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Social Order and the Limits of Law

A Theoretical Essay



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Social Order and the Limits of Law Iredell Jenkins, 2014-07-14 Professor Jenkins develops a systematic theory of the origins the ends and the functions of law He then applies this theory to the problems that law encounters and the conditions that it must satisfy if it is to be an effective force in society Originally published in 1980 The Princeton Legacy Library uses the latest print on demand technology to again make available previously out of print books from the distinguished backlist of Princeton University Press These editions preserve the original texts of these important books while presenting them in durable paperback and hardcover editions The goal of the Princeton Legacy Library is to vastly increase access to the rich scholarly heritage found in the thousands of books published by Princeton University Press since its founding in 1905

Women's Health and the Limits of Law Irehobhude O. Iyioha, 2019-12-10 Despite some significant advances in the creation and protection of rights affecting women s health these do not always translate into actual health benefits for women This collection asks What is an effective law and what influences law s effectiveness or ineffectiveness What dynamics elements and conditions come together to limit law s capacity to achieve instrumental goals for women s health and the advancement of women s health rights The book presents an integrated co referential and sustained critical discussion of the normative and constitutive reasons for law s limited effectiveness in the field of women s health It offers comprehensive and cohesive explanatory accounts of law s limits and for the first time in the field introduces a distinction between formal and substantive effectiveness of laws Its approach is trans systemic multi jurisdictional and comparative with a focus on six countries in North America Europe Asia and Africa and international human rights case law based on matters arising from Hungary Portugal Spain Slovakia the Czech Republic Peru and Bolivia The book will be a valuable resource for educators students lawyers rights advocates and policymakers working in women s health socio legal studies human rights feminist legal studies and legal philosophy more broadly

Law and Democracy in Neil MacCormick's Legal and Political Theory Agustín José Menéndez, John Erik Fossum, 2011-03-29 This volume offers a collection of articles by leading legal and political theorists Originally intended as a celebration of MacCormick s work on the occasion of the completion of the four volume series on Law State and Practical Reason it has turned into a homage and salute after MacCormick s passing Cast in MacCormick s reflexive spirit the book presents a critical reconstruction of the Scottish philosopher s work with the aim of revealing the connections between law and democracy in his writings and furthering his insights in each specific field Neil MacCormick made outstanding contributions to the understanding of law and democracy under conditions of pluralism His institutional theory of law has elucidated the close connection between the normative character of law as a means of social integration and legal social practices This has produced a synthesis of the key insights of the legal and political theories of Kelsen Hart Alexy and Dworkin and has broken new ground by undermining the monolithic and nation state centered character of standard legal theories

Bentham and the Common Law Tradition Gerald J. Postema, 2019-12-19 This work

explores the relationship between Bentham's utilitarian practical philosophy and his positivist jurisprudence. These theories appear to be in tension because his utilitarian commitment to the sovereignty of utility as a practical decision principle seems inconsistent with his positivist insistence on the sovereignty of the will of the lawmaker. Two themes emerge from the attempt in this work to reconcile these two core elements of Bentham's practical thought. First, Bentham's conception of law does not fit the conventional model of legal positivism. Bentham was not just a utilitarian and a positivist; he was a positivist by virtue of his commitment to a utilitarian understanding of the fundamental task of law. Moreover, his emphasis on the necessary publicity and the systemic character of law led him to insist on an essential role for utilitarian reasons in the regular public functioning of law. Second, Bentham's radical critique of common law theory and practice convinced him of the necessity to reconcile the need for certainty of law with an equally great need for its flexibility. He eventually developed a constitutional framework for adjudication in the shadow of codified law that accorded to judges discretion to decide particular cases according to their best judgment of the balance of utilities, guaranteeing the accountability and appropriate motivation of judicial decision making through institutional incentives. The original text of this work, first published in 1986, remains largely unchanged, but an afterword reconsiders and revises some themes in response to criticism.

General Theory of Law and State Hans Kelsen, 2017-07-05. Widely regarded as the most important legal theorist of the twentieth century, Hans Kelsen is best known for his formulation of the pure theory of law, within which the study of international law was his special field of work. The present volume, *General Theory of Law and State*, first published in 1945, allowed Kelsen to adjust his pure theory of law to American circumstances after World War II. It also afforded him the opportunity to present to English-speaking readers his latest ideas on the supremacy of international law. The volume is divided into two parts: the first devoted to law, the second to the state. Together, these topics constitute the most systematic and comprehensive exposition of Kelsen's jurisprudence. The volume is not only a compendium of Kelsen's lifework up to that time; it is also an extension of his theories to embrace the problems and institutions of English and American law, as well as those of the civil law countries. Indeed, references to Continental European law are minimal, compared with examples scattered throughout the text taken from the U.S. Constitution and several American court cases. This is more than a concession to American readers; it signifies that Kelsen's legal theory is truly general in that it accounts for the common law as well as the civil law. A systematic treatise on jurisprudence, *General Theory of Law and State* is a substantial reformulation of Kelsen's ideas articulated in several of his previous books written in German. The juridical principles put forth by the most important legal theorist of the twentieth century remain of great value. This volume will be read by legal scholars, political scientists, and intellectual historians.

General Theory of Law Nikolaï Mikhaïlovich Korkunov, 1909 **Law's Community** Roger Cotterrell, 1995. *Law's Community* offers a distinctive analysis of law, identifying political and moral problems that are fundamental to contemporary legal theory. It portrays contemporary law as institutionalized doctrine, emphasizing ways in which legal modes of thought

influence wider currents of understanding and belief in contemporary Western societies Exploring relationships between law and sociology as contrasting and competing fields of knowledge Law s Community develops ideas from social theory to identify key problems for legal development in particular those of restoring moral authority to law and of elaborating a concept of community that can guide legal regulation The analysis leads to radical conclusions among them that law s functions need reconsideration at the most general level that a unitary state legal system as portrayed in traditional kinds of legal theory may no longer be adequate in complex contemporary societies and that law should be reconceptualized as a diverse but co ordinated plurality of systems sites and forms of regulation Research Handbook on Law and Utilitarianism Guillaume Tusseau,2024-10-03 The Research Handbook on Law and Utilitarianism sheds light on contemporary legal culture and the ways in which it interacts with theories of justice Guillaume Tusseau brings together an interdisciplinary range of scholars to analyse the utilitarian standpoint on legal disciplines and legal governance as well as the contribution of utilitarian arguments to current legal debates **Theory of Societal Constitutionalism** David Sciulli,1992 The author argues that the existing conceptual frameworks of political and social theory restrict both theorists and empirical researchers to a narrow definition of authoritarianism that focuses on governmental structure and fails to take account of forms of social control exercised outside the governmental sphere Rather than define authoritarianism primarily by contrast to liberal democracy Sciulli argues we need to broaden our conception of authoritarianism to include social authoritarianism referring to social control imposed by private organizations and institutions such as business corporations and professional associations In this book Sciulli develops an alternative conceptual framework which he calls the theory of societal constitutionalism and he explains how the theory can be used to assess whether social order in a society whether democratic or authoritarian in political rule is characterized by some degree of social authoritarianism The book will be important reading for theorists in sociology political science and legal studies *Pure Theory of Law* Hans Kelsen,2024-03-29 Pure Theory of Law defines law as a system of coercive norms created by the state that rests on the validity of a generally accepted Grundnorm or basic norm such as the supremacy of the Constitution Entirely self supporting it rejects any concept derived from metaphysics politics ethics sociology or the natural sciences Beginning with the medieval reception of Roman law traditional jurisprudence has maintained a dual system of subjective law the rights of a person and objective law the system of norms Throughout history this dualism has been a useful tool for putting the law in the service of politics especially by rulers or dominant political parties The pure theory of law destroys this dualism by replacing it with a unitary system of objective positive law that is insulated from political manipulation This title is part of UC Press s Voices Revived program which commemorates University of California Press s mission to seek out and cultivate the brightest minds and give them voice reach and impact Drawing on a backlist dating to 1893 Voices Revived makes high quality peer reviewed scholarship accessible once again using print on demand technology This title was originally published in 1967 Pure Theory of Law

defines law as a system of coercive norms created by the state that rests on the validity of a generally accepted Grundnorm or basic norm such as the supremacy of the Constitution Entirely self supporting it rejects any concept deri *The Methodology of Constitutional Theory* Dimitrios Kyritsis, Stuart Lakin, 2022-02-24 What sort of methods are best suited to understanding constitutional doctrines and practices Should we look to lawyers and legal methods alone or should we draw upon other disciplines such as history sociology political theory and moral philosophy Should we study constitutions in isolation or in a comparative context To what extent must constitutional methods be sensitive to empirical data about the functioning of legal practice Can ideal theory aid our understanding of real constitutions This volume brings together constitutional experts from around the world to address these types of questions through topical events and challenges such as Brexit administrative law reforms and the increasing polarisations in law politics and constitutional scholarship Importantly it investigates the ways in which we can ensure that constitutional scholars do not talk past each other despite their persistent and often fierce disagreements In so doing it aims systematically to re examine the methodology of constitutional theory **Research Handbook on Law and Marxism** O'Connell, Paul, Özsu, Umut, 2021-12-14 This Research Handbook offers unparalleled insights into the large scale resurgence of interest in Marx and Marxism in recent years with contributions devoted specifically to Marxist critiques of law rights and the state How Might We Live? Global Ethics in the New Century Ken Booth, Timothy Dunne, Michael Cox, 2001-10-18 This volume looks outward to the new century and to the dynamics of this first truly global age It asks the fundamental question how might human societies live The contributors believe that there is nothing more political than ethics By exploring in the newest context some of the oldest questions about duties and obligations within and beyond humanly constructed boundaries the essays help us ponder the most profound question in world politics today who will the twenty first century be for **Law, Economics and Evolutionary Theory** Peer Zumbansen, Galf-Peter Calliess, 2011-01-01 Evolutionary theory belongs to the rare species of theories that are simultaneously fundamental and over arching implicating as it does numerous life contexts as well as an array of scholarly disciplines Armed with a profound grasp of evolutionary theory and its implications to social research Professors Zumbansen and Calliess have mobilized an appropriately diverse and truly stellar group of academics to investigate how this theory may provide new insights about law economics and their inter relations Cast against an especially broad intellectual backdrop set by the editors this volume is sure to become a standard reference in literature Amir N Licht Radzyner School of Law Israel Zumbansen and Calliess have done a wonderful job in assembling papers from the leading scholars in the field who draw on evolutionary approaches for explaining developments in both economics and the law Anybody interested in issues of institutional change will be inspired by the wealth of ideas and the diversity of perspectives Stefan Voigt University of Hamburg Germany Law and economics has arguably become one of the most influential theories in contemporary legal theory and adjudication The essays in this volume authored by both legal scholars and economists

constitute lively and critical engagements between law and economics and new institutional economics from the perspectives of legal and evolutionary theory The result is a fresh look at core concepts in law and economics such as institutions institutional change and market failure that offer new perspectives on the relationship between economic and legal governance The increasingly transnational dimension of regulatory governance presents lawyers economists and social scientists with an unprecedented number of complex analytical and conceptual questions The contributions to this volume engage with legal theory new institutional economics economic sociology and evolutionary economics in an interdisciplinary assessment of the capacities and limits of the state markets and institutions Drawing as well upon legal sociology and the philosophy of law the authors expand and transform the known terrain of law and economics by applying evolutionary theory to both law and economics from a domestic and transnational perspective Legal scholars evolutionary and regulatory theorists economists economic sociologists economic historians and political scientists will find this cutting edge volume both challenging and engaging

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

The Foundations of Tort Law in the Civilian Tradition Enrique Barros, 2025-08-21 The leading Spanish language treatise on the law on torts has now been translated into English making it accessible to jurists scholars and practitioners throughout the world It addresses the central analytical questions in modern tort theory by reference to first principles explaining how doctrinal tension has resulted from the law's evolution The book also offers a theoretical framework for understanding and analysing the doctrines behind the main tort rules found in different jurisdictions including their interrelationship and historical development Steeped in Chilean legal doctrine and case law on torts it also considers authorities from Britain Germany the USA France and Spain This is a magisterial and important

work **New Private Law Theory** Stefan Grundmann, Hans-W. Micklitz, Moritz Renner, 2021-03-18 New Private Law Theory opens a new pathway to private law theory through a pluralistic approach Such a theory needs a broad and stable foundation which the authors have built here through a canon of nearly seventy texts of reference This book brings these different texts from different disciplines into conversation with each other grouping them around central questions of private law and at the same time integrating them with the legal doctrinal analysis of example cases This book will be accessible to both experienced and early career scholars working on private law **Soviet Administrative Law: Theory and Policy** George Ginsburgs, Ger P. van den Berg, Gianmaria Ajani, William B. Simons, 2024-12-30 Islamic Public Law - Islamic Law in Theory and Practice Ahmed Akgunduz, 2011-11-01 Islamic law contains explications and divisions that imply a classification in terms of public and private law In this book we will explain the outlines of Islamic public law e g First Chapter Islamic constitutional law al siy sah al shar iyyah and administrative law al siy sah al shar iyyah Second Chapter penal law al uq b t Third Chapter financial law zak t ushr ar j and other taxes Fourth Chapter trial law qa and Fifth Chapter international public law al siyar The fields of especially Islamic constitutional law administrative law financial law ta z r penalties and arrangements concerning military law based on the restricted legislative authority vested by Shar ah rules and those jurisprudential decrees based on secondary sources like customs and traditions and the public good maslahah all fell under what was variously called public law al siy sah al shar iyyah Shar ah policy q n n legal code q n nn mah orf uq q etc Since these laws could not go beyond Shar ah principles either at least in theory they should not be regarded as a legal system outside of Islamic law But Islamic penal law financial law trial law and international law depend mostly on rules that are based directly on the Qur an and the Sunnah and codified in books of fiqh Islamic law called Shar ah rules Shar i shar f or Shar ah law Such rules formed 85% of the legal system In this book we will focus on some controversial problems in the Muslim world today such as the form of government in Islamic law and the relation between Islam and democracy Islamic law does not stipulate a certain method of state government nonetheless we may say that the principles it decrees and its concept of sovereignty suggest a religious republic As a matter of fact ulaf al R shid n the Rightly Guided Caliphs were both caliphs and religious republican presidents We could say that this book has three main characteristics i We have tried to base our explanations directly on the primary Islamic law sources For example after reading some articles on the caliphate or t m r system in articles or books by some Western scholars and even by some Muslim scholars one might conclude that there are different views on these subjects among Muslim scholars This is not true Muslisms have agreed on the basic rules on legal subjects but there are some conflicts regarding nuances and interpretations If one reads works by Im m Gazzali Ibn Taymiyyah al M wardi and al Farr one will not find any disagreement on the main rules but there are some different interpretations of some concepts We have tried to discover where they agreed and we have sometimes pointed to where they differed ii We have researched practices of Islamic law especially legal documents in the Ottoman archives For example we

explain add i sariqa but also mention some legal articles from the Ottoman legal codes q nunn mes and some Shar ah court decisions like legal decrees i l m t i shar iyyah It is well known that nobody can understand any legal system without implementing and practicing it That also holds for Islamic law because theory alone does not yield a complete understanding of Shar ah rules iii We have worked hard to correct some misconceptions and misunderstandings about Islamic law That is why we appeal to the primary sources For example some scholars claim that the anaf jurist Im m Sara s did not accept the idea of punishment for apostasy We have studied his work al Mabs t and found this claim to be unfounded The comparison between t m r and fief is another example because the t m r system is different from the fief system Some scholars confuse the concept of sovereignty and governance The Islamic state is not a theocratic state in the sense in which Europeans understand the term

“The” Political Theory of the Schoolmen and Grotius John Martin Littlejohn, 1895

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