

# CHAPTER 3: THEORIES OF LAW

	NATURALIST	POSITIVIST	SOCIOLOGIST
THEORY	<ul style="list-style-type: none"> <li>• a legal theory that recognises law of nature/ moral law</li> <li>• believes that laws must be good and just to govern human relation.</li> <li>• It's the nature of every human being to know from his conscience what is righteous and therefore lawful.</li> <li>• They believe that human laws are defined by morality, and not by an authority figure like a government king.</li> <li>• <b>NATURALIST: OVERLAP THESIS</b></li> <li>• all forms of natural law theory supports the necessary relation between the concepts of law and morality.</li> </ul>	<ul style="list-style-type: none"> <li>• Positivists believe that only positive law is law. Positive laws are laws that have been established by the authority of the state (sovereign).</li> <li>• Positivists are blind to values.</li> <li>• Positive law has nothing to do with ideal or just law, it has no regard to goodness or badness or the law.</li> <li>• Recognize only positive facts and excludes considerations towards concepts of jurisprudence.</li> <li>• <b>POSITIVIST: SEPARABILITY THESIS</b></li> <li>• Positivism is not concerned with whether law is moral, just or unfair.</li> </ul>	<ul style="list-style-type: none"> <li>• Law is wholly concerned with its effect and results on society rather than treating law as will of god or command of the sovereign as law exists for the needs of the society.</li> <li>• Main concern of socialist is interpreting the law in the social context, to bring good to the society.</li> <li>• Law regulates all kinds of relationships in a society and controls the behavior of its members. Hence, it is considered as a form of social control.</li> <li>• Law is not only about legality and punishment.</li> </ul>
JURIST	<p>→ <b>BLACKSTONE</b></p> <ul style="list-style-type: none"> <li>◆ Laws of nature dictated by god himself that are superior to any other</li> </ul>	<p>→ <b>JOHN AUSTIN</b></p> <ul style="list-style-type: none"> <li>◆ Law is a command made by a political sovereign.</li> <li>◆ Rule is only legally valid</li> </ul>	<p>→ <b>ROSCOE POUND</b></p> <ul style="list-style-type: none"> <li>◆ Law is an instrument of social engineering. Its</li> </ul>

# Rights And Law Analysis And Theory

**Robert Alexy**



## **Rights And Law Analysis And Theory:**

**Rights and Law** Andrew Halpin,1997      **Rights and Law** Andrew Halpin,2001      **Theory of Legal Personhood** Visa A. J. Kurki,2019 This work offers a new theory of what it means to be a legal person and suggests that it is best understood as a cluster property The book explores the origins of legal personhood the issues afflicting a traditional understanding of the concept and the numerous debates surrounding the topic      *Criminal Theory and International Human Rights Law* Steven Malby,2019-09-11 The development of an international human rights jurisprudence on criminalization is in its relative infancy Nonetheless systematic examination of international decisions on acts engaging the criminal law reveals an emerging human rights approach to the acceptability or not of criminalization This book provides an in depth characterization of the reasoning and principles that underpin those decisions The work builds upon and adds value to existing literature by bringing together two fields of study international human rights law and criminal theory that usually receive separate treatment It provides an in depth analysis of human rights criminalization jurisprudence and presents a systematic identification of underlying reasoning and concepts that influence international human rights decisions on criminalization The work thus advances both fields independently as well as providing an example of inter sub disciplinary analysis The book will be a valuable resource for academics and students working in the areas of International Human Rights Law Criminal Law and Moral Philosophy      **The Right to Equality in European Human Rights Law** Charilaos Nikolaidis,2014-07-25 A right to equality and non discrimination is widely seen as fundamental in democratic legal systems But failure to identify the human interest that equality aims to uphold reinforces the argument of those who attack it as morally empty or unsubstantiated and weakens its status as a fundamental human right This book argues that an understanding of the human interest which equality aims to uphold is feasible within the jurisprudence of the European Court of Human Rights ECtHR and the European Court of Justice ECJ In comparing the evolution of the prohibition of discrimination in the case law of both Courts Charilaos Nikolaidis demonstrates that conceptual convergence within the European Convention on Human Rights ECHR and the EU on the issue of equality is not as far as it might appear initially While the two bodies of equality law are extremely divergent as to the requirements they impose their interpretation by the international judiciary might be properly analysed under a common light to emphasise the substantive dimension of equality in European Human Rights law The book will be of great use and interest to scholars and students of human rights discrimination law and European politics      THE THEORY OF AMERICAN INTERNATIONAL LAW: ANALYSIS AND CRITICISM. LAVERNE BURCHFIELD,1928      **Gender and Feminist Theory in Law and Society** Madhavi Sunder,2017-11-30 This volume chronicles a quarter century of feminist theorizations on equality and liberty The essays demonstrate a continuing commitment to feminist method a democratic notion that all people have a right to participate in the production of knowledge of the world including legal knowledge and manifest feminism s continuing critical tradition namely theorists willingness to see multiple factors including feminism itself as

obstructing enlightened constructions of the world Taken together the essays suggest that liberty to make the world is not just a means to an end equality but is a substantive end in itself

**The Science of Law According to the American Theory of Government** Edward L. Campbell,1887

**Women and International Human Rights Law** Kelly Dawn Askin,Dorean Koenig,2024-02-12 For in depth coverage of gender issues in human rights law from theory and cultural practices to legal instruments and the case law of international tribunals this major three volume work is without peer More than 100 leading authorities in the field offer trenchant analyses of problems and solutions crimes and abuses available recourses areas of empowerment the entire spectrum of women s rights discussed at a level of detail and legal awareness unavailable in any other single source Published under the Transnational Publishers imprint The print edition is available as a set of three volumes 9781571050946

**Reconstructing American Legal Realism & Rethinking Private Law Theory** Hanoch Dagan,2013-09-19 In the myriad choices of interpretation judges face when confronted with rules and cases legal realists are concerned with how these doctrinal materials carry over into judicial outcomes What can explain past judicial behavior and predict its future course How can law constrain judgments made by unelected judges How can the distinction between law and politics be maintained despite the collapse of law s autonomy in its positivist rendition In *Reconstructing American Legal Realism Rethinking Private Law Theory* Hanoch Dagan provides an innovative and useful interpretation of legal realism He revives the legal realists rich account of law as a growing institution accommodating three sets of constitutive tensions power and reason science and craft and tradition and progress and demonstrates how the major claims attributed to legal realism fit into this conception of law Dagan seeks to rein in realist descendants who have become fixated on one aspect of the big picture and to dispel the misconceptions that those gone astray represent the tradition accurately or that realism is now merely a historical signpost He draws upon the realist texts of Oliver Wendell Holmes Karl Llewellyn and others to explain how legal realism offers important and unique jurisprudential insights that are not just a part of legal history but are also relevant and useful for a contemporary understanding of legal theory Building on this realist conception of law and enriching its texture Dagan addresses more particular jurisprudential questions He shows that the realist achievement in capturing law s irreducible complexity is crucial to the reinvigoration of legal theory as a distinct scholarly subject matter and is also inspiring for a host of other more specific theoretical topics such as the rule of law the autonomy and taxonomy of private law the relationships between rights and remedies and the pluralism and perfectionism that typify private law

**Making Law for Families** Mavis Maclean,2000-12 This book analyzes the concept of the family in the context of increasing challenges and questions created by multicultural societies

**The Yale Law Journal** ,1907

**Theory and Reality in the International Protection of Human Rights** Watson,2023-06-26 Many theories and propositions have been advanced on the tacit assumption that international law encompasses the protection of human rights Very few if any question the validity of this position Here is a book that does *Theory and Reality in the International*

Protection of Human Rights presents a defense of the traditional theory of international law based on a decentralized nation state system of international relation as being more appropriate for the analysis of its subject than more recent variants that allow for supranational redress at an increasingly personal level In particular Professor Watson shows how the proponents of the international human rights regime persistently use a legislative mode of reasoning and how international law cannot sustain this technique He holds that violation of the right to life is best adjudicated within a customary system and concludes that the validity of the norms of international human rights has yet to be demonstrated Published under the Transnational Publishers imprint

**A Theory of Constitutional Rights** Robert Alexy, 2010 In any country where there is a Bill of Rights constitutional rights reasoning is an important part of the legal process As more and more countries adopt Human Rights legislation and accede to international human rights agreements and as the European Union introduces its own Bill of Rights judges struggle to implement these rights consistently and sometimes the reasoning behind them is lost Examining the practice in other jurisdictions can be a valuable guide Robert Alexy's classic work reconstructs the reasoning behind the jurisprudence of the German Basic Law and in doing so provides a theory of general application to all jurisdictions where judges wrestle with rights adjudication In considering the features of constitutional rights reasoning the author moves from the doctrine of proportionality procedural rights and the structure and scope of constitutional rights to general rights of liberty and equality and the problem of horizontal effect A postscript written for the English edition considers critiques of the Theory since it first appeared in 1985 focusing in particular on the discretion left to legislatures and in an extended introduction the translator argues that the theory may be used to clarify the nature of legal reasoning in the context of rights under the British Constitution This book will be of central interest to all legal and constitutional theorists and human rights scholars

Research Methods in Human Rights Bård A. Andreassen, Claire Methven O'Brien, Hans-Otto Sano, 2024-05-02 In this thoroughly revised second edition editors Bård A. Andreassen, Claire Methven O'Brien and Hans Otto Sano advance contemporary discussions on human rights methodology bringing together an array of leading scholars to offer instruction and guidance on the methodological approaches to human rights research

*Developing Property Rights Theory* Shaoan Huang, 2023-11-08 This book aims to interpret China's property rights reform since 1978 on theory level Property rights reform is no doubt the essential for economic system reform which led to China's economic miracle in the past 40 years Neither modern property rights theory nor Marxism can explain all issues around Chinese complex economic system reform The book sheds light on the theory development through comparative study and China focused research

*The Oxford Handbook of the Theory of International Law* Anne Orford, Florian Hoffmann, Martin Clark, 2016-09-22 The Oxford Handbook of International Legal Theory provides an accessible and authoritative guide to the major thinkers concepts approaches and debates that have shaped contemporary international legal theory The Handbook features 48 original essays by leading international scholars from a wide range of traditions nationalities and perspectives reflecting the richness and diversity of

this dynamic field The collection explores key questions and debates in international legal theory offers new intellectual histories for the discipline and provides fresh interpretations of significant historical figures texts and theoretical approaches It provides a much needed map of the field of international legal theory and a guide to the main themes and debates that have driven theoretical work in international law The Handbook will be an indispensable reference work for students scholars and practitioners seeking to gain an overview of current theoretical debates about the nature function foundations and future role of international law Białostockie Studia Prawnicze 23(4) Anna Drabarz,2018-12-18 *Foundations of Critical Race Theory in Education* Edward Taylor,David Gillborn,Gloria Ladson-Billings,2023-01-30 Critical Race Theory CRT is at the forefront of contemporary discussions about racism and race inequity in education and politics internationally The emergence of CRT marked a pivotal moment in the history of racial politics within the academy and powerfully influenced the broader conversation about race and racism in the United States and beyond Comprised of articles by some of the most prominent scholars in the field this groundbreaking anthology is the first to pull together both the foundational writings and more recent scholarship on the cultural and racial politics of schooling The collection offers a variety of critical perspectives on race analysing the causes consequences and manifestations of race racism and inequity in schooling Unique to this updated edition is a variety of contributions by key CRT scholars published within the last five years including an all new section addressing the war on CRT that followed the murder of George Floyd and international protests in support of BlackLivesMatter Each section concludes with a set of questions and discussion points to further engage with the issues discussed in the readings This revised edition of a landmark publication documents the progress of the CRT movement and acts to further spur developments in education policy critical pedagogy and social justice making it a crucial resource for students and educators alike

**Redirecting Human Rights** A. Gear,2010-04-09 Against the backdrop of globalization and mounting evidence of the corporate subversion of the Universal Declaration of Human Rights paradigm Anna Gear interrogates the complex tendencies within law that are implicated in the emergence of corporate humanity Gear presents a critical account of legal subjectivity linking it with law s intimate relationship with liberal capitalism in order to suggest law s special receptivity to the corporate form She argues that in the field of human rights law particularly within the Universal Declaration of Human Rights paradigm human embodied vulnerability should be understood as the foundation of human rights and as a key qualifying characteristic of the human rights subject The need to redirect human rights in order to resist their colonization by powerful economic global actors could scarcely be more urgent

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