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THE PRACTICE OF PRINCIPLE

IN DEFENCE OF A
PRAGMATIST APPROACH
TO LEGAL THEORY

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Practice Of Principle In Defence Of A Pragmatist Approach To Legal Theory

Mark McBride, James Penner



Practice Of Principle In Defence Of A Pragmatist Approach To Legal Theory:

The Practice of Principle Jules L. Coleman, 2003 *The Practice of Principle* Jules Coleman, 2000 *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 Oxford Handbook of American Philosophy* Cheryl Misak, 2008-09-25 Cheryl

Misak presents the first collective study of the development of philosophy in North America from the 18th century to the end of the 20th century Twenty six leading experts examine distinctive features of American philosophy trace notable themes and consider the legacy and influence of notable figures This will be the first reference point for future work on the subject and a fascinating resource for anyone interested in modern philosophy or American intellectual history **New Essays on the**

Nature of Legal Reasoning Mark McBride, James Penner, 2022-05-19 This is the first book to bring together distinguished jurisprudential theorists as well as up and coming scholars to critically assess the nature of legal reasoning The volume is divided into 3 parts The first part General Jurisprudence and Legal Reasoning addresses issues at the intersection of general jurisprudence those pertaining to the nature of law itself and legal reasoning The second part Rules and Reasons addresses two concepts central to two prominent types of theory of legal reasoning The essays in the third and final part Doctrine and Practice delve into the mechanics of legal practice and doctrine from a legal reasoning perspective **Rethinking**

Criminal Law Theory Francois Tanguay-Renaud, James Stribopoulos, 2012-01-10 In the last two decades the philosophy of criminal law has undergone a vibrant revival in Canada The adoption of the Charter of Rights and Freedoms has given the Supreme Court of Canada unprecedented latitude to engage with principles of legal moral and political philosophy when elaborating its criminal law jurisprudence Canadian scholars have followed suit by paying increased attention to the philosophical foundations of domestic criminal law Because of Canada's leadership in international criminal law both at the level of the International Criminal Court and of specific war crimes tribunals they have also begun to turn their attention to international criminal law per se This collection seeks to bring all these Canadian voices together for the first time and evidence the fact that criminal law theory is no longer to be associated exclusively with the older British German and American traditions The topics covered include questions of philosophical methodology the legitimate scope of domestic and international criminalization rationales for criminal law defences in both domestic and international law the philosophical

underpinnings of specific crimes and forms of joint responsibility as well as the theorization of criminal procedure and evidence law

ENDORSEMENTS In continental Europe academic commentary on the criminal law has long manifested large philosophical ambitions Less so in common law countries where the dominance of jury trial and the piecemeal development of case law together with the famously robust attitudes of common lawyers have militated against detailed philosophical engagement with doctrine Over the last 20 years or so however new generations of philosophically literate lawyers and legally informed philosophers have overcome the historic resistance Nowhere more so it seems than in Canada where the common law and civilian traditions meet In *Rethinking Criminal Law Theory* Francois Tanguay Renaud and James Stribopoulos have joined with 14 talented Canadian colleagues to showcase the tremendous breadth and depth of their contemporary national contribution to the subject Ranging across topics as diverse as emergency obscenity and insanity these essays without exception insightful and penetrating set a high standard for the rest of us to aspire to John Gardner University of Oxford *Rethinking Criminal Law Theory* is an excellent collection of essays demonstrating the vigour creativity and range of Canadian criminal justice scholarship It covers a wide range of problems and issues both in the domestic and the international context Core questions are examined in depth and new questions are brought to the fore I recommend it very highly to criminal lawyers and philosophers of the criminal law Professor Victor Tadros University of Warwick

Rethinking Criminal Law Theory is packed with outstanding contributions from criminal law theorists who are among the best not only in Canada but in the whole English speaking world Broad and deep in its coverage the collection offers fresh approaches to a wide range of cutting edge issues in the field It provides a resource readers will come back to repeatedly Stuart Green Professor of Law and Justice Nathan L Jacobs Scholar Rutgers University

[Philosophy of Law, Theories, Examples and Human Rights](#) Charalampos Stamelos, 2024-08-13 The book *Philosophy of Law* presents relevant theories puts emphasis on the analysis of the branches of law and of basic human rights and proposes the holistic analysis of law In the first part the author analyses the main elements of each theory natural law legal positivism legal realism legal formalism legal liberalism economic analysis of law critical legal studies The main philosophers of law or supporters of each theory are discussed In the second part of the book human rights and jurisprudence are analysed in the context of public law criminal law e.g. death penalty private law and international law The holistic analysis of law is proposed as a theory to address modern problems such as poverty climate change the pandemic and other global issues The book is designed primarily for law students teachers and supervisors

[The Oxford Handbook of the New Private Law](#) Andrew S. Gold, John C. P. Goldberg, Daniel B. Kelly, Emily Sherwin, Henry E. Smith, 2020-11-06 The *Oxford Handbook of the New Private Law* promises to help redefine and reinvigorate the subject of private law a domain that includes property contract and tort law as well as intellectual property unjust enrichment and equity It emphasizes cross cutting perspectives and relations between areas of private law with special attention to the doctrines and structures of the law an approach now known as the New Private Law

This perspective includes explanation justification and criticism of existing law reflecting the conviction of the editors that it makes sense to know what the law is in order to be in a position to criticize and reform it The Handbook will be an essential resource for legal scholars interested in the future of this important field **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 *Neutrality and Theory of Law* Jordi Ferrer Beltrán,José Juan Moreso,Diego M. Papayannis,2013-04-03 This book brings together twelve of the most important legal philosophers in the Anglo American and Civil Law traditions The book is a collection of the papers these philosophers presented at the Conference on Neutrality and Theory of Law held at the University of Girona in May 2010 The central question that the conference and this collection seek to answer is Can a theory of law be neutral The book covers most of the main jurisprudential debates It presents an overall discussion of the connection between law and morals and the possibility of determining the content of law without appealing to any normative argument It examines the type of project currently being held by jurisprudential scholarship It studies the different approaches to theorizing about the nature or concept of law the role of conceptual analysis and the essential features of law Moreover it sheds some light on what can be learned from studying the non essential features of law Finally it analyzes the nature of legal statements and their truth values This book takes the reader a step further to understanding law **Oxford Studies in Philosophy of Law Volume 5** ,2024-08-07

Oxford Studies in Philosophy of Law is a forum for some of the best new philosophical work on law by both senior and junior scholars from around the world The essays range widely over issues in general jurisprudence the nature of law adjudication and legal reasoning the philosophical foundations of specific areas of law from criminal law to evidence to international law

the history of legal philosophy and related philosophical topics that illuminate the problems of legal theory OSPL will be essential reading for philosophers academic lawyers political scientists and historians of law who wish to keep up with the latest developments in this flourishing field Reason and Restitution Charlie Webb,2016 In law gains like losses don't always lie where they fall That there exists a body of law dealing with liability for gains is now settled and the circumstances in which the law requires defendants to give up their gains are well documented in the work of unjust enrichment lawyers The same cannot be said however of the reasons for ordering restitution of such gains It is often suggested that unjust enrichment's existence can be demonstrated without inquiry into these reasons into the principles of justice it represents and invokes Yet while we can indeed show that there exists a body of claims dealing with the recovery of mistaken payments and the like without going on to inquire into their rationale the same cannot be said for unjust enrichment's existence as a distinct ground of such claims For if unjust enrichment exists as a body of like cases and claims truly independent of contract and tort then it does so by virtue of the distinct reasons it identifies and to which these claims respond Reason and Restitution offers an analysis of the reasons which support and shape claims in unjust enrichment and how these reasons bear on the law's application and development The identity of these reasons matters since it establishes how and to what extent unjust enrichment really is independent of contract and tort giving us a clearer understanding of unjust enrichment's relationship to these and other concepts and categories But more importantly it matters to those charged with the practical tasks of deciding cases and making laws for it is these reasons alone which can direct how judges and legislators ought respond to these claims *Liability of Corporate Groups and Networks* Christian A. Witting,2018-01-11 Discusses the nature of corporate groups and networks and provides arguments for rules extending liability beyond insolvent entities

Elucidating Law Julie Dickson,2022 In *Elucidating Law* Julie Dickson addresses questions concerning the methodology of legal philosophy and advocates that legal philosophers should espouse an Indirectly Evaluative Legal Philosophy This approach can facilitate legal philosophers understanding of aspects of the nature of law without regarding law as inherently morally valuable **Idea and Methods of Legal Research** P. Ishwara Bhat,2019-09-05 Legal research examines subject matter enshrouded in social circumstances in order to conceptualize theories and prepare a future course of action This dynamic inter disciplinary and labyrinthine character of legal research requires researchers to be fluid eclectic and analytical in their approach Idea and Methods of Legal Research unearths how the thinking process is to be streamlined in research how a theme is built on the basis of comprehensive and intensive study and the paths through which notions of objectivity feminism ethics and purposive character of knowledge are to be understood The book first explains the meaning evolution and scope of legal research and discusses objectivity and ethics in legal research It engages with the requirements advantages and limits of various doctrinal and non doctrinal methods and tools and the points to be considered in selecting a suitable method or combination of methods It highlights analytical historical philosophical comparative qualitative and

quantitative methods of legal research The book then goes on to discuss the use of multi method legal research policy research action research and feminist legal research and finally reflects on research based critical legal writing as opposed to client related legal writing This book thus is a comprehensive answer to key questions one faces in legal research

Without Trimmings Mark McBride, Visa AJ Kurki, 2022-05-02 Professor Matthew Kramer is one of the most important legal philosophers of our time even if the label legal philosopher does not do justice to the breadth of his work This collection of essays brings together esteemed philosophers as well as junior scholars to critically assess Kramer s philosophy The contributions focus on Kramer s work on legal philosophy metaethics normative ethics and political philosophy The volume is divided into six parts each focusing on different aspect of Kramer s work The first part Rights and Right holding contains five essays addressing Kramer s work on rights and right holding including the Hohfeldian analysis and the interest theory of right holding The four essays in the second part General Jurisprudence focus on Kramer s work in general jurisprudence from the compatibility of legal positivism with universal legal error to his robust defense of inclusive legal positivism concluding with reflections on his writings on the rule of law The third part General Matters of Ethics contains two essays addressing Kramer s metaethical work on moral realism as a moral doctrine The fourth and fifth parts Freedom and Liberalism have four essays falling within political philosophy probing Kramer s work on negative freedom and political liberalism respectively The sixth part Applied Ethics contains two essays on Kramer s work on capital punishment and freedom of expression The collection is rounded off by reflections on and replies to the contributions by Kramer himself

The Concept of Law Herbert Lionel Adolphus Hart, Leslie Green, 2012-10-25 Fifty years on from its first publication The Concept of Law is still the starting point for the study of legal philosophy and is widely heralded as a classic work of modern philosophy This third edition features a new introduction by Leslie Green looking at Hart s work from the perspective of modern jurisprudence

Law and Politics Mauro Zamboni, 2007-10-25 Politics and the political discourse occupy a central position in the modern legal theoretical discussion The goal of this book is to reconstruct and to classify according to ideal typical models the different positions taken by the major contemporary legal theories as to whether and how law relates to politics In particular attention is focused on Kelsen Hart Finnis Critical Legal Studies Law and Economics and legal realisms Though reaching different conclusions these major legal theories have some common points of departure as to the law and politics issue law and politics tend to keep the features of being two different phenomena as well as of presenting regions of interaction although with differences as to extent and intensity Finally a possible explanation is presented as to why such different legal theories though often reaching diametric results somehow must still begin from these common basic points The explanation for this is found in the specific character of law in the modern state and the welfare state in particular

Agency, Morality and Law Joshua Jowitt, 2023-01-12 How does law possess the normative force it requires to direct our actions This book argues that this seemingly innocuous question is of central importance to the philosophy of law and by

extension of the very concept of law itself. It advances a position grounded in the secular natural law tradition and in doing so addresses the two success criteria for this position head on. Firstly that commitment to the existence of a supreme moral principle is required. Secondly that any supreme moral principle must be identifiable through human reason. The book argues that these conditions are met by Alan Gewirth's Principle of Generic Consistency (PGC) which through a dialectically necessary argument locates the existence of universally applicable moral norms in the concept of agency. Given the very purpose of law is to guide action, legal norms must be located in a unified hierarchy of practical reason. It follows that if law is to succeed in claiming to be capable of guiding our action, moral permissibility with reference to the PGC is a necessary condition of a rule's legal validity. This strong theory of natural law is defended throughout both against moral sceptics and positions within contemporary legal positivism.

Legal Positivism in a Global and Transnational Age Luca Siliquini-Cinelli, 2019-08-30

A theme of growing importance in both the law and philosophy and socio-legal literature is how regulatory dynamics can be identified that is conceptualised and operationalised and normative expectations met in an age when transnational actors operate on a global plane and in increasingly fragmented and transformative contexts. A reconsideration of established theories and axiomatic findings on regulatory phenomena is an essential part of this discourse. There is indeed an urgent need for discontinuity regarding what we think we know about among other things law, legality, sovereignty and political legitimacy, power relations, institutional design and development and pluralist dynamics of ordering under processes of globalisation and transnationalism. Making an important contribution to the scholarly debate on the subject, this volume features original and much needed essays of theoretical and applied legal philosophy as well as socio-legal accounts that reflect on whether legal positivism has anything to offer to this intellectual enterprise. This is done by discussing whether global and transnational cultural, socio-political, economic and juridical challenges as well as processes of diversification, fragmentation and transformation significantly de-formalise or reinforce or weaken legal positivists' assumptions, claims and methods. The themes covered include but are not limited to absolute and limited state sovereignty, the new international legal positivism, Hartian legal positivism and the normative positivist account, the relationship between modern secularisation, social conventionalism and meta-ontological issues of temporality in postnational jurisprudence, the social positivisation of human rights, the formation and content of *jus cogens* norms, feminist critique, the global and transnational migration of principles of justice and morality, the Vienna Convention on the Law of Treaties, rule of interpretation and the responsibility of transnational corporations.

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