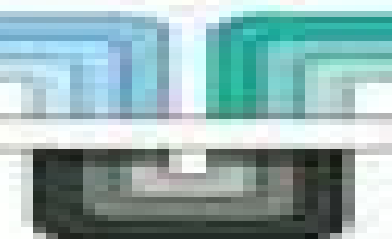


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Reason Democracy Society A Treatise On The Basis Of Legal Thinking

Enrico Pattaro



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Reason, Democracy, Society Sebastián Urbina, 2013-03-09 Reason Democracy Society deals with basic points of legal theory and philosophy of law The main contention of the book relates to the insufficiencies of the legal positivistic approach Some of its claims are that we must sharply separate what the law is from what the law ought to be and that we can know what the law is without appealing to meta legal considerations These and other claims are criticized The author shows that with the legal positivistic approach we cannot know in all cases what the law is if that is equated to the rules posited by the legislator He also challenges H L A Hart's and MacCormick's points of view amongst others about the characteristic corner stones of legal positivism Some other issues relate to human rights legal rationality and efficiency and ethics This book will be of interest to philosophers concerned with law or ethics those concerned with justice in modern society and to jurists and law students

A Treatise of Legal Philosophy and General Jurisprudence Enrico Pattaro, 2007-10-08 A Treatise of Legal Philosophy and General Jurisprudence is the first ever multivolume treatment of the issues in legal philosophy and general jurisprudence from both a theoretical and a historical perspective The work is aimed at jurists as well as legal and practical philosophers Edited by the renowned theorist Enrico Pattaro and his team this book is a classical reference work that would be of great interest to legal and practical philosophers as well as to jurists and legal scholar at all levels The work is divided The theoretical part published in 2005 consisting of five volumes covers the main topics of the contemporary debate the historical part consisting of six volumes Volumes 6-8 published in 2007 Volumes 9 and 10 published in 2009 Volume 11 published in 2011 and volume 12 forthcoming in 2012 2013 accounts for the development of legal thought from ancient Greek times through the twentieth century The entire set will be completed with an index Volume 1 The Law and the Right a Reappraisal of the Reality that ought to be by Enrico Pattaro This work brings out and recovers the normative dimension of law called the reality that ought to be placing within this reality the idea of what is right Part I reconstructs the current as well as the traditional civil law conception of the reality that ought to be and raises some critical theoretical issues Part II introduces some basic concepts on language and behaviour and presents a conception of norms as beliefs Part III aims to find explanations for the idea of a reality that ought to be Part IV consists of inquiries focussed on Homeric epic the natural law school and the normativistic view of positive law

Theory of Legal Principles Humberto Avila, 2007-09-26 This book intends to help understand and apply principles and rules better Its target is to keep the distinction between principles and rules whereas structuring it on different foundations than those jurisprudence ordinarily employs The first object of investigation is the phenomenon of interpretation in Law in order to understand that the classification of certain normative species as either principles or rules depends in the first place on axiological connections that are not ready prior to the interpretation process that unveils them Then a definition of principles is proposed aiming to understand what their unique characteristics are when compared to other norms of the legal order Thirdly the conditions for the application of principles and rules are examined

which are the normative applicative postulates It will be shown on one hand that principles not only explicit values but also set forth precise species of behaviors though indirectly on the other hand the creation of conducts by rules is also to be weighed even though the behavior set forth in advance may be overcome depending on the accomplishment of a few requirements That will surpass both the mere praise of values which does not create behaviors and the automatic application of rules A model is proposed to explain the normative species which includes structured weighing on the application process while encompassing substantive criteria of justice in its argument through the analytical reconstruction of the concrete use of normative postulates especially those of reasonableness and proportionality All of that is done with a focus on the ability of intersubjective control of the argumentation which often degenerates into capricious decisionism Current Legal Theory, 1998 **Forthcoming Books** Rose Arny, 1997-04 Whitaker's Books in Print, 1998 *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

Extending Deontic Logic for the Formalisation of Legal Rules L.L. Royakkers, 2013-04-17 This book describes extensions of deontic logic Deontic logic is a branch of philosophical logic involving reasoning with norms obligations prohibitions and permissions The extensions concern the logical structure of legal rules and legal reasoning Their function is to improve the representation of legal knowledge and enhance deontic logic through increased expressibility The resulting formulas acquire new meanings not expressible in standard deontic logic which are subject to fresh interpretations The author offers an extensive analysis of the representation of actors to whom the norms are directed and authorities who enact the norms Moreover a distinction is made between enactment and applicability A modality of enactment can be used to express inconsistent enacted norms in a consistent way An authority hierarchy is introduced to filter out the applicable norms from the set of enacted norms Some related philosophical questions will be discussed regarding the applications of formalisms that are intrinsic to practical science with respect to consistency and universality The formalisms and applications considered here are relevant for law philosophy and computer science with a special focus on the improvement of legal expert systems and intelligent support for legal professionals Objectivity in Law and Legal Reasoning Jaakko Husa, Mark Van

Hoecke,2013-01-28 Legal theorists consider their discipline as an objective endeavour in line with other fields of science. Objectivity in science is generally regarded as a fundamental condition informing how science should be practised and how truths may be found. Objective scientists venture to uncover empirical truths about the world and ought to eliminate personal biases, prior commitments and emotional involvement. However, legal theorists are inevitably bound up with a given legal culture. Consequently, their scholarly work derives at least in part from this environment and their subtle interaction with it. This book questions critically, in novel ways and from various perspectives, the possibilities of objectivity of legal theory in the twenty-first century. It transpires that legal theory is unavoidably confronted with varying conceptions of law, underlying ideologies, approaches to legal method, argumentation and discourse etc, which limit the possibilities of objectivity in law and in legal reasoning. The authors of this book reveal some of these underlying notions and discuss their consequences for legal theory.

A Theory of Precedent Raimo Siltala,2000-11-30 Analytical jurisprudence has been mostly silent on the role of precedent in legal adjudication. What is the content of a judge's precedent ideology or the rule of precedent recognition by means of which the ratio of a case is to be distinguished from mere dicta? In this study, the author identifies six types of judicial precedent ideology among them: judicial legislation, systemic construction of the underlying reasons of law in the Dworkinian sense and a radical re-evaluation of the merits of a prior case in later adjudication as envisioned by the American Realists. These competing models are tested against judicial experiences in the UK, US, France, Italy, Germany and Finland. By this means, Lon Fuller's famous internal morality of law is shown to function rather poorly in the context of precedents and the author therefore suggests a redefinition of the rule which makes it work for precedent. This in turn leads the author to confront fundamental questions about the normative nature of law: Is Kelsen's grundnorm or Hart's ultimate rule of recognition a valid rule in the image of legal rules proper or is it merely a social fact observable only in the practices and behaviour of judges and other officials? The author claims that Hart is caught between Kelsen and J. L. Borges, the late Argentinian fabulist, in so far as the ontology and epistemology of the rule of recognition are concerned. This leads the author to the conclusion that the two predicaments affecting analytical positivism, namely the threat of endless self-referentiality or infinite regress, can only be accounted for by means of recourse to the philosophy of deconstruction as posited by Jacques Derrida.

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