

 THE   
HIDDEN  
HOLMES

HIS THEORY OF  
TORTS IN HISTORY

 DAVID   
ROSENBERG

# The Hidden Holmes His Theory Of Torts In History

**Frederic R. Kellogg**



### **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

**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

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