

# *THE PATH OF THE LAW AND ITS INFLUENCE*

The Legacy of  
Oliver Wendell Holmes, Jr.

Edited by  
STEVEN J. BURTON

CAMBRIDGE STUDIES IN  
PHILOSOPHY AND LAW

# Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr

**Matthew Adler, Kenneth Einar Himma**



## **Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr:**

The Path of the Law and its Influence Steven J. Burton, 2000-05-18 Oliver Wendell Holmes Jr 1841 1935 is arguably the most important American jurist of the twentieth century and his essay *The Path of the Law* first published in 1898 is the seminal work in American legal theory This volume brings together some of the most distinguished legal scholars from the United States and Canada to examine competing understandings of *The Path of the Law* and its implications for contemporary American jurisprudence For the reader's convenience the essay is republished in an Appendix The book will be of interest to professionals and students in the philosophy history economics and sociology of law *The Legacy of Oliver Wendell Holmes, Jr* Robert Watson Gordon, 1992 On his retirement from the Supreme Court at the age of 90 in 1932 Oliver Wendell Holmes Jr was celebrated as few judges have ever been beloved and revered as a national treasure Holmes's influence magnified into legend by the attention he has continued to receive has helped to constitute the identity of the legal profession the conception of the judicial function and the role of the public intellectual in modern American culture The present collection of seven essays attempts to view Holmes's work apart from the restricted framework supplied by traditional jurisprudence by reassessing Holmes as an intellectual a legal theorist and an iconic public figure and culture hero Each essay adds something new and distinctive to the scholarly controversies that have surrounded Holmes for over a century J W Burrow begins the volume by looking at Holmes's relations to various strands of Victorian social thought the next three essays approach each from a different angle the problem of Holmes's relationship to formalism or classical orthodoxy in legal thought Morton Horwitz provides a sweeping reassessment of the development of Holmes's legal thinking between the early period of the 1870s and 1880s and *The Path of the Law* in 1897 Mathias Reimann presents the first thorough exploration of Holmes's use misuse more often of German philosophy notably his discrediting in *The Common Law* of the legacy of Kant and Hegel Stephen Diamond approaches Holmes's jurisprudence and his broader social and personal views by another original pathway his legal opinions in taxation cases and his private views on taxation The final three essays consider Holmes as a man of letters and representative man of the American scene both as he created himself and as he was created by others Robert Ferguson shows how Holmes deliberately went about the work of fashioning the public persona of a judge Peter Gibian shows how Holmes's construction of his public style was formed as a deliberate reaction against that of his famous father Dr Oliver Wendell Holmes Sr The final essay by David Hollinger has a dual purpose to ask what Holmes meant by the scientific way of looking at the world and to discover how Holmes came to be such a hero to liberal Jewish intellectuals like Felix Frankfurter and Harold J Laski BOOK JACKET Title Summary field provided by Blackwell North America Inc All Rights Reserved *Oliver Wendell Holmes Jr., Pragmatism and Neuroscience* Jay Schulkin, 2019-08-17 This book explores the cultures of philosophy and the law as they interact with neuroscience and biology through the perspective of American jurist Oliver Wendell Holmes Jr and the pragmatist tradition of John Dewey Schulkin proposes that human

problem solving and the law are tied to a naturalistic realistic and an anthropological understanding of the human condition. The situated character of legal reasoning given its complexity like reasoning in neuroscience can be notoriously fallible. Legal and scientific reasoning is to be understood within a broader context in order to emphasize both the continuity and the porous relationship between the two. Some facts of neuroscience fit easily into discussions of human experience and the law. However it is important not to oversell neuroscience a meeting of law and neuroscience is unlikely to prove persuasive in the courtroom any time soon. Nevertheless as knowledge of neuroscience becomes more reliable and more easily accepted by both the larger legislative community and in the wider public through which neuroscience filters into epistemic and judicial reliability the two will ultimately find themselves in front of a judge. A pragmatist view of neuroscience will aid and underlie these events.

Oliver Wendell Holmes Jr. and Legal Logic Frederic R. Kellogg, 2018-03-16. With Oliver Wendell Holmes Jr and Legal Logic Frederic R Kellogg examines the early diaries reading and writings of Justice Oliver Wendell Holmes Jr 1841-1935 to assess his contribution to both legal logic and general logical theory. Through discussions with his mentor Chauncey Wright and others Holmes derived his theory from Francis Bacon's empiricism influenced by recent English debates over logic and scientific method and Holmes's critical response to John Stuart Mill's 1843 *A System of Logic*. Conventional legal logic tends to focus on the role of judges in deciding cases. Holmes recognized input from outside the law the importance of the social dimension of legal and logical induction how opposing views of many minds may converge. Drawing on analogies from the natural sciences Holmes came to understand law as an extended process of inquiry into recurring problems. Rather than vagueness or contradiction in the meaning or application of rules Holmes focused on the relation of novel or unanticipated facts to an underlying and emergent social problem. Where the meaning and extension of legal terms are disputed by opposing views and practices it is not strictly a legal uncertainty and it is a mistake to expect that judges alone can immediately resolve the larger issue.

Law Without Values Albert W. Alschuler, 2000. Albert Alschuler's study of Holmes is very different from other books about him in that it is an exercise in debunking him.

**Law and Authority under the Guise of the Good** Veronica Rodriguez-Blanco, 2014-12-01. The received view on the nature of legal authority contains the idea that a sound account of legitimate authority will explain how a legal authority has a right to command and the addressee a duty to obey. The received view fails to explain however how legal authority truly operates upon human beings as rational creatures with specific psychological makeups. This book takes a bottom up approach beginning at the microscopic level of agency and practical reason and leading to the justificatory framework of authority. The book argues that an understanding of the nature of legal normativity involves an understanding of the nature and structure of practical reason in the context of the law and advances the idea that legal authority and normativity are intertwined. This point can be summarised thus if we are able to understand both how the agent exercises his or her practical reason under legal directives and commands and how the agent engages his or her practical reason by following legal rules grounded on reasons for

actions as good making characteristics then we can fully grasp the nature of legal authority and legal normativity Using the philosophies of action enshrined in the works of Elisabeth Anscombe Aristotle and Thomas Aquinas the study explains practical reason as diachronic future directed intention in action and argues that this conception illuminates the structure of practical reason of the legal rules addressees The account is comprehensive and enables us to distinguish authoritative and normative legal rules in just and good legal systems from apparent authoritative and normative legal rules of evil legal systems At the heart of the book is the methodological view of a practical turn to elucidate the nature of legal normativity and authority

*The Rule of Recognition and the U.S. Constitution* Matthew Adler, Kenneth Einar Himma, 2009-07-20 The Rule of Recognition and the U S Constitution is a volume of original essays that discuss the applicability of Hart s rule of recognition model of a legal system to U S constitutional law The contributors are leading scholars in analytical jurisprudence and constitutional theory including Matthew Adler Larry Alexander Mitchell Berman Michael Dorf Kent Greenawalt Richard Fallon Michael Green Kenneth Einar Himma Stephen Perry Frederick Schauer Scott Shapiro Jeremy Waldron and Wil Waluchow The volume makes a contribution both in jurisprudence using the U S as a test case that highlights the strengths and limitations of the rule of recognition model and in constitutional theory by showing how the model can illuminate topics such as the role of the Supreme Court the constitutional status of precedent the legitimacy of unwritten sources of constitutional law the choice of methods for interpreting the text of the Constitution and popular constitutionalism

*Pragmatic Modernism* Lisi Schoenbach, 2014-11-28 Pragmatic Modernism traces an alternative strain of modernism influenced by pragmatist philosophy and characterized by its commitment to gradualism continuity and habit rather than spectacular events and radical rupture Through original readings of Gertrude Stein Henry James Marcel Proust and Oliver Wendell Holmes Jr this study rediscovers an overlooked cultural and social matrix and suggests an expanded range of responses to modernity

**Death and Dying in the Working Class, 1865-1920** Michael K. Rosenow, 2015-04-15 Michael K Rosenow investigates working people s beliefs rituals of dying and the politics of death by honing in on three overarching questions How did workers their families and their communities experience death Did various identities of class race gender and religion coalesce to form distinct cultures of death for working people And how did people s attitudes toward death reflect notions of who mattered in U S society Drawing from an eclectic array of sources ranging from Andrew Carnegie to grave markers in Chicago s potter s field Rosenow portrays the complex political social and cultural relationships that fueled the United States industrial ascent The result is an undertaking that adds emotional depth to existing history while challenging our understanding of modes of cultural transmission

**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

*The Inception of Modern Professional Education* Bruce A. Kimball, 2009-06-15 Christopher C Langdell 1826 1906 is one of the most influential figures in the history of American professional education As dean of Harvard Law School from 1870 to 1895 he conceived designed and built the educational model that leading professional schools in virtually all fields subsequently emulated In this first full length biography of the educator and jurist Bruce Kimball explores Langdell s controversial role in modern professional education and in jurisprudence Langdell founded his model on the idea of academic meritocracy According to this principle scholastic achievement should determine one s merit in professional life Despite fierce opposition from students faculty alumni and legal professionals he designed and instituted a formal system of innovative policies based on meritocracy This system s components included the admission requirement of a bachelor s degree the sequenced curriculum and its extension to three years the hurdle of annual examinations for continuation and graduation the independent career track for professional faculty the transformation of the professional library into a scholarly resource the inductive pedagogy of teaching from cases the organization of alumni to support the school and a new highly successful financial strategy Langdell s model was subsequently adopted by leading law schools medical schools business schools and the schools of other professions By the time of his retirement as dean at Harvard Langdell s reforms had shaped the future model for professional education throughout the United States

Global Lawmaking and Social Change Gregor Novak, 2024-12-12 Customary international law is a widely recognised modality of international lawmaking It underpins all norms of international law and shapes all aspects of global society Yet familiar approaches to customary international law struggle to answer basic questions about its role operation and prospects Pursuing an interdisciplinary approach this book offers an alternative perspective on customary international law as a dynamic and multifaceted social phenomenon and idea It explores customary international lawmaking in different social contexts including the regulation of armed conflict the treatment of the other and the management of global environmental risks Focusing on the varieties of customary international law it identifies four types of customary international law norms and explores their roles and implications Critically revisiting a classic topic of international law the book provides a tool for understanding and shaping global lawmaking and social change in a rapidly changing international legal order

**Knowing What the Law Is** Alexander Somek, 2021-08-26 This book provides a selective and somewhat cheeky account of prominent positions in legal theory such as American legal realism modern legal positivism sociological systems theory institutionalism and critical legal

studies It presents a relational approach to law and a new perspective on legal sources The book explores topics of legal theory in a playful manner It is written and composed in a way that refutes the widespread prejudice that legal theory is a dreary subject with a cast of characters that occasionally interact in order to illustrate the claims of the book Legal experts claim to know what the law is Legal theory or jurisprudence explores whether such claims are warranted The discipline first emerged at the turn of the 20th century when the self confidence of both legal scholarship and judicial craftsmanship became severely shattered but the crisis continues to this day Nussbaum and Law Robin West,2017-07-05 The essays collected in this volume reflect the profound impact of Martha Nussbaum s philosophical writings on law and legal scholarship The capabilities approach that she has largely authored has influenced the approach scholars take to the law of disabilities both in the United States and in Canada as well as to international human rights and to domestic private law s protections of vulnerable populations Her analyses of the relationship between our emotions and our thought and action has triggered a re assessment of the legal regulation and recognition of emotion in a range of fields most particularly in the field of criminal law and her writing on the nature of dignity has informed an understanding of the emerging civil rights of gay and lesbian citizens worldwide Our appreciation of the role of narrative in legal thought and discourse and the contributions of literature to law and legal culture have also been broadened and deepened by her contributions Taken together and including the introduction by the editor the essays collected in this volume demonstrate the far reaching impact of Nussbaum s philosophical oeuvre Consumer Protection in the Age of the 'Information Economy' Jane K. Winn,2013-01-28 This volume considers the impact of technological innovation on the foundations of consumer advocacy contracting behaviour control over intellectual capital and information privacy A unique and timely perspective on these issues is presented by internationally renowned experts who provide novel approaches to the question of what consumer protection might consist of in the context of technological innovation **A Modern Legal Ethics** Daniel Markovits,2011-01-17 Daniel Markovits proposes here a wholesale renovation of legal ethics one that contributes to ethical thought generally His book rejects the casuistry that dominates contemporary applied ethics in favour of an interpretive method that may be mimicked in other areas

Democracy and Conflict Frederic R. Kellogg,2023-12-15 The economist Kenneth Arrow proved in 1951 that a society of diverse individual preferences could only be ordered by dictatorship His impossibility theorem is still an axiom of contemporary welfare economics and has never been seriously challenged The American philosopher John Dewey who died in 1952 had claimed that voting and electoral mechanisms do not define democratic self government His broad conception of social conflict addresses preference diversity and resolves Arrow s impossibility Since the 1980s political scientists have focused on decision through democratic deliberation Dewey saw that conversation alone is inadequate for resolution of conflicts in a democracy Conflict is accompanied by discourse but preferences are grounded in habits Social habits resist adjustment in response to discourse alone but demonstrably adjust in the process of conflict resolution Preference conflict is

distinguished from Marxist and later models as a discovery and transformation process. It advances an original updated theory of social conflict in a democracy relevant to today's problematic situations from discrimination to climate change and political polarization.

**The Fragility of Goodness** Martha C. Nussbaum, 2001-01-15 This book first published in 2001 is a study of ancient views about moral luck.

Constitutionalism and Legal Reasoning Massimo La Torre, 2007-04-10 This book which consists of three chapters and two appendices is intended to connect subjects that have usually been considered as detached or not strongly connected: constitutionalism, legal argumentation and legal ethics. Its main contention is that contemporary constitutionalism pushes towards a new style of legal reasoning which needs to take into account moral criteria and principles and that eventually the interpretative and moralist approach will lead to a somewhat unorthodox and less authoritarian concept of law. A constitution to be taken seriously and as a distinct and superior source of law will end up referring to some sort of constitutional justice or judicial review. And constitutional reasoning and justice need to make recourse to principles but principles to be given an operative content should be elaborated through some form of moral reasoning. This reasoning however if it does not want to betray the spirit of constitutional democracy and the very idea of a constitution as a special moment of self-determination could not be just Platonism, a cognitivism without roots in the practice of public discourse and deliberation. So that constitutionalism will not really do without a public sphere and some activism of the latter. But if this is so the traditional concept of law based on hierarchy, commands, prescription, sanction and in the last instance violence becomes obsolete. A law which is a command cannot be congruent with a practice ruled by discourse that I argue with constitution.

*The Legal Relation* Alexander Somek, 2017-10-12 This introductory series of books provides concise studies of the philosophical foundations of law of perennial topics in the philosophy of law and of important and opposing schools of thought. The series is aimed principally at students in philosophy, law and political science.



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## **Table of Contents Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr**

1. Understanding the eBook Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  - The Rise of Digital Reading Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  - Advantages of eBooks Over Traditional Books
2. Identifying Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  - User-Friendly Interface
4. Exploring eBook Recommendations from Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr

- Personalized Recommendations
  - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr User Reviews and Ratings
  - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr and Bestseller Lists
5. Accessing Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr Free and Paid eBooks
    - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr Public Domain eBooks
    - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr eBook Subscription Services
    - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr Budget-Friendly Options
  6. Navigating Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr eBook Formats
    - ePub, PDF, MOBI, and More
    - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr Compatibility with Devices
    - Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr Enhanced eBook Features
  7. Enhancing Your Reading Experience
    - Adjustable Fonts and Text Sizes of Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
    - Highlighting and Note-Taking Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
    - Interactive Elements Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  8. Staying Engaged with Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
    - Joining Online Reading Communities
    - Participating in Virtual Book Clubs
    - Following Authors and Publishers Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  9. Balancing eBooks and Physical Books Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
    - Benefits of a Digital Library
    - Creating a Diverse Reading Collection Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  10. Overcoming Reading Challenges
    - Dealing with Digital Eye Strain
    - Minimizing Distractions
    - Managing Screen Time
  11. Cultivating a Reading Routine Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
    - Setting Reading Goals Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
    - Carving Out Dedicated Reading Time

12. Sourcing Reliable Information of Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  - Fact-Checking eBook Content of Path Of The Law And Its Influence The Legacy Of Oliver Wendell Holmes Jr
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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