an analytical enquiry into judicial precedent examining a variety of ideal typical systems in terms of their normative or de iure relevance Chapter 10 addresses defeasibility and legal indeterminacy In closing Chapter 11 highlights the central tenets of a realistic theory of legislation Hans Kelsen's Pure Theory of Law Lars Vinx, 2007-09-06 Hans Kelsen is commonly considered to be among the founding fathers of modern legal philosophy Despite Kelsen's prominence as a legal theorist his political theory has so far been mostly overlooked This book

argues that Kelsen's legal theory the Pure Theory of Law needs to be read in the context of Kelsen's political theory. It offers the first comprehensive interpretation of the Pure Theory that makes systematic use of Kelsen's conception of the rule of law of his theory of democracy his defense of constitutional review and his views on international law. Once it is read in the context of Kelsen's political works Kelsen's analysis of legal normativity provides us with a notion of political legitimacy that is distinct from any comprehensive and contestable theory of justice. It shows how members of pluralist societies can reasonably acknowledge the binding nature of law even where its content does not fully accord with their own substantive views of the requirements of justice provided it is created in accordance with an ideal of fair arbitration amongst social groups. This result leads to a fundamental re-evaluation of the Pure Theory of Law. The theory is best understood as an attempt to find a middle ground between natural law and legal positivism. Later positivist legal theorists inspired by Kelsen's work failed to appreciate the political theoretical context of the Pure Theory and turned to a narrow instrumentalism about the functions of law. The perspective on Kelsen offered in this book aims to reconnect positivist legal thought with normative political theory.

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