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NORMATIVITY AND NORMS

Critical Perspectives on Kelsenian Themes

Edited by

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Normativity And Norms Critical Perspectives On Kelsenian Themes

Michael D. Barber



Normativity And Norms Critical Perspectives On Kelsenian Themes:

Normativity and Norms Stanley L. Paulson, Bonnie Litschewski Paulson, 1998 This remarkable collection contains some of the very best work on themes developed by Hans Kelsen regarded by many as the most influential legal philosopher of the twentieth century The volume addresses in rich detail the topic where debate on Kelsen's work has been liveliest normativity as Kelsen's alternative to both traditional legal positivism and natural law theory The book boasts a truly international list of contributors with authors from Europe North and South America and Australia a dozen countries in all **Hans Kelsen and the Natural Law Tradition** Peter Langford, Ian Bryan, John McGarry, 2019-03-19 Hans Kelsen and the Natural Law Tradition provides the first sustained examination of Hans Kelsen's critical engagement itself founded upon a distinctive theory of legal positivism with the Natural Law Tradition This edited collection commences with a comprehensive introduction which establishes the character of Kelsen's critical engagement as a general critique of natural law combined with a more specific critique of representative thinkers of the Natural Law Tradition The subsequent chapters are then devoted to a detailed analysis of Kelsen's engagement with prominent theorists from the Natural Law Tradition The volume concludes with an exploration focusing upon the delineation of a non-positivist legal theory in the debate between Robert Alexy and Joseph Raz of the continued presence of Kelsenian legal positivism in contemporary legal theory *Research Handbook on the Theory and History of International Law* Alexander Orakhelashvili, 2020-12-25 This updated and revised second edition with contributions from renowned experts provides a comprehensive scholarly framework for analyzing the theory and history of international law Featuring an array of legal and interdisciplinary analyses it focuses on those theories and developments that illuminate the central and timeless basic concepts and categories of the international legal system highlighting the interdependency of various aspects of theory and history and demonstrating the connections between theory and practice

The Normative Force of the Factual Nicoletta Bersier Ladavac, Christoph Bezemek, Frederick Schauer, 2019-06-26 This book explores the interrelation of facts and norms How does law originate in the first place What lies at the roots of this phenomenon How is it preserved And how does it come to an end Questions like these led Georg Jellinek to speak of the normative force of the factual in the early 20th century emphasizing the human tendency to infer rules from recurring events and to perceive a certain practice not only as a fact but as a norm a norm which not only allows us to distinguish regularity from irregularity but at the same time to treat deviances as transgressions Today Jellinek's concept still provides astonishing insights on the dichotomy of is and ought to be the emergence of the normative the efficacy and the defeasibility of legal norms and the distinct character of what legal theorists refer to as normativity It leads us back to early legal history it connects anthropology and legal theory and it demonstrates the interdependence of law and the social sciences In short it invites us to fundamentally reassess the interrelation of facts and norms from various perspectives The contributing authors to this volume have accepted that invitation *Why Religion? Towards a Critical Philosophy of Law, Peace and God* Dawid

Bunikowski,Alberto Puppo,2020-02-11 This book examines the relation between religion and jurisprudence God and peace respectively It argues that in order to elucidate the possible role religion can play in the contemporary world it is useful to analyse religion by associating it with other concepts Why peace Because peace is probably the greatest promise made by religions and the greatest concern in the contemporary world Why jurisprudence Because quoting Kelsen s famous book Peace through Law peace is usually understood as something achievable by international legal instruments But what if we replace Peace through Law with Peace through Religion Does law as an instrument for achieving peace incorporate a religious dimension Is law ultimately a religious and normative construction oriented to peace to the protection of humanity in order to keep humans from the violence of nature Is the hope for peace rational or just a question of faith Is religion itself a question of faith or a rational choice Is the relatively recent legal concept of responsibility to protect a secular expression of the oldest duty of humankind The book follows the structure of interdisciplinary research in which the international legal scholar the moral philosopher the philosopher of religion the theologian and the political scientist contribute to the construction of the necessary bridges Moreover it gives voice to different monotheistic traditions and more importantly it analyses religion in the various dimensions in which it determines the authors cultures as a set of rituals as a source of moral norms as a universal project for peace and as a political discourse *Hans Kelsen's Pure Theory of Law* Lars

Vinx,2007-09-06 Hans Kelsen is commonly considered to be among the founding fathers of modern legal philosophy Despite Kelsen s prominence as a legal theorist his political theory has so far been mostly overlooked This book argues that Kelsen s legal theory the Pure Theory of Law needs to be read in the context of Kelsen s political theory It offers the first comprehensive interpretation of the Pure Theory that makes systematic use of Kelsen s conception of the rule of law of his theory of democracy his defense of constitutional review and his views on international law Once it is read in the context of Kelsen s political works Kelsen s analysis of legal normativity provides us with a notion of political legitimacy that is distinct from any comprehensive and contestable theory of justice It shows how members of pluralist societies can reasonably acknowledge the binding nature of law even where its content does not fully accord with their own substantive views of the requirements of justice provided it is created in accordance with an ideal of fair arbitration amongst social groups This result leads to a fundamental re evaluation of the Pure Theory of Law The theory is best understood as an attempt to find a middle ground between natural law and legal positivism Later positivist legal theorists inspired by Kelsen s work failed to appreciate the political theoretical context of the Pure Theory and turned to a narrow instrumentalism about the functions of law The perspective on Kelsen offered in this book aims to reconnect positivist legal thought with normative political theory [Hans Kelsen in America - Selective Affinities and the Mysteries of Academic Influence](#) D.A. Jeremy Telman,2016-08-26 This volume explores the reasons for Hans Kelsen s lack of influence in the United States and proposes ways in which Kelsen s approach to law philosophy and political democratic and international relations theory could be relevant to current debates within the

U S academy in those areas Along the way the volume examines Kelsen s relationship and often hidden influences on other members of the mid century Central European migr community whose work helped shape twentieth century social science in the United States The book includes major contributions to the history of ideas and to the sociology of the professions in the U S academy in the twentieth century Each section of the volume explores a different aspect of the puzzle of the neglect of Kelsen s work in various disciplinary and national settings Part I provides reconstructions of Kelsen s legal theory and defends that theory against negative assessments in Anglo American jurisprudence Part II focuses both on Kelsen s theoretical views on international law and his practical involvement in the post war development of international criminal law Part III addresses Kelsen s theories of democracy and justice while placing him in dialogue with other major twentieth century thinkers including two fellow migr scholars Leo Strauss and Albert Ehrenzweig Part IV explores Kelsen s intellectual legacies through European and American perspectives on the interaction of Kelsen s theoretical approach to law and national legal traditions in the United States and Germany Each contribution features a particular applications of Kelsen s approach to doctrinal and interpretive issues currently of interest in the legal academy The volume concludes with two chapters on the nature of Kelsen s legal theory as an instance of modernism

Kelsen Revisited Luís Duarte d'Almeida, John Gardner, Leslie Green, 2014-07-18 Forty years after his death Hans Kelsen 1881 1973 remains one of the most discussed and influential legal philosophers of our time This collection of new essays takes Kelsen s Pure Theory of Law as a stimulus aiming to move forward the debate on several central issues in contemporary jurisprudence The essays in Part I address legal validity the normativity of law and Kelsen s famous but puzzling idea of a legal system s basic norm Part II engages with the difficult issues raised by the social realities of law and the actual practices of legal officials Part III focuses on conceptual features of legal systems and the logical structure of legal norms All the essays were written for this volume by internationally renowned scholars from seven countries Also included in English translation is an important polemical essay by Kelsen himself

The Project of Positivism in International Law Mónica García-Salmones Rovira, 2013-11-28 International legal positivism has been crucial to the development of international law since the nineteenth century It is often seen as the basis of mainstream or traditional international legal thought The Project of Positivism in International Law addresses this theory in the long standing tradition of critical intellectual histories of international law It provides a nuanced analysis of the resilience of the economic positivist theory and shows how influential its role was in shaping the modern frameworks of international law The book argues that the rise of positivist international law was inseparable from philosophical developments placing the notion of conflict of interests at the centre of collective life Where previously international thought was dominated by notions of the right the just and the good increasingly international relations became viewed as interests in need of harmonisation In this context international law was re founded as the universal law that could harmonise the interests of both public and private international entities The book argues that these evolutions in philosophical thought were bound up with the consolidation of

capitalism and with the ideas about human existence and human nature which emerged in that process It provides an innovative analysis of the selected biography of ideas which it presents including a detailed focus on the work of Hans Kelsen one of the leading positivist thinkers of the twentieth century It also argues that the work of Lassa Oppenheim should be included within this analysis as providing some of the key founding texts of positivism in international law This book will be a fascinating read for scholars and students of international legal theory historians of ideas and legal philosophers *Legal Monism* Paul Gragl, 2018 In this first full length study of legal monism Paul Gragl advocates for the revival of legal monism as a solution to normative conflicts between different bodies of law Using comprehensive and inter disciplinary arguments this book defends the theory against dualism and pluralism

The Blackwell Guide to the Philosophy of Law and Legal Theory Martin P. Golding, William A. Edmundson, 2008-04-15 The Blackwell Guide to the Philosophy of Law and Legal Theory is a handy guide to the state of play in contemporary philosophy of law and legal theory Comprises 23 essays critical essays on the central themes and issues of the philosophy of law today written by an international assembly of distinguished philosophers and legal theorists Each essay incorporates essential background material on the history and logic of the topic as well as advancing the arguments Represents a wide variety of perspectives on current legal theory

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

The Participating Citizen Michael D. Barber, 2012-02-01 Winner of the 2007 Edward Goodwin Ballard Book Prize in Phenomenology presented by the Center for Advanced Research in Phenomenology with interest from a fund raised from Professor Ballard s family students and friends Vienna born philosopher and social scientist Alfred Schutz 1899 1959 is primarily responsible for applying to the social sciences the resources of phenomenology the prominent philosophical movement begun by Edmund Husserl in the early twentieth century Drawing on previously unavailable letters this biography depicts Schutz s childhood adolescence first visit to the United States struggle to secure asylum for family and friends after the Austrian Anschluss family and business life and connections with phenomenologists worldwide the New School for Social Research and close friends As a philosophical biography it examines the ethical dimensions of his philosophical work including its resistance to ethical theory and shows

how during the civil rights movement he articulated a standard for assessing democracy in terms of ability to facilitate individual citizen participation

Kelsenian Legal Science and the Nature of Law Peter Langford, Ian Bryan, John McGarry, 2017-05-16 This book critically examines the conception of legal science and the nature of law developed by Hans Kelsen. It provides a single dedicated space for a range of established European scholars to engage with the influential work of this Austrian jurist, legal philosopher and political philosopher. The introduction provides a thematization of the Kelsenian notion of law as a legal science. Divided into six parts, the chapter contributions feature distinct levels of analysis. Overall, the structure of the book provides a sustained reflection upon central aspects of Kelsenian legal science and the nature of law. Parts one and two examine the validity of the project of Kelsenian legal science with particular reference to the social fact thesis, the notion of a science of positive law and the specifically Kelsenian concept of the basic norm (*Grundnorm*). The next three parts engage in a critical analysis of the relationship of Kelsenian legal science to constitutionalism, practical reason and human rights. The last part involves an examination of the continued pertinence of Kelsenian legal science as a theory of the nature of law with a particular focus upon contemporary non-positivist theories of law. The conclusion discusses the increasing distance of contemporary theories of legal positivism from a Kelsenian notion of legal science in its consideration of the nature of law.

The Foundation of the Juridico-Political Ian Bryan, Peter Langford, John McGarry, 2015-10-23 Hans Kelsen and Max Weber are conventionally understood as initiators not only of two distinct and opposing processes of concept formation but also of two discrete and contrasting theoretical frameworks for the study of law. *The Foundation of the Juridical Political* Concept Formation in Hans Kelsen and Max Weber places the conventional understanding of the theoretical relationship between the work of Kelsen and Weber into question. Focusing on the theoretical foundations of Kelsen's legal positivism and Weber's sociology of law and guided by the conceptual frame of the *juridico-political*, the contributors to this interdisciplinary volume explore convergences and divergences in the approach and stance of Kelsen and Weber to law, the State, political science, modernity, legal rationality, legal theory, sociology of law, authority, legitimacy and legality. The chapters comprising *The Foundation of the Juridical Political* uncover complexities within as well as between the theoretical and methodological principles of Kelsen and Weber and thereby challenge the enduring division between legal positivism and the sociology of law in contemporary discourse.

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.

The Making of Constitutional Democracy Paolo Sandro, 2022-01-27 This open access book addresses a palpable yet widely neglected tension in legal discourse. In our everyday legal practices, whether taking place in a courtroom, classroom, law firm or elsewhere, we routinely and unproblematically talk of the activities of creating and applying the law. However, when legal scholars have analysed this distinction in their theories rather than simply assuming it, many have undermined it if

not dismissed it as untenable The book considers the relevance of distinguishing between law creation and law application and how this transcends the boundaries of jurisprudential enquiry It argues that such a distinction is also a crucial component of political theory For if there is no possibility of applying a legal rule that was created by a different institution at a previous moment in time then our current constitutional democratic frameworks are effectively empty vessels that conceal a power relationship between public authorities and citizens that is very different from the one on which constitutional democracy is grounded After problematising the most relevant objections in the literature the book presents a comprehensive defence of the distinction between creation and application of law within the structure of constitutional democracy It does so through an integrated jurisprudential methodology which combines insights from different disciplines including history anthropology political science philosophy of language and philosophy of action while also casting new light on long standing issues in public law such as the role of legal discretion in the law making process and the scope of the separation of powers doctrine The ebook editions of this book are available open access under a CC BY NC ND 4 0 licence on bloomsburycollections.com

Institutionalized Reason Matthias Klatt, 2012-02-23 Matthias Klatt is Professor for Public Law EU Law Public International Law and Jurisprudence at the University of Hamburg Book Jacket

Legal Validity Maris Köpcke, 2019-01-24 Critical human interests are affected on a daily basis by appeal to past decisions deemed to be legally valid They include statutes deportation orders judgments mortgage contracts patents and wills Through the technique of validity lawyerly reasoning settles morally pressing matters in a way that largely bypasses moral argument Legal philosophy has paid considerable attention to validity criteria but it has neglected to explore validity's point whether and if so how the pervasive technique of validity can contribute to a legal system's ability to realise justice and human rights This book shows that validity can help a political community to foster justice precisely because validity does not primarily turn on moral considerations Validity serves to both allocate and limit a distinct kind of power a power that is key to forging valuable forms of enterprise and commitment in pursuit of individual and collective self direction By entrusting the capacity to decide to those who in justice ought to bear it validity can enable persons and institutions to rally the resources and opportunities that only large scale behavioural convergence can afford thereby weaving a fabric of just relationships within the systemic framework of law

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

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