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The
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The Philosophy Of Positive Law Foundations Of Jurisprudence

D Keegan



The Philosophy Of Positive Law Foundations Of Jurisprudence:

The Philosophy of Positive Law James Bernard Murphy, 2008-10-01 In this first book length study of positive law James Bernard Murphy rewrites central chapters in the history of jurisprudence by uncovering a fundamental continuity among four great legal philosophers Plato Thomas Aquinas Thomas Hobbes and John Austin In their theories of positive law Murphy argues these thinkers represent successive chapters in a single fascinating story That story revolves around a fundamental ambiguity is law positive because it is deliberately imposed as opposed to customary law or because it lacks moral necessity as opposed to natural law These two senses of positive law are not coextensive yet the discourse of positive law oscillates unstably between them What then is the relation between being deliberately imposed and lacking moral necessity Murphy demonstrates how the discourse of positive law incorporates both normative and descriptive dimensions of law and he discusses the relation of positive law not only to jurisprudence but also to the philosophy of language ethics theories of social order and biblical law

The Philosophy of Customary Law James Bernard Murphy, 2014 Although many modern philosophers of law describe custom as merely a minor source of law formal law is actually only one source of the legal customs that govern us Many laws grow out of custom and one measure of a law's success is by its creation of an enduring legal custom Yet custom and customary law have long been neglected topics in unsettled jurisprudential debate Smaller concerns such as whether customs can be legitimized by practice or by stipulation stipulated by an authority or by general consent or dictated by law or vice versa lead to broader questions of law and custom as alternative or mutually exclusive modes of social regulation and whether rational reflection in general ought to replace sub rational prejudice Can legal rules function without customary usage and does custom even matter in society *The Philosophy of Customary Law* brings greater theoretical clarity to the often murky topic of custom by showing that custom must be analyzed into two more logically basic concepts convention and habit James Bernard Murphy explores the nature and significance of custom and customary law and how conventions relate to habits in the four classic theories of Aristotle Francisco Suarez Jeremy Bentham and James C Carter He establishes that customs are conventional habits and habitual conventions and allows us to better grasp the many roles that custom plays in a legal system by offering a new foundation of understanding for these concepts

The Legacy of John Austin's Jurisprudence Michael Freeman, Patricia Mindus, 2012-09-12 This is the first ever collected volume on John Austin whose role in the founding of analytical jurisprudence is unquestionable After 150 years time has come to assess his legacy The book fills a void in existing literature by letting top scholars with diverse outlooks flesh out and discuss Austin's legacy today A nuanced vibrant and richly diverse picture of both his legal and ethical theories emerges making a case for a renewal of interest in his work The book applies multiple perspectives reflecting Austin's various interests stretching from moral theory to theory of law and state from Roman Law to Constitutional Law and it offers a comparative outlook on Austin and his legacy in the light of the contemporary debate and major movements within legal theory It sheds new light on some

central issues of practical reasoning the relation between law and morals the nature of legal systems the function of effectiveness the value free character of legal theory the connection between normative and factual inquiries in the law the role of power the character of obedience and the notion of duty *The Cambridge History of Modern European Thought* Warren Breckman, Peter Eli Gordon, 2019 In these well nigh encyclopedic volumes Warren Breckman and Peter E Gordon engage in a daunting feat They offer compact and informative introductions to essays on very many crucial dimensions of thought in the nineteenth and twentieth centuries And they furnish along with their own substantive chapters contributions from an array of prominent scholars of intellectual and cultural history all of whom demonstrate impressive expertise in their varied areas of inquiry The result is an important work of both scholarly and general interest Back cover *The Nature of Customary Law* Amanda Perreau-Saussine, James B. Murphy, 2007-05-17 Some legal rules are not laid down by a legislator but grow instead from informal social practices In contract law for example the customs of merchants are used by courts to interpret the provisions of business contracts in tort law customs of best practice are used by courts to define professional responsibility Nowhere are customary rules of law more prominent than in international law The customs defining the obligations of each State to other States and to some extent to its own citizens are often treated as legally binding However unlike natural law and positive law customary law has received very little scholarly analysis To remedy this neglect a distinguished group of philosophers historians and lawyers has been assembled to assess the nature and significance of customary law The book offers fresh insights on this neglected and misunderstood form of law *The ^AOxford Handbook of Hobbes* A.P. Martinich, Kinch Hoekstra, 2016-03-07 The Oxford Handbook of Hobbes collects twenty six newly commissioned original chapters on the philosophy of the English thinker Thomas Hobbes 1588 1679 The chapters included in this Oxford Handbook cover the full range of Hobbes s thought his philosophy of logic and language his view of physics and scientific method his ethics political philosophy and philosophy of law and his views of religion history and literature **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

Aquinas and Modern Law James Bernard Murphy, 2017-07-05 This volume collects some of the best recent writings on St Thomas s philosophy of law and includes a critical examination of Aquinas s theory of the relation between law and morality his natural law theory as well as the modern reformulation of his approach to natural rights The volume shows how Aquinas understood the importance of positive law and demonstrates the modern relevance of his writings by including Thomistic critiques of modern jurisprudence and examples of applications of Thomistic jurisprudence to specific modern legal problems such as federalism environmental policy abortion and euthanasia The volume also features an introduction which places Aquinas s writings in the context of modern jurisprudence as well as an extensive bibliography The volume is suited to the needs of jurisprudence scholars teachers and students and is an essential resource for all law libraries **The Shenzi**

Fragments Eirik Lang Harris, 2016-09-20 The Shenzi Fragments is the first complete translation in any Western language of the extant work of Shen Dao 350 275 B C E Though his writings have been recounted and interpreted in many texts particularly in the work of Xunzi and Han Fei very few Western scholars have encountered the political philosopher s original influential formulations This volume contains both a translation and an analysis of the Shenzi Fragments It explains their distillation of the potent political theories circulating in China during the Warring States period along with their seminal relationship to the Taoist and Legalist traditions and the philosophies of the L shi Chunqiu and the Huainanzi These fragments outline a rudimentary theory of political order modeled on the natural world that recognizes the role of human self interest in maintaining stable rule Casting the natural world as an independent amoral system Shen Dao situates the source of moral judgment firmly within the human sphere prompting political philosophy to develop in realistic directions Harris s sophisticated translation is paired with commentary that clarifies difficult passages and obscure references For sections open to multiple interpretations he offers resources for further research and encourages readers to follow their own path to meaning much as Shen Dao intended The Shenzi Fragments offers English language readers a chance to grasp the full significance of Shen Dao s work among the pantheon of Chinese intellectuals *State Law and Legal Positivism* , 2021-12-13

This volume formulates the hypothesis of a truly global revolution that reflected a Great Divide between ancient and new legal regimes The volume brings together several case studies of transition from an ancient to a new legal regime characterized by the positivization of the law This was an effect of Western imperialism but also of local elites conviction that positive law was an efficient instrument of governance The contributors emphasize the depth and scale of the positivist legal

revolution and explore the phenomenon whether it was the outcome of either direct colonialism Morocco Egypt India or indigenous reformism Ottoman empire China Japan

The Philosophy Of Positive Law Foundations Of Jurisprudence Book Review: Unveiling the Magic of Language

In an electronic era where connections and knowledge reign supreme, the enchanting power of language has been apparent than ever. Its ability to stir emotions, provoke thought, and instigate transformation is actually remarkable. This extraordinary book, aptly titled "**The Philosophy Of Positive Law Foundations Of Jurisprudence**," compiled by a very acclaimed author, immerses readers in a captivating exploration of the significance of language and its profound impact on our existence. Throughout this critique, we shall delve to the book's central themes, evaluate its unique writing style, and assess its overall influence on its readership.

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