

The Soundest Theory of Law

C. L. TEN

Ronald Dworkin's important theory of law has developed out of his attack on what he calls 'the ruling theory' of legal positivism. Positivism is for him a combination of connected claims: that law is a system of explicitly adopted or enacted rules; that law and morality are conceptually separate; that in hard cases when there are no clear legal rules, judges exercise discretion by appealing to extra-legal considerations; that these extra-legal considerations are often utilitarian in character in that they seek to promote the general welfare rather than individual rights. Dworkin rejects each one of these claims. He argues that law consists of principles as well as rules. These principles are moral principles which confer rights on individuals. In hard cases where rules do not dictate a result, a judge is still bound by legal principles and does not therefore have discretion. Decisions governed by legal principles enforce the existing rights of individuals, and hence judges do not create the law: they discover it. Judges should not decide hard cases on the basis of those considerations which influence legislators when they pursue policies promoting collective goals. Individual rights are to be enforced against considerations of the general welfare. Judicial discretion is mistaken both as a descriptive thesis about how judges in fact act in hard cases, and as a prescriptive account of how they ought to behave. Dworkin has pursued these themes over many years, and in successive papers, now collected in a book, *Taking Rights Seriously*, he has sought to refine and elaborate on both his opposition to legal positivism as well as his own theory of law.¹ He has also applied his theory to topical issues with results that are recognisably liberal in character, although it is a form of liberalism without the usual utilitarian underpinnings.

The focus of discussion has been on Dworkin's denial of judicial discretion, for this is the central issue of legal theory in the United States, where jurisprudence thrives more than anywhere else in the world. The American legal system revolves

*I Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1996). Unless otherwise stated, all subsequent references to Dworkin are to this book.*

round a Constitution that is formulated in terms of vague general principles which constantly call for judicial interpretation. Judicial activism in striking down legislation, and in giving birth to new legal rules, operates on a scale that exists in no other legal

Soundest Theory Of Law

Scott Brewer



Soundest Theory Of Law:

The Soundest Theory of Law C. L. Ten, 2004 The papers in this volume focus on two central issues in the philosophy of law the relationship between law and morality and crime and punishment In the essay that gives the title to this volume it is argued that although in many legal systems there are in fact significant connections between law and morality these connections are not conceptually or logically necessary They depend on various social practices Ronald Dworkin s famous attempt to undermine the legal positivist s separation of law from morality is rejected and it is argued that Dworkin s own positive theory of law may indeed be quite compatible with certain versions of legal positivism Other essays explore the notion of a wicked legal system the rule of law and various perspectives on the nature of law The essays on crime and punishment discuss the theory and practice of punishment They extend the work done in the author s earlier book *Crime Guilt and Punishment* They reject a purely retributive justification of punishment in spite of the increasing sophistication in its recent formulations

Classic Readings and Cases in the Philosophy of Law Susan Dimock, 2016-09-16 With over sixty cases as support this text presents the philosophy of law as a perpetual series of debates with overlapping lines and cross connections Using law as a focus to bring into relief many social and political issues of pressing importance in contemporary society this book encourages readers to think critically and philosophically *Classic Readings and Cases in the Philosophy of Law* centers on five major questions What is law What if any connection must there be between law and morality When should law be used to restrict the liberty of individuals To what extent should democratic states permit civil disobedience What if anything justifies the infliction of punishment on those who violate the law The extensive anthology of cases covers the mundane to the grandest of constitutional issues including controversial topics like ownership of genetic material capital punishment and gay rights Brief introductions to each case describe the central issue being litigated the legal reasoning of the justices both majority and dissenting the decision of the court and its philosophical significance

The Fate of Law Austin Sarat, Thomas R. Kearns, 2009-11-10 Assesses the impact of intellectual and political movements of the late twentieth century on law and legal theory

Race, Rights, and Justice J. Angelo Corlett, 2009-03-03 *Race Rights and Justice* explores questions of the nature of law and constitutional interpretation international law and global justice and the nature function and importance of rights each from a perspective that takes seriously the realities of race and racism After a critical assessment of various contemporary theories of law is provided a new theory of legal interpretation is set forth and defended The respective words of Immanuel Kant and H L A Hart on the possibility and desirability of international law are carefully explicated Following this *Race Rights and Justice* defends John Rawls *Law of Peoples* from the cosmopolitan liberal critique of it The nature and importance of rights both individual and collective are clarified while correcting some political philosophies that have propagated confused rhetoric about rights And the collective right to humanitarian intervention is investigated philosophically in terms of the recent problems in Colombia with surprisingly original results While the

methodology of this book is thoroughly analytical philosophically speaking some of the conclusions drawn are substantially original infusing the facts of race and racism into mainstream matters of philosophy of law In this collection of essays J Angelo Corlett continues his important work of bringing the perspective of indigenous peoples and more generally of race into mainstream philosophical debates about justice and rights Corlett s book also has very valuable insights into the nature of international law that will greatly enrich our contemporary debates Larry May Washington University in St Louis USA Angelo Corlett is a prolific writer whose work is invariably stimulating provocative and insightful Race Rights and Justice is an important addition to the oeuvre Corlett is not afraid to tackle big problems and big names See for example his scathing criticisms of Bork and Scalia on constitutional interpretation Burleigh T Wilkins University of California Santa Barbara USA

Critical Legal Studies Andrew Altman,2021-06-08 Scholars in the Critical Legal Studies movement have challenged some of the most cherished ideals of modern Western legal and political thought CLS thinkers claim that the rule of law is a myth and that its defense by liberal thinkers is riddled with inconsistencies This first book length liberal reply to CLS systematically examines the philosophical underpinnings of the CLS movement and exposes the deficiencies in the major lines of CLS argument against liberalism Taking Rights Seriously Ronald Dworkin,2018-06-25 What is law What is it for How should judges decide novel cases when the statutes and earlier decisions provide no clear answer Do judges make up new law in such cases or is there some higher law in which they discover the correct answer Must everyone always obey the law If not when is a citizen morally free to disobey *Hard Cases in Wicked Legal Systems* David Dyzenhaus,2010-02-25 This influential book makes sense of abstract debates about the nature of law and the rule of law by situating them in the real world context of apartheid era South Africa The new edition examines the transformation in South Africa since the end of apartheid and the shift in debates surrounding the rule of law post 9 11 **Moral Theory and Legal Reasoning** Scott Brewer,1998 *Critical Legal Studies* Richard W Bauman,2021-11-28 Contemporary legal thought has been powerfully influenced by Critical Legal Studies a school of legal scholars whose work has sustained a continuing radical critique of established legal doctrines In this essential reference work Richard Bauman presents the most thorough up to date guide available for this essential literature In addition to providing the basic bibliographic information Bauman offers a set of effective introductions to contextualize and explain the work being surveyed He has created a fundamental handbook not only for the law but also for politics and radical thought **Essays in Jurisprudence and Philosophy** H. L. A. Hart,1983-11-24 This important collection of essays includes Professor Hart s first defense of legal positivism his discussion of the distinctive teaching of American and Scandinavian jurisprudence an examination of theories of basic human rights and the notion of social solidarity and essays on Jhering Kelsen Holmes and Lon Fuller Understanding Jurisprudence Raymond Wacks,2021 Understanding Jurisprudence provides an illuminating and engaging introduction to the central questions of legal theory It is the perfect starting point for those new to the subject **Rights, Emergencies and Judicial**

Review Imtiaz Omar,2023-07-03 This book makes a significant contribution to the understanding of issues of comparative constitutionalism in emergent politics Recurrent states of emergency in Malaysia Sri Lanka and Bangladesh provide the background for a comparative examination of constitutional emergency powers individual rights and judicial review This work examines the extent to which the Court in these countries has performed its expected role identifies problems in approaches to interpretation which have been adopted and suggests alternatives to constitutional interpretation and judicial review The alternatives explored are drawn from contemporary western jurisprudence including those of Ronald Dworkin and writers of the Critical Legal Studies tradition The juxtaposition of western jurisprudential development to issues of constitutionalism in the countries under survey is a bold attempt to seek some common ground in conceptualizing rights and techniques of juristic interpretation in western and eastern legal cultures The theoretical framework of the study is well perceived the arguments convincing This carefully researched work makes a valuable and scholarly contribution to the study of comparative constitutional law and jurisprudence

The Judicial Process E. W. Thomas,2005-09-15 In the absence of a sound conception of the judicial role judges at present can be said to be muddling along They disown the declaratory theory of law but continue to behave and think as if it had not been discredited Much judicial reasoning still exhibits an unquestioning acceptance of positivism and a rulish predisposition Formalistic thinking continues to exert a perverse influence on the legal process This 2005 book dismantles these outdated theories and seeks to bridge the gap between legal theory and judicial practice The author propounds a coherent and comprehensive judicial methodology for modern times Founded on the truism that the law exists to serve society and adopting the twin criteria of justice and contemporaneity with the times a judicial methodology is developed which is realistic and pragmatic and which embraces a revised conception of practical reasoning including in that conception a critical role for legal principles

Philosophy of Law Joel Feinberg,Hyman Gross,1991 substantial revision many new articles sections have been added authors apply abstract theory of philosophy to specific examples in law introduction from the authors heads each section to guide students into the material that follows

Educating Oneself in Public Michael S. Moore,2000 The eleven essays in Educating Oneself in Public Critical Essays in Jurisprudence constitute an education in the Anglo American jurisprudence of the second half of the twentieth century The book examines both the thought of major figures such as H L A Hart Joseph Raz Ronald Dworkin Lon Fuller and Richard Rorty and the general themes of major movements such as legal realism post modernism and pragmatism Despite this focus on the thoughts of others the book is not a survey but is a critical probing of particular ideas often attributed to such figures Detailed depth of understanding is sought about Hart s conception of a general jurisprudence that describes law in general Dworkin s conception of an internal jurisprudence that interprets the concept of law of our legal culture Fuller s ideal of a functional jurisprudence that seeks the essence of law in the values it serves the place of rules in legal and moral reasoning Raz s idea that laws give exclusionary reasons to legal actors subject to such laws how judges

should reason according to the legal realists whether there are right answers to all disputed law cases whether behind the obvious law of legal rules there can exist an unobvious law of legal principles Finnis's conception of the common good as the function law uniquely serves in what sense law practice and legal theory are interpretive activities whether all knowledge or some discrete realm of knowledge is peculiarly interpretive in character Michael Moore's views on each of these topics are detailed and original even if the springboards for each discussion are the writings of those who introduced such topics into modern discussions The introductory chapter includes responses by many of the figures examined in the other essays together with the author's rejoinders

Social and Political Philosophy Peter A. French, Theodore Edward Uehling, Howard K. Wettstein, 1982 Social and Political Philosophy was first published in 1982 Minnesota Archive Editions uses digital technology to make long unavailable books once again accessible and are published unaltered from the original University of Minnesota Press editions

Justifying Judgment Vincent Joseph Samar, 1998 Samar philosophy Loyola U seeks to develop a metatheory of law that judges could use to decide very hard cases in which the law offers no firm precedents or it is not clear whether the applicable law is just He discusses theories of political philosophy that set a foundation for the duty to obey law presents a natural law justification for a legal system containing morally just laws uses his metatheory to resolve five historically significant constitutional cases and offers suggestions for legal education Annotation copyrighted by Book News Inc Portland OR

Constitutional Interpretation Keith E. Whittington, 1999 With its detailed and wide ranging explorations in history philosophy and law this book is essential reading for anyone interested in how the Constitution ought to be interpreted and what it means to live under a constitutional government

BOOK JACKET *Hart's Legal Philosophy* M.E. Bayles, 2013-03-09 During the last half of the twentieth century legal philosophy or legal theory or jurisprudence has grown significantly It is no longer the domain of a few isolated scholars in law and philosophy Hundreds of scholars from diverse fields attend international meetings on the subject In some universities large lecture courses of five hundred students or more study it The primary aim of the Law and Philosophy Library is to present some of the best original work on legal philosophy from both the Anglo American and European traditions Not only does it help make some of the best work available to an international audience but it also encourages increased awareness of and interaction between the two major traditions The primary focus is on full length scholarly monographs although some edited volumes of original papers are also included The Library editors are assisted by an Editorial Advisory Board of internationally renowned scholars Legal philosophy should not be considered a narrowly circumscribed field Insights into law and legal institutions can come from diverse disciplines on a wide range of topics Among the relevant disciplines or perspectives contributing to legal philosophy besides law and philosophy are anthropology economics political science and sociology Among the topics included in legal philosophy are theories of law the concepts of law and legal institutions legal reasoning and adjudication epistemological issues of evidence and procedure law and justice economics politics or morality legal ethics and theories of legal fields such

as criminal law contracts and property *Postmodern Philosophy and Law* Douglas E. Litowitz, 1997 The author presents a two tiered analysis that views postmodern legal thought as both a collective intellectual movement and as the work of particular theorists notably Friedrich Nietzsche Michel Foucault Jacques Derrida Francois Lyotard and Richard Rorty He concludes that even though postmodern thought does not give rise to a normative theory of right that can be used as a framework for deciding cases it can focus attention on genealogy and discourse and can empower those who have been denied a voice in the legal system Annotation copyrighted by Book News Inc Portland OR

The Top Books of the Year Soundest Theory Of Law The year 2023 has witnessed a noteworthy surge in literary brilliance, with numerous compelling novels enthralling the hearts of readers worldwide. Lets delve into the realm of bestselling books, exploring the engaging narratives that have captivated audiences this year. Soundest Theory Of Law : Colleen Hoover "It Ends with Us" This touching tale of love, loss, and resilience has captivated readers with its raw and emotional exploration of domestic abuse. Hoover expertly weaves a story of hope and healing, reminding us that even in the darkest of times, the human spirit can succeed. Uncover the Best : Taylor Jenkins Reids "The Seven Husbands of Evelyn Hugo" This spellbinding historical fiction novel unravels the life of Evelyn Hugo, a Hollywood icon who defies expectations and societal norms to pursue her dreams. Reids compelling storytelling and compelling characters transport readers to a bygone era, immersing them in a world of glamour, ambition, and self-discovery. Discover the Magic : Delia Owens "Where the Crawdads Sing" This evocative coming-of-age story follows Kya Clark, a young woman who grows up alone in the marshes of North Carolina. Owens crafts a tale of resilience, survival, and the transformative power of nature, captivating readers with its evocative prose and mesmerizing setting. These bestselling novels represent just a fraction of the literary treasures that have emerged in 2023. Whether you seek tales of romance, adventure, or personal growth, the world of literature offers an abundance of engaging stories waiting to be discovered. The novel begins with Richard Papen, a bright but troubled young man, arriving at Hampden College. Richard is immediately drawn to the group of students who call themselves the Classics Club. The club is led by Henry Winter, a brilliant and charismatic young man. Henry is obsessed with Greek mythology and philosophy, and he quickly draws Richard into his world. The other members of the Classics Club are equally as fascinating. Bunny Corcoran is a wealthy and spoiled young man who is always looking for a good time. Charles Tavis is a quiet and reserved young man who is deeply in love with Henry. Camilla Macaulay is a beautiful and intelligent young woman who is drawn to the power and danger of the Classics Club. The students are all deeply in love with Morrow, and they are willing to do anything to please him. Morrow is a complex and mysterious figure, and he seems to be manipulating the students for his own purposes. As the students become more involved with Morrow, they begin to commit increasingly dangerous acts. The Secret History is a masterful and thrilling novel that will keep you guessing until the very end. The novel is a cautionary tale about the dangers of obsession and the power of evil.

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