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Robert A. Hillman

# The Richness of Contract Law

An Analysis and Critique of  
Contemporary Theories of  
Contract Law

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# Richness Of Contract Law An Analysis And Critique Of Contemporary Theories Of Contract Law

**Peter M. Gerhart**



## **Richness Of Contract Law An Analysis And Critique Of Contemporary Theories Of Contract Law:**

*The Richness of Contract Law* R.A. Hillman, 2012-12-06 Scholars have produced a wide variety of theoretical work on contract law. This is the first book to compile it to present it coherently to evaluate it and to supply numerous references to additional sources. The author also offers his own practical perspective that emphasizes contract law's richness and complexity and questions the utility of abstract unitary theories. The author argues that notwithstanding contract law's complexity, it successfully facilitates the formation and enforcement of private arrangements and ensures a degree of fairness in the process of exchange. Each chapter presents a pair of largely contrasting theories to clarify the central issue of contract law and theory to set forth the range of views and to help identify a practical middle ground. Among the contract theories discussed and analyzed are promise, contextual, feminist, formal, mainstream, critical, economic, empirical, and relational. The book should interest legal theorists, practising lawyers, law students, and general readers who want to learn more about contract law and theory. *The Richness of Contract Law* Robert A. Hillman, 1997

**Principles of Contract Law and Theory** Larry D. DiMatteo, 2023-12-11 This informative and accessible book reviews the core concepts of contract law and theory from an Anglo American perspective. Larry A. DiMatteo deftly analyses the key principles, rules, and frameworks which have shaped Anglo American contract law, as well as highlighting important legislative acts that have changed and modernised its development.

**Contract Law and Social Morality** Peter M. Gerhart, 2021-02-18 When people in a relationship disagree about their obligations to each other, they need to rely on a method of reasoning that allows the relationship to flourish while advancing each person's private projects. This book presents a method of reasoning that reflects how people reason through disagreements and how courts create doctrine by reasoning about the obligations arising from the relationship. Built on the ideal of the other regarding person, *Contract Law and Social Morality* displays a method of reasoning that allows one person to integrate their personal interests with the interests of another, determining how divergent interests can be balanced against each other. Called values balancing reasoning, this methodology makes transparent the values at stake in a disagreement and provides a neutral and objective way to identify and evaluate the trade-offs that are required if the relationship is to be sustained or terminated justly. **Mutual Expectations** Govert

Hartogh, 2002-05-31 The law persists because people have reasons to comply with its rules. What characterizes those reasons is their interdependence: each of us only has a reason to comply because he or she expects the others to comply for the same reasons. The rules may help us to solve coordination problems, but the interaction patterns regulated by them also include Prisoner's Dilemma games, Division problems, and Assurance problems. In these games, the rules can only persist if people can be expected to be moved by considerations of fidelity and fairness, not only of prudence. This book takes a fresh look at the perennial problems of legal philosophy: the source of obligation to obey the law, the nature of authority, the relationship between law and morality, and the nature of legal argument from the perspective of this conventionalist understanding of

social rules It argues that since the resilience of such rules depends on cooperative dispositions conventionalism properly understood does not imply positivism *Justifying Taxes* Agustín José Menéndez, 2013-03-14 *Justifying Taxes* offers readers some of the elements of a democratic tax law considered within its political and philosophical context in order to determine the extent of legitimate tax obligations The objective is to revisit some of the issues in the dogmatics of tax law from the viewpoint of a critical citizen always ready to ask questions about the justification underlying her obligations and especially about her paramount burden viz the payment of certain amounts of money Within this purview special attention is paid to the general principles of taxation The argument is complemented by a detailed reconstruction of constitutional reasoning in tax matters close attention being paid to the jurisprudence of the Spanish Tribunal Constitucional Readership Legal scholars political scientists and philosophers Especially recommended to graduate and undergraduate students of Tax Law Constitutional Law Jurisprudence Philosophy of Law and Political Theory *Being Apart from Reasons* Cláudio Jr. Michelon, 2006-04-23 *Being Apart from Reasons* deals with the question of how we should go about using reasons to decide what to do More particularly the book presents objections to the most common response given by contemporary legal and political theorists to the moral complexity of decision making in modern societies namely the attempt to release public agents from their argumentative burden by insulating a particular set of reasons from the general pool of reasons and assigning the former systematic priority over all other reasons That strategy is apparent both in Rawls claim that reasons concerning the right are systematically prior to reasons concerning the good and in Raz s claim that pre emptive reasons are systematically prior to first order reasons The same strategy is also instantiated by certain arguments for the procedural value of law such as Jeremy Waldron s In the book each of those arguments for the insulation of reasons is objected to in order to defend the thesis the reasoning by public agents must always be as comprehensive as possible The remaining chapters object to those arguments mentioned above which aim at justifying the exclusion of certain reasons from public agents decision making

**Legal Reductionism and Freedom** Martin V.B.P.M. van Hees, 2012-12-06 Martin van Hees presents a new approach to the study of law legal reductionism which combines elements of legal positivism new institutionalism and decision theory From legal positivism Van Hees derives some fundamental insights into the nature of legal systems but he also revises some of its key tenets He argues that law can be reduced to facts moreover he re establishes the relation between law and morality by arguing that law and positive morality are inherently related He subsequently uses decision theoretic tools to develop and defend his reductionist methodology The second part of the study applies the resulting approach to an analysis of legal freedom By showing that legal reductionism allows us to analyse the value of liberal legal systems Van Hees makes a forceful case for including the study of law in moral and political philosophy The book is accessible to a wide readership including legal and moral philosophers political theorists and social scientists Group Rights as Human Rights Neus Torbisco Casals, 2006-06-30 Liberal theories have long insisted that cultural diversity in democratic societies can be accommodated

through classical liberal tools in particular through individual rights and they have often rejected the claims of cultural minorities for group rights as illiberal Group Rights as Human Rights argues that such a rejection is misguided Based on a thorough analysis of the concept of group rights it proposes to overcome the dominant dichotomy between individual human rights and collective group rights by recognizing that group rights also serve individual interests It also challenges the claim that group rights so understood conflict with the liberal principle of neutrality on the contrary these rights help realize the neutrality ideal as they counter cultural biases that exist in Western states Group rights deserve to be classified as human rights because they respond to fundamental and morally important human interests Reading the theories of Will Kymlicka and Charles Taylor as complementary rather than opposed Group Rights as Human Rights sees group rights as anchored both in the value of cultural belonging for the development of individual autonomy and in each person s need for a recognition of her identity This double foundation has important consequences for the scope of group rights it highlights their potential not only in dealing with national minorities but also with immigrant groups and it allows to determine how far such rights should also benefit illiberal groups Participation not intervention should here be the guiding principle if group rights are to realize the liberal promise

*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

*The Market of Virtue* Michael Baurmann, 2002-08-31 The Market of Virtue Morality and Commitment in a Liberal Society is a contribution to the present controversy between liberalism and communitarianism This controversy is not only confined to academic circles but is becoming of increasing interest to a wider public It has become popular again today to criticize a liberal market society as being a society in which

morality and virtues are increasingly being displaced by egoism and utility maximization According to this view the competition between individuals and the dissolution of community ties erode the respect for the interests of others and undermine the commitment to the common good The present book however develops quite a different picture of a liberal society An analysis of its fundamental principles shows that anonymous market relations and competition are by no means the only traits of a liberal society Such a society also provides the framework for freedom of cooperation and association It gives its citizens the right to cooperate with other people in pursuit of their own interests Just as the rivalry between competitors is a basic element of a liberal society so is the cooperation between partners Thus not only self centred individualism is rewarded The main part of the book explains how the freedom to cooperate and to establish social ties lays the empirical foundation for the emergence of civil virtues and moral integrity It is the basic insight of this analysis that it can no longer be maintained that a liberal society is incapable of producing moral attitudes and social commitment If a civil society can develop under a liberal order then one can reckon with citizens who voluntarily contribute to public goods and who commit themselves of their own accord to the society its constitution and institutions However this book not only develops further arguments for the current debate between liberalism and communitarianism by explaining the emergence of morality and virtue in a market society It also provides new aspects for the present theoretical and methodological controversies over the fundamentals of the social sciences and contributes to the advancement of the modern individualistic approach in social theory In this context it aims especially at an improvement of a sociological model of behaviour

**Knowledge Discovery from Legal Databases** Andrew Stranieri, John Zeleznikow, 2006-03-30 Knowledge Discovery from Legal Databases is the first text to describe data mining techniques as they apply to law Law students legal academics and applied information technology specialists are guided thorough all phases of the knowledge discovery from databases process with clear explanations of numerous data mining algorithms including rule induction neural networks and association rules Throughout the text assumptions that make data mining in law quite different to mining other data are made explicit Issues such as the selection of commonplace cases the use of discretion as a form of open texture transformation using argumentation concepts and evaluation and deployment approaches are discussed at length **The**

**Scepter of Reason** R. Gargarella, 2012-12-06 It is not unusual that formal and informal discussions about the political system its virtues and its many defects conclude in a discussion about impartiality In fact we all discuss impartiality when we talk about the best way to equally consider all viewpoints We show our concerns with impartiality when facing a particular problem we try to figure out the best solution for all of us given our conflicting interests Thus the quest for impartiality tends to be a common objective for most of us although we normally disagree on its particular contents Generally these formal and informal discussions about impartiality conclude in a dispute between different epistemic conceptions That is to say simply that in these situations we begin to disagree about best procedure to define the more neutral impartial solution for all of us

Basically trying to answer this question we tend to fluctuate between two opposite positions According to some the best way to know which is the more impartial solution is to resort to a process of collective reflection in those situations we have to consider the opinions of all those who are possibly affected

*The Concept of Rights* George W. Rainbolt, 2006-03-09 What does it mean to have a right Previous answers to this question fall into two groups interest benefit theories of rights and choice will theories This book proposes an alternative to these traditional views the justified constraint theory of rights which avoids the pitfalls of earlier theories and solves the puzzle of the relational nature of rights The analysis shows that this theory applies without modification to past present and future beings

**Studies in Legal Logic** Jaap Hage, 2006-03-30 Studies in Legal Logic is a collection of nine interrelated papers about the logic epistemology and ontology of law All of the papers were written after the publication of the author's Reasoning with Rules and supplement the issues addressed therein Some of the papers are new others have been revised substantially after the publication of their original versions The emphasis is on analysis not on logical technicalities Studies in Legal Logic contains chapters about the nature of norms the role of coherence in the law the nature of defeasibility the role of dialectics in law and artificial intelligence the statics and dynamics of the law and the consistency of rules Moreover it contains a new simplified and yet more powerful version of Reason based Logic and extensive examples of how it can be used for the analysis of legal reasoning The examples deal with legal theory construction case based reasoning and judicial proof

*Methods of Legal Reasoning* Jerzy Stelmach, Bartosz Brozek, 2006-09-03 Anyone reflecting on the methodology of legal reasoning faces a difficult task The number of methodological theories in jurisprudence and the vast literature on the subject are not the only problems that have to be taken into account Perhaps the most striking difficulty concerning the methodology of legal argument is the heated debate between jurists legal theorists and philosophers of law that has been recurring since at least nineteenth century Therefore a justification is needed for writing yet another book concerning the methods of legal reasoning a book that aims to cover a lot of what has already been proposed in legal theory We believe that there is such a justification First the perspective that we adopt in the present book is unique at least in some respects We venture to look at the methodology of legal reasoning from the outside i e from a more general philosophical perspective while taking into account the hard reality of law This perspective enables us to ask questions about the justification for the methods of legal argument presented Second we do not want to defend one paradigmatic conception of legal reasoning On the contrary we put forward the thesis that there is a plurality of argumentative methods The plurality however does not lead to relativism in legal decision making Third we reject any hierarchy of the methods of legal reasoning and take the view that one can speak only of the precision and flexibility of different methodologies

**Legal Institutions** D.W. Ruiter, 2013-03-14 Building on his contributions to institutional legal theory in Institutional Legal Facts of 1993 Law and Philosophy Library volume 18 the author presents a comprehensive theory of legal institutions To that end the initial theoretical approach which mainly concentrated on problems connected

with legal powers and legal acts acts in law is widened to allow for the development of a theory of legal judgements capable of accounting not only for enacted but also unwritten law legal principles and customary law With the use of the concept of institutional legal facts the structure of legal institutions is analyzed in detail In addition to that a classification of legal institutions is provided Extensive attention is given to logical as well as doctrinal problems connected with a conception of legal validity as the mode of existence of legal conditions rather than as a value of legal norms similar to the truth of propositions The study results in an elaborate conceptual framework for institutional analysis of positive law In a final chapter the analytical potential of the framework is put to the test by applying it to the branch of public international law known as the law of treaties Readership Specialists in legal theory and lawyers interested in theoretical issues particularly in linguistic approaches and questions related to the institutional nature of law

**Contract Law** Mindy Chen-Wishart, 2015 This textbook provides an accessible account of the intricacies of contract law and the problems that can arise during the life of a contract These problems along with their solutions are discussed in detail using everyday language that stimulates thought and reflection

**Constitutional Justice, East and West** Wojciech Sadurski, 2002-12-31 How can the power of constitutional judges to overturn parliamentary choices on the basis of their own reading of the constitution be reconciled with fundamental democratic principles which assign the supreme role in the political system to parliaments This time honoured question acquired a new significance when the post communist countries of Central and Eastern Europe without exception adopted constitutional models in which constitutional courts play a very significant role at least in theory Can we learn something about the relationship between democracy and constitutionalism in general from the meteoric rise of constitutional tribunals in the post communist countries Can the discussions and controversies relating to constitutional review which have been going on for decades in more established democracies illuminate the sources of the strength of constitutional courts in Central and Eastern Europe These questions lie at the center of this book which focuses on the question of constitutional review in postcommunist states from a theoretical and comparative perspective The chapters contained in the book outline the conceptual framework for analyzing the sources the role and the legitimacy of constitutional justice in a system of political democracy From this perspective it assesses the experience of constitutional justice in the West where the model originated and in Central and Eastern Europe where the model has been implanted after the fall of Communism

*Political Friendship and the Good Life* Gianfrancesco Zanetti, 2002-07-31 The main subject of this book is the rather fascinating link between an acceptable concept of political whole and its legal and moral implications When we face this problem we find that widespread categories like happiness and friendship are at the same time necessary and dangerous crucial and elusive In order to make the case against the so called Legal Enforcement of Morals and to grasp the complex relationship between law and morality from a liberal point of view it is not enough to reject a pattern of happiness or of human flourishing from which to draw normative instructions for men and women it must be recognized that



integration of individuals in the comprehensive groups as well as in the political whole itself is not the only valuable option  
The fragile value of a relative lack of integration a right to unhappiness turns out to be eventually what makes the weak but  
decisive moral primacy of liberal societies

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