

 THE
HIDDEN
HOLMES

HIS THEORY OF
TORTS IN HISTORY

 DAVID 
ROSENBERG

The Hidden Holmes His Theory Of Torts In History

Louis Menand



The Hidden Holmes His Theory Of Torts In History:

The Hidden Holmes David Rosenberg (Professor of law), 1995 This bold book challenges a contemporary consensus on the titanic figure of Oliver Wendell Holmes Holmes is the acknowledged source of twentieth century tort law but David Rosenberg takes sharp issue with the current portrayal of Holmes as a legal formalist in torts who opposed the notion of strict liability and dogmatically advocated a universal rule of negligence primarily to subsidize industrial development Marshaling the evidence found in Holmes classic *The Common Law* and other writings the author reveals that the opposite was the case and in the process raises troubling questions about the present state of legal scholarship It was Holmes who founded the modern conception and justification of strict liability He envisioned an expansive role for strict liability to augment the negligence rule in preventing and redressing injury from industrial activity This recovery of Holmes theory of torts provides new insights into the nature of the jurisprudence that launched the American legal realist movement and also overturns standard interpretations of the history of tort law Rejecting the prevailing view that either strict liability or negligence reigned exclusively Holmes and his contemporaries reconciled the existence of both rules and advocated reforms of tort law to protect society from the unprecedented hazards of industrial life The parallel drawn by the book between their response and ours in grappling with the novel problem of mass torts confirms Holmes belief in the adaptive genius of the common law

Oliver Wendell Holmes, Jr., Legal Theory, and Judicial Restraint Frederic R. Kellogg, 2006-12-11

Oliver Wendell Holmes Jr is considered by many to be the most influential American jurist The voluminous literature devoted to his writings and legal thought however is diverse and inconsistent In this study Frederic R Kellogg follows Holmes s intellectual path from his early writings through his judicial career He offers a fresh perspective that addresses the views of Holmes s leading critics and explains his relevance to the controversy over judicial activism and restraint Holmes is shown to be an original legal theorist who reconceived common law as a theory of social inquiry and who applied his insights to constitutional law From his empirical and naturalist perspective on law with its roots in American pragmatism emerged Holmes s distinctive judicial and constitutional restraint Kellogg distinguishes Holmes from analytical legal positivism and contrasts him with a range of thinkers

The Public Life of Privacy in Nineteenth-Century American Literature Stacey

Margolis, 2005-05-13 Challenges the familiar way of reading a major strain of 19th century American literature Rather than seeing this strain as preoccupied with a subject s inner mental life it shows that subjects can only be understood and understand themselves through

Formalism and Pragmatism in American Law Thomas C. Grey, 2014-09-03 In *Formalism and Pragmatism in American Law* Thomas Grey gives a full account of each of these modes of legal thought with particular attention to the versions of them promulgated by their influential exponents Christopher Columbus Langdell and Oliver Wendell Holmes Jr Grey argues that legal pragmatism as understood by Holmes is the best jurisprudential framework for a modern legal system He enriches his theoretical account with treatments of central issues in three important areas of law in

the United States constitutional interpretation property and torts **The Accidental Republic** John Fabian Witt,2009-07-01 Witt argues that experiments in accident law at the turn of the 20th century arose out of competing views of the loose network of ideas and institutions that historians call the ideology of free labor These experiments a century ago shaped 20th and 21st century American accident law and laid the foundations of the American administrative state The Law Is a White Dog - How Legal Rituals Make and Unmake Persons Colin Dayan,2013-03-03 A fascinating account of how the law determines or dismantles identity and personhood Abused dogs prisoners tortured in Guant namo and supermax facilities or slaves killed by the state all are deprived of personhood through legal acts Such deprivations have recurred throughout history and the law sustains these terrors and banishments even as it upholds the civil order Examining such troubling cases The Law Is a White Dog tackles key societal questions How does the law construct our identities How do its rules and sanctions make or unmake persons And how do the supposedly rational claims of the law define marginal entities both natural and supernatural including ghosts dogs slaves terrorist suspects and felons Reading the language allusions and symbols of legal discourse and bridging distinctions between the human and nonhuman Colin Dayan looks at how the law disfigures individuals and animals and how slavery punishment and torture create unforeseen effects in our daily lives Moving seamlessly across genres and disciplines Dayan considers legal practices and spiritual beliefs from medieval England the North American colonies and the Caribbean that have survived in our legal discourse and she explores the civil deaths of felons and slaves through lawful repression Tracing the legacy of slavery in the United States in the structures of the contemporary American prison system and in the administrative detention of ghostly supermax facilities she also demonstrates how contemporary jurisprudence regarding cruel and unusual punishment prepared the way for abuses in Abu Ghraib and Guant namo Using conventional historical and legal sources to answer unconventional questions The Law Is a White Dog illuminates stark truths about civil society s ability to marginalize exclude and dehumanize **Oliver Wendell Holmes Jr. and Legal Logic** Frederic R. Kellogg,2018-03-16 With Oliver Wendell Holmes Jr and Legal Logic Frederic R Kellogg examines the early diaries reading and writings of Justice Oliver Wendell Holmes Jr 1841 1935 to assess his contribution to both legal logic and general logical theory Through discussions with his mentor Chauncey Wright and others Holmes derived his theory from Francis Bacon s empiricism influenced by recent English debates over logic and scientific method and Holmes s critical response to John Stuart Mill s 1843 A System of Logic Conventional legal logic tends to focus on the role of judges in deciding cases Holmes recognized input from outside the law the importance of the social dimension of legal and logical induction how opposing views of many minds may converge Drawing on analogies from the natural sciences Holmes came to understand law as an extended process of inquiry into recurring problems Rather than vagueness or contradiction in the meaning or application of rules Holmes focused on the relation of novel or unanticipated facts to an underlying and emergent social problem Where the meaning and extension of legal terms are disputed by opposing views

and practices it is not strictly a legal uncertainty and it is a mistake to expect that judges alone can immediately resolve the larger issue

Philosophy and the Law of Torts Gerald J. Postema, 2001-11-19 When accidents occur and people suffer injuries who ought to bear the loss Tort law offers a complex set of rules to answer this question but up to now philosophers have offered little by way of analysis of these rules In eight essays commissioned for this volume leading legal theorists examine the philosophical foundations of tort law Amongst the questions they address are the following how are the notions at the core of tort practice such as responsibility fault negligence due care and duty to repair to be understood Is an explanation based on a conception of justice feasible How are concerns of distributive and corrective justice related What amounts to an adequate explanation of tort law This collection will be of interest to professionals and advanced students working in philosophy of law social theory political theory and law as well as anyone seeking a better understanding of tort law

The Lost World of Classical Legal Thought William M. Wiecek, 2001 This text examines the ideology of elite lawyers and judges from the Gilded Age to the New Deal Between 1866 and 1937 this coherent outlook or legal orthodoxy shaped the way the American bar interpreted and understood the law

Stereoscopic Law Alexander Lian, 2020-12-03 This book argues for a three dimensional view of law and restates the message of Holmes s *The Path of the Law* for legal educators of today

Law Without Values Albert W. Alschuler, 2000 Albert Alschuler s study of Holmes is very different from other books about him in that it is an exercise in debunking him

Governing Hate and Race in the United States and South Africa Patrick Lynn Rivers, 2008-08-20 In this book Patrick Lynn Rivers asserts that states govern racist hate by governing racial constructs Rivers maintains that state practices used to govern hate and race in both the United States and South Africa do not make citizens safer even as the United States markets itself as a melting pot of cultures and South Africa touts its status as the new multicultural city on a hill In effect the regulatory practices of the neoliberal state aid in the redirection of responsibility for the eradication of racist hate away from the nation and toward the hated leaving unaddressed the systemic causes of hate In line with emerging scholarship on hate but also taking advantage of the perspective that comparative analysis makes possible Rivers advocates a particular brand of progressive activism for a socially engaged state and citizenry where race is central and racism is not anomalous

Making Tort Law Charles Fried, David Rosenberg (Professor of law), 2003 Two Harvard law professors make the case for improving tort law to better protect individuals and discipline businesses

Searching the Law, 3d Edition Frank Bae, Edward Bander, Francis Doyle, Joel Fishman, Paul Richert, 2021-12-13

American Studies Louis Menand, 2003-11-01 At each step of this journey through American cultural history Louis Menand has an original point to make he explains the real significance of William James s nervous breakdown and of the anti-Semitism in T S Eliot s writing He reveals the reasons for the remarkable commercial successes of William Shawn s *New Yorker* and William Paley s CBS He uncovers the connection between Larry Flynt s *Hustler* and Jerry Falwell s evangelism between the atom bomb and the Scholastic Aptitude Test He locates the importance of Richard Wright Norman

Mailer Pauline Kael Christopher Lasch and Rolling Stone magazine And he lends an ear to Al Gore in the White House as the Starr Report is finally presented to the public Like his critically acclaimed bestseller The Metaphysical Club American Studies is intellectual and cultural history at its best game and detached with a strong curiosity about the political underpinnings of ideas and about the reasons successful ideas insinuate themselves into the culture at large From one of our leading thinkers and critics known both for his sly wit and reportorial high jinks and clarity and rigor The Nation these essays are incisive surprising and impossible to put down The American Judicial Tradition G. Edward White,2007-01-11 In this revised third edition of a classic in American jurisprudence G Edward White updates his series of portraits of the most famous appellate judges in American history from John Marshall to Oliver W Holmes to Warren E Burger with a new chapter on the Rehnquist Court White traces the development of the American judicial tradition through biographical sketches of the careers and contributions of these renowned judges In this updated edition he argues that the Rehnquist Court s approach to constitutional interpretation may have ushered in a new stage in the American judicial tradition The update also includes a new preface and revised bibliographic note **The Canon of American Legal Thought** David Kennedy,William W. Fisher III,2018-06-05 This anthology presents for the first time full texts of the twenty most important works of American legal thought since 1890 Drawing on a course the editors teach at Harvard Law School the book traces the rise and evolution of a distinctly American form of legal reasoning These are the articles that have made these authors from Oliver Wendell Holmes Jr to Ronald Coase from Ronald Dworkin to Catherine MacKinnon among the most recognized names in American legal history These authors proposed answers to the classic question What does it mean to think like a lawyer an American lawyer Their answers differed but taken together they form a powerful brief for the existence of a distinct and powerful style of reasoning and of rulership The legal mind is as often critical as constructive however and these texts form a canon of critical thinking a toolbox for resisting and unravelling the arguments of the best legal minds Each article is preceded by a short introduction highlighting the article s main ideas and situating it in the context of its author s broader intellectual projects the scholarly debates of his or her time and the reception the article received Law students and their teachers will benefit from seeing these classic writings in full in the context of their original development For lawyers the collection will take them back to their best days in law school All readers will be struck by the richness the subtlety and the sophistication with which so many of what have become the clichés of everyday legal argument were originally formulated Comparative Tort Law Mauro Bussani,2021-02-26 This revised second edition of Comparative Tort Law Global Perspectives offers an updated and enriched framework for analysing and understanding the current state of tort law around the world Using a critical comparative methodology it covers not only the common tort law issues but also many jurisdictions often overlooked in the mainstream literature Contributions explore illuminating case studies from tort systems in Europe the US Latin America Asia and sub Saharan Africa including new chapters specifically discussing tort law in Brazil India and Russia Calderon V.

United States of America ,1996 *The Force of Law Reaffirmed* Christoph Bezemek,Nicoletta Ladavac,2016-08-24 This book examines the success of Frederick Schauer s efforts to reclaim force as a core element of a general concept of law by approaching the issue from different legal traditions and distinct perspectives In discussing Schauer s main arguments it contributes to answering the question whether force sanctions and coercion should or should not be regarded as necessary elements of the concept of law and whether legal philosophy should be concerned at all or exclusively with necessary or essential properties While it was long assumed that legal norms are essentially defined by their force it was H L A Hart who raised doubts about whether law and coercion are necessarily connected referring to the empowering or more generally enabling character exhibited by some legal norms Prominent scholars following and refining Hart s argument built an influential case for excluding force as a necessary element of the concept of law Most recently however Frederick Schauer has made a strong case to reaffirm the force of law shedding new light on this essential question This book collects important commentaries never before published by prominent legal philosophers evaluating Schauer s substantive arguments and his claims about jurisprudential methodology

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