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Edited by Francis J. Mootz
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ON PHILOSOPHY IN AMERICAN LAW

In recent years, there has been tremendous growth of interest in the connections between law and philosophy, but the diversity of approaches that claim to be working at the intersection of these disciplines might suggest that this area of inquiry is so fractured as to be incoherent. This volume gathers leading scholars to provide focused and straightforward articulations of the role that philosophy might play at this juncture of the history of American legal thought.

The volume marks the seventy-fifth anniversary of Karl Llewellyn's essay "On Philosophy in American Law" in which he rehearsed the broad development of American jurisprudence, diagnosed its contemporary failings, and then charted a productive path opened by the variegated scholarship that claimed to initiate a realistic approach to law and legal theory. The essays are written in the spirit of Llewellyn's article: they are succinct and direct arguments about the potential for bringing law and philosophy together.

Francis J. Mootz III is the author of *Rhetorical Knowledge in Legal Practice and Critical Legal Theory* (2006) and *Law, Rhetoric and Hermeneutics* (to be published in 2010). He is editor of *Gadamer and Law* (2007) and *Nietzsche and Law* (2008, with Peter Goodrich). He is also the author of a law casebook, *Commercial Transactions: Sales, Leases, and Computer Information* (2nd ed., 2008, with David Frisch and Peter Alces). He has published numerous articles in a variety of journals, including law reviews and peer-reviewed journals. Professor Mootz is a regular presenter at academic symposia focusing on issues of legal theory. He is a member of the editorial advisory board of the interdisciplinary journals *Law, Culture and the Humanities*, and *International Journal for the Semiotics of Law* and is a member of the Organizing Committee of the Association for the Study of Law, Culture and the Humanities. He is an active member of the Association of American Law Schools, the North American Society for Philosophical Hermeneutics, the Law and Society Association, the Society for Ricoeur Studies, and the Rhetoric Society of America.

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My Philosophy of Law, 1941 **My philosophy of law : credos of sixteen American scholars**, 1941 Review of My Philosophy of Law Felix S. Cohen, 1943 The Later Works of John Dewey, Volume 14, 1925 - 1953 John Dewey, 2008

This volume republishes forty four essays reviews and miscellaneous pieces from 1939 1940 and 1941 In his Introduction R W Sleeper characterizes the contents of this volume as vintage Dewey Ranging widely over problems of theory and practice they reveal him commencing his ninth decade at the peak of his intellectual powers Nature in Experience Dewey s reply to Morris R Cohen and William Ernest Hocking is a model of clarity and responsiveness writes Sleeper perhaps his clearest statement of why it is that metaphysics does not play the fundamental role for him that it had regularly played for his predecessors

American Legal Realism and Empirical Social Science John Henry Schlegel, 2000-11-09 John Henry Schlegel recovers a largely ignored aspect of American Legal Realism a movement in legal thought in the 1920s and 1930s that sought to bring the modern notion of empirical science into the study and teaching of law In this book he explores individual Realist scholars efforts to challenge the received notion that the study of law was primarily a matter of learning rules and how to manipulate them He argues that empirical research was integral to Legal Realism and he explores why this kind of research did not finally become a part of American law school curricula Schlegel reviews the work of several prominent Realists but concentrates on the writings of Walter Wheeler Cook Underhill Moore and Charles E Clark He reveals how their interest in empirical research was a product of their personal and professional circumstances and demonstrates the influence of John Dewey s ideas on the expression of that interest According to Schlegel competing understandings of the role of empirical inquiry contributed to the slow decline of this kind of research by professors of law Originally published in 1995 A UNC Press Enduring Edition UNC Press Enduring Editions use the latest in digital technology to make available again books from our distinguished backlist that were previously out of print These editions are published unaltered from the original and are presented in affordable paperback formats bringing readers both historical and cultural value

The Oxford Handbook of Legal History Markus D. Dubber, Christopher Tomlins, 2018-07-26 Some of the most exciting and innovative legal scholarship has been driven by historical curiosity Legal history today comes in a fascinating array of shapes and sizes from microhistory to global intellectual history Legal history has expanded beyond traditional parochial boundaries to become increasingly international and comparative in scope and orientation Drawing on scholarship from around the world and representing a variety of methodological approaches areas of expertise and research agendas this timely compendium takes stock of legal history and methodology and reflects on the various modes of the historical analysis of law past present and future Part I explores the relationship between legal history and other disciplinary perspectives including economic philosophical comparative literary and rhetorical analysis of law Part II considers various approaches to legal history including legal history as doctrinal intellectual or social history Part III focuses on the interrelation between legal

history and jurisprudence by investigating the role and conception of historical inquiry in various models schools and movements of legal thought Part IV traces the place and pursuit of historical analysis in various legal systems and traditions across time cultures and space Finally Part V narrows the Handbooks focus to explore several examples of legal history in action including its use in various legal doctrinal contexts

Introducing Pragmatism Cornelis de Waal,2021-08-30 This unique introduction fully engages and clearly explains pragmatism an approach to knowledge and philosophy that rejects outmoded conceptions of objectivity while avoiding relativism and subjectivism It follows pragmatism s focus on the process of inquiry rather than on abstract justifications meant to appease the skeptic According to pragmatists getting to know the world is a creative human enterprise wherein we fashion our concepts in terms of how they affect us practically including in future inquiry This book fully illuminates that enterprise and the resulting radical rethinking of basic philosophical conceptions like truth reality and reason Author Cornelis de Waal helps the reader recognize understand and assess classical and current pragmatist contributions from Charles S Peirce to Cornel West evaluate existing views from a pragmatist angle formulate pragmatist critiques and develop a pragmatist viewpoint on a specific issue The book discusses Classical pragmatists including Peirce James Dewey and Addams Contemporary figures including Rorty Putnam Haack and West Connections with other twentieth century approaches including phenomenology critical theory and logical positivism Peirce s pragmatic maxim and its relation to James s Will to Believe Applications to philosophy of law feminism and issues of race and racism

The Oxford Handbook of Dewey Steven Fesmire,2019-08-19 John Dewey was the foremost philosophical figure and public intellectual in early to mid twentieth century America He is still the most academically cited Anglophone philosopher of the past century and is among the most cited Americans of any century In this comprehensive volume spanning thirty five chapters leading scholars help researchers access particular aspects of Dewey s thought navigate the enormous and rapidly developing literature and participate in current scholarship in light of prospects in key topical areas Beginning with a framing essay by Philip Kitcher calling for a transformation of philosophical research inspired by Dewey contributors interpret appraise and critique Dewey s philosophy under the following headings Metaphysics Epistemology Science Language and Mind Ethics Law and the Starting Point Social and Political Philosophy Race and Feminist Philosophy Philosophy of Education Aesthetics Instrumental Logic Philosophy of Technology and the Unfinished Project of Modernity Dewey in Cross Cultural Dialogue The American Philosophical Tradition the Social Sciences and Religion and Public Philosophy and Practical Ethics

The Legal Philosophy and Influence of Jeremy Bentham Guillaume Tusseau,2014-06-20 Gathering together an impressive array of legal scholars from around the world this book features essays on Jeremy Bentham s major legal theoretical treatise *Of the Limits of the Penal Branch of Jurisprudence* reassessing Bentham s theories of law as well as his impact on jurisprudence While offering a suggestive picture of contemporary Bentham studies the book provides a thorough examination of concepts such as legal discourse legal norms legal system and subjective legal positions The book

compares Bentham's approach with other landmark theories and the works of major legal philosophers including Austin Hart and Kelsen and explores Bentham's treatise through major trends in contemporary legal thought such as the imperative theory of law deontic logic Scandinavian and American legal realisms the pure theory of law and critical legal thought Resisting any apologetic stance the book elucidates how consistent with Bentham's all encompassing project of utilitarian reform Limits turns out to be and how this sheds light on contemporary modes of governance The book will be great use and interest to scholars and students of contemporary jurisprudence legal theory 19th century philosophy and public law

The Legal Realism of Jerome N. Frank Julius Paul, 2012-12-06 Between the Levite at the gate and the judicial systems of our day is a long journey in courthouse government but its basic structure remains the same law judge and process Of the three process is the most unstable procedure and facts Of the two facts are the most intractable While most of the law in books may seem to center about abstract theories doctrines principles and rules the truth is that most of it is designed in some way to escape the painful examination of the facts which bring parties in a particular case to court Frequently the emphasis is on the rule of law as it is with respect to the negotiable instrument which forbids inquiry behind its face sometimes the emphasis is on men as in the case of the wide discretion given a judge or administrator sometimes on the process as in pleading to a refined issue summary judgment pre trial conference or jury trial designed to impose the dirty work of fact finding on laymen The minds of the men of law never cease to labor at improving process in the hope that some less painful more trustworthy and if possible automatic method can be found to lay open or force litigants to disclose what lies inside their quarrel so that law can be administered with dispatch and decisiveness in the hope that truth and justice will be served

Readings in Jurisprudence and Legal Philosophy Morris Raphael Cohen, Felix S. Cohen, 2002 Legal Positivism Tom D. Campbell, 2016-12-05 Despite persistent criticism from a variety of different perspectives including natural law legal realism and socio legal studies legal positivism remains as an enduring theory of law The essays contained in this volume represent the most balanced responses toward legal positivism and although largely sympathetic the essays do not fail to criticize elements of the tradition wherever appropriate

Rediscovering Fuller W. J. Witteveen, Wibren van der Burg, 1999 Lon Fuller one of the great American jurists of this century is often remembered only for his stand on the morality of law in the Fuller Hart debate Rediscovering Fuller considers the full range of Fuller's writings from his early engagement with legal fictions and his critique of legal positivism to his later work on implicit law and the art of institutional design Contributors from the fields of both civil law and common law argue that Fuller's insights are highly relevant to contemporary concerns The book contains essays by K Winston D Dyzenhaus P Cliteur F Schauer Beyond the Fuller Hart Debate P Westerman W van der Burg D Luban Moralities of Law G Postema P Teachout Implicit Law R Macdonald W Witteveen J Allison M Hertogh K Soltan The Art of Institutional Design J Allan F Mootz J Vining Law's Dialogue and a preface by Ph Selznick At some point in the future when we become more open to the moral relevance of social inquiry more empirical in our study of philosophical

issues more capable of uniting moral and social theory Lon Fuller's work will stand as a landmark This volume will help show the way Ph Selznick

Administrative Competence Elizabeth Fisher, Sidney A. Shapiro, 2020-10-15 This book by two of the world's leading administrative law scholars reimagines administrative law as the law of public administration by making its competence the focus of administrative law Grounded in extensive interdisciplinary historical and doctrinal analysis Fisher and Shapiro show why understanding both the capacity and authority of expert public administration is crucial to ensure the legitimacy and accountability of the administrative state To address the current precarious state of administrative law they support a new study of the administrative process by an Attorney General's Committee on Administrative Procedure leading to a revised Administrative Procedure Act APA This book is a must read for anyone interested in administrative law and its reform

The Justification of the Law Clarence Morris, 2016-11-11 Men enjoy justice steadily and by design only when they live in a society that affords opportunities to all to form aspirations for their society From the Introduction The crux about which this book revolves is theory of justice writes Clarence Morris In its simplest form his theory is this the more the law implements the public's genuine and important aspirations not its desires for individual gratification but the social deep seated unselfish nonexploitable aspirations the more just the legal system becomes Man's capacity for justice does not flow from divine reason or divine revelation Men enjoy justice steadily and by design only when they live in a society that affords opportunities in all its inhabitants to develop their capacity to form aspirations for their society Up to now the world's capacity for justice so defined has been small Some believe that the Western world is still too suppressed for such aspirations and that true justice will emerge only after its liberation Herbert Marcuse calls for liberation through revolution John Stuart Mill relying on man's reason urged peaceful nonconformity Both says Morris are wrong but we should learn from Marcuse that every aspiration has an emotional dimension and we should not allow Mill to persuade us that justice is only a matter of factual discovery And since justices are always in flux the justice of one time or place can become the clumsy legalisms of another In the light of this theory of justice the author examines the complex logic with which the law must tread its way through the maze of human existence the need for general rules enacted law and judicial precedents the function of sociological insights in the development of common law and the role of statutory penal law strikingly illustrated from the Chinese Imperial Code

Constitutionalism of Australian First Nations Maria Salvatrice Randazzo, 2022-07-29 The book considers Australian First Nations constitutionalism by drawing on the chthonic constitutional traditions of three distinct Australian First Nations legal orders the Warlpiri Yolngu and Pintupi legal orders in the endeavour of identifying via a comparative analysis a core of similarities to be drawn upon and articulate an emergent legal theory common to the three legal orders The comparative analysis is undertaken at the most foundational levels of their legal traditions via the prism of a legal paradigm elaborated with reference to an Australian Indigenous cosmological ontological and epistemological standpoint The proposed legal theory comprises a broad overview general concepts normative principles and general

working principles In so doing the book expounds how Australian First Nations constitutionalism unfolds into holistic orders of spiritual political and legal authority that are explainable in terms of legal theory At the most foundational level such elaboration may help delineate normative and legal constitutional patterns throughout Indigenous Australia **Law, Society, and History** Robert W. Gordon, Morton J. Horwitz, 2011-03-07 This book assembles essays on legal sociology and legal history by an international group of distinguished scholars All of them have been influenced by the eminent and prolific legal historian legal sociologist and scholar of comparative law Lawrence M Friedman Not just a Festschrift of essays by colleagues and disciples this volume presents a sustained examination and application of Friedman s ideas and methods Together the essays in this volume show the powerful ripple effects of Friedman s work on American and comparative legal sociology American and comparative legal history and the general sociology of law and legal change Common Law, History, and Democracy in America, 1790-1900 Kunal M. Parker, 2011-03-14 This book argues for a change in our understanding of the relationships among law politics and history Since the turn of the nineteenth century a certain anti foundational conception of history has served to undermine law s foundations such that we tend to think of law as nothing other than a species of politics Thus viewed the activity of unelected common law judges appears to be an encroachment on the space of democracy However Kunal M Parker shows that the world of the nineteenth century looked rather different Democracy was itself constrained by a sense that history possessed a logic meaning and direction that democracy could not contravene In such a world far from law being seen in opposition to democracy it was possible to argue that law specifically the common law did a better job than democracy of guiding America along history s path **Rights, Democracy, and Fulfillment in the Era of Identity Politics** David Ingram, 2004-04-09 Introduction new critical theory taking rights democracy and identity politics seriously Human rights and differends the fragmentation of reason and identity in the post modern age White man s burden ethnicity and race in the era of identity politics Identity politics and the law reflections on disability Democracy and racial identity reconsidering representation Democracy and the rule of law differends and crises in postliberal capitalism Toward a pragmatist and perfectionist theory of rights Human rights and international justice Concluding remarks achieving global harmony through transformative dialogue *Handbook of the History of the Philosophy of Law and Social Philosophy* Gianfrancesco Zanetti, Mortimer Sellers, Stephan Kirste, 2023-03-28 This Handbook discusses representative philosophers in the history of the philosophy of law and social philosophy giving clear concise expert definitions and explanations of key personalities and their ideas It provides an essential reference for experts and newcomers alike

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