

CHAPTER 3: THEORIES OF LAW

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

Rights And Law Analysis And Theory

Sir John William Salmond



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 New Essays on the Nature of Rights Mark McBride, 2017-08-24 This original collection of jurisprudential essays furthers our understanding of the nature of rights In Part 1 Halpin considers the value of Hohfeldian neutrality when theorising about law in general and legal rights in particular and Kurki focuses on Hohfeld's operative notion of power In Part 2 Kramer rebuts Wenar's objections to his Interest Theory of rights and May provides a comparative defence of the Interest Theory against Wenar's Kind Desire theory of claim rights Penner then pursues legal doctrine focusing on whether judges hold the powers of their office as rights an issue over which Wenar and Kramer have clashed Sreenivasan utilising a novel test case involving pure public goods argues that the third party beneficiary objection to the Interest Theory is fatal McBride builds on Sreenivasan's Hybrid Theory of claim rights to construct his new Tracking Theory of rights Cruft then argues that the best extant versions of the Interest and Will Theories of rights cannot avoid a form of circularity and Van Duffel argues that meeting four adequacy constraints which he proposes counts in favour of any theory of rights In Part 3 Andersson proposes a tie breaking procedure for rights conflicts in the applied realm of politics and Steiner concludes by alleging that Kant's principle of right a standard of corrective justice has distributive implications A fine collection of cutting edge essays on the most important normative concept of modernity Professor Leif Wenar King's College London This important collection proceeds much beyond the famous 1998 A Debate Over Rights which sets the stage for the debates concerning rights since then It explores three aspects of rights First it re-examines the Hohfeldian classification and highlights its importance and relevance Second it investigates and develops the debates between the interest and the will theory It includes essays by the main established proponents of these two positions as well as essays by newcomers to this field The different essays in this part address each other in ways which sharpen and clarify the disagreements and provide new original arguments for the contending views Last it provides a new perspective on the debates concerning conflicts of rights and the ways to overcome them This collection will no doubt dominate the future conceptual discussions concerning the nature of rights and their role in political theory Professor Alon Harel The Hebrew University of Jerusalem Legal Reasoning, Legal Theory and Rights Martin P. Golding, 2017-07-05 This book is a selection of articles and chapters published over Martin Golding's academic career Golding's approach to the philosophy of law is that it contains conceptual and normative issues and in this volume logical issues in legal reasoning are examined and various theories of law are critically discussed Normative questions are dealt with regarding the rule of law and criminal law defenses and the concept of rights and the terminology of rights are analyzed Much of Golding's work is critical historical as

well as constructive This volume will prove an informative and useful collection for scholars and students of the philosophy of law

The Architecture of Rights David Frydrych, 2021-10-13 What is a right What if anything makes rights different from other features of the normative world such as duties standards rules or principles Do all rights serve some ultimate purpose In addition to raising these questions philosophers and jurists have long been aware that different senses of a right abound To help make sense of this diversity and to address the above questions they developed two types of accounts of rights models and theories This book explicates rights modelling and theorising and scrutinises their methodological underpinnings It then challenges this framework by showing why the theories ought to be abandoned In addition to exploring structural concerns the book also addresses the various ways that rights can be used It clarifies important differences between rights exercise enforcement remedying and vindication and identifies forms of legal rights claiming and rights invoking outside of institutional contexts

THE THEORY OF AMERICAN INTERNATIONAL LAW: ANALYSIS AND CRITICISM. LAVERNE BURCHFIELD, 1928

Criminology and Political Theory Dr Anthony Amatrudo, 2009-07-09 A lucid sophisticated and timely vindication of the importance of Marxist feminist and other radical perspectives on the state and political economy to the analysis of crime control and justice It offers a valuable guide to issues of political philosophy for students and teachers of criminology critically deconstructing the taken for granted categories of law and criminal justice Professor Robert Reiner London School of Economics UK This clear and concise book sets out the relationship between political theory and criminology It critically analyzes key theories and debates within criminology and addresses the major political ideas that lie beneath them Organized around key criminological concepts and issues the book covers power and ideology the nature of the state social control and policing punishment economics and criminal activity morality The book has been carefully developed to support practical teaching and learning and contains chapter summaries further reading and a comprehensive glossary which combine to provide a full understanding of the themes

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 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 Cultural Heritage Rights

Anthony J. Connolly, 2017-05-15 This collection brings together selected articles on key areas in the field of cultural heritage rights discourse Contributed by an international group of scholars the papers address conceptual and political issues and explore themes in contemporary literature on cultural heritage such as repatriation looting and illicit trade the effects of armed conflict and the relationship between tourism economic development and cultural heritage The legal regulation of cultural heritage is also discussed with articles on regulatory challenges current practices around the world and issues and challenges in common Topics which are likely to become increasingly important in the future such as climate change cultural globalisation human genomic science and the shift to a post liberal post rights politics and law of cultural heritage are also explored This volume which presents the most up to date scholarship in an area of increasing interest and relevance is an indispensable reference resource for libraries lecturers and students **Natural Law and Modern Society** Sean

Coyle, 2023-07-12 Modern society is riven by social divisions between conservatives and progressives liberals and socialists the mainstream and the rise of far right political groups etc Instead of truth there are post truth and alternative facts In the wake of problems caused by untruthful politicians and world leaders by Brexit and Covid the need to repair or rebuild our communities has become paramount but what kind of community should we build and on what foundations This book suggests that natural law is such a foundation Natural Law and Modern Society presents a new theory of natural law grounded in the thought of Saint Thomas Aquinas aimed at answering questions relevant to the world of today from the nature of morality and ethics to the theory of law obligation and political authority from the domestic realm to international community It seeks to elicit from the natural law tradition timeless truths concerning the human condition in particular the social and political dimensions to human existence This mode of existence it argues is not a problem to be resolved through some permutation of political institutions but a predicament to be managed At the heart of the book is the identification of a core morality a set of moral requirements that are foundational to every society at all places and times as distinct from those standards that are particular to this or that society at some time *Rights in Context* Reza Banakar, 2010 This collection

offers a snapshot of how rights are debated and employed in public discourse to reshape legal and political relations at the beginning of the twenty first century They explore how rights are used to challenge the state of affairs by indiv

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

Philosophical Foundations of Property Law James Penner, Henry Smith,2013-11 This volume seeks to bring the concepts and doctrines of property law into the philosophy of property It offers contributions from leading theorists of property law The papers serve as introductions to many facets of philosophical work grounded in the law of property and as cutting edge contributions to the scholarly literature

Jurisprudence and Practical Logic of Civil Code Xianzhong Sun,2024-11-06 This book is a collection of articles that the author has pondered for a long time on the legal theory and practice of China s civil law It mainly discusses the systematic scientific and practical issues of Chinese civil law At the macro level it covers the relationship between the general provisions and the specific provisions of the Civil Code the introduction decline and revival of the Pandekton system in the process of drafting the Civil Code in China and the important position of the Civil Code in the national governance system at the meso level it analyses the legislative arrangement and practical significance of the real right of the Civil Code at the micro level it explains the attribute of unauthorised disposal and the legal basis for the abolition of this clause in the Contract Law

Women and International Human Rights Law Gayatri Patel,2019-12-06 This book presents the findings of the first comprehensive study on the most recent and most unique and innovative method of monitoring international human rights law at the United Nations Since its existence there has yet to be a complete and comprehensive book solely dedicated to exploring the Universal Periodic Review UPR process Women and International Human Rights Law provides a much needed insight to what the process is how it operates in practice and whether it meets its fundamental aim of promoting the universality of all human rights The book addresses the topics with regard to international human rights law and will be of interest to researchers academics and students interested in the monitoring and implementation of international human rights law at the United Nations In addition it will form supplementary reading for those students studying international human rights law on undergraduate programmes and will also appeal to academics and students with interests in political sciences and international relations

Social and Economic Rights in Theory and Practice Helena Alviar García,Karl Klare,Lucy A. Williams,2014-09-19 Since World War II a growing number of jurisdictions in both the developing and industrialized worlds have adopted progressive constitutions that guarantee social and economic

rights SER in addition to political and civil rights Parallel developments have occurred at transnational level with the adoption of treaties that commit signatory states to respect and fulfil SER for their peoples This book is a product of the International Social and Economic Rights Project iSERP a global consortium of judges lawyers human rights advocates and legal academics who critically examine the effectiveness of SER law in promoting real change in people s lives The book addresses a range of practical political and legal questions under these headings with acute sensitivity to the racial cultural and gender implications of SER and the path breaking SER jurisprudence now emerging in the Global South The book brings together internationally renowned experts in the field of social and economic rights to discuss a range of rights controversies from both theoretical and practical perspectives Contributors of the book consider specific issues in the litigation and adjudication of SER cases from the differing standpoints of activists lawyers and adjudicators in order to identify and address the specific challenges facing the SER community This book will be of great use and interest to students and scholars of comparative constitutional law human rights public international law development studies and democratic political theory

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

Jurisprudence, Or, The Theory of the Law Sir John William Salmond,1907

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