

OXFORD LEGAL PHILOSOPHY

WHY LAW MATTERS

Alon Harel



Why Law Matters Oxford Legal Philosophy

Mark McBride, James Penner



Why Law Matters Oxford Legal Philosophy:

Why Law Matters Alon Harel, 2014 *Why Law Matters* argues that public institutions and legal procedures are valuable and matter as such irrespective of their instrumental value Examining the value of rights public institutions and constitutional review the book criticises instrumentalist approaches in political theory claiming they fail to account for their enduring appeal

Theory of Legal Personhood Visa A. J. Kurki, 2019 This work offers a new theory of what it means to be a legal person and suggests that it is best understood as a cluster property The book explores the origins of legal personhood the issues afflicting a traditional understanding of the concept and the numerous debates surrounding the topic

Judicial Avoidance Carolina Alves das Chagas, 2023-08-24 This book analyses cases of judicial avoidance what happens when courts leave some or all of the merits of a case undecided It explores examples of justiciability assessments and deferential approaches regarding the decision of another authority and examines legitimacy issues involving judicial avoidance The reader is presented with answers to two fundamental questions that guide the development of the book Is it legitimate to practise judicial avoidance How could judicial avoidance be practised legitimately The conflict of competences which often emerges in instances of judicial avoidance is an important book baseline From this conflict the book considers and defends the possibility of applying formal balancing to provide a clearer structure of the exercise of justiciability and judicial deference The formal balancing methodology is based on Alexy's principles theory and its connection with judicial avoidance represents a significant contribution and novel point in constitutional adjudication

Constitutionalism Justified Ester Herlin-Karnell, Matthias Klatt, Héctor A. Morales Zúñiga, 2019-10-15 *Constitutionalism Justified* analyzes leading Frankfurt School theorist Rainer Forst's theory of a basic right to justification unique in combining insights from philosophy constitutionalism and legal theory Drawing upon Kant's critical philosophy and Habermas's discourse theory he has developed fresh perspectives on core topics like the concept of justice the relation between modernity and emancipation and human rights The contributors to this volume explore Forst's work from three different perspectives philosophy legal philosophy and constitutional theory The first part of this volume addresses the philosophical argument of the basic right to justification including the influence of Kantian thought on this right the deontological versus teleological fundamentals the tension between moral pluralism and universalism and the relation of the right to justification with social and distributive justice The second part covers how the right to justification is embedded in constitutional and legal frameworks It explores the implications that Forst's right to justification has for conceptualizing constitutional democracy and its foundations and how the moral right to justification may translate into particular practices of justification that are constrained by a legal framework This includes discussion of the value of constitutionalism in general of the relation between the formal structure of democracy and substantive justice of the inclusion of outsiders to the constitutional setting and of proportionality analysis and judicial review as forms of justification The book concludes with Rainer Forst's reply to his interlocutors making the book

a valuable source for future research

Legal Validity Maris Köpcke, 2019-01-24 Critical human interests are affected on a daily basis by appeal to past decisions deemed to be legally valid They include statutes deportation orders judgments mortgage contracts patents and wills Through the technique of validity lawyerly reasoning settles morally pressing matters in a way that largely bypasses moral argument Legal philosophy has paid considerable attention to validity criteria but it has neglected to explore validity's point whether and if so how the pervasive technique of validity can contribute to a legal system's ability to realise justice and human rights This book shows that validity can help a political community to foster justice precisely because validity does not primarily turn on moral considerations Validity serves to both allocate and limit a distinct kind of power a power that is key to forging valuable forms of enterprise and commitment in pursuit of individual and collective self-direction By entrusting the capacity to decide to those who in justice ought to bear it validity can enable persons and institutions to rally the resources and opportunities that only large-scale behavioural convergence can afford thereby weaving a fabric of just relationships within the systemic framework of law

Reason and Restitution Charlie Webb, 2016 In law gains like losses don't always lie where they fall That there exists a body of law dealing with liability for gains is now settled and the circumstances in which the law requires defendants to give up their gains are well documented in the work of unjust enrichment lawyers The same cannot be said however of the reasons for ordering restitution of such gains It is often suggested that unjust enrichment's existence can be demonstrated without inquiry into these reasons into the principles of justice it represents and invokes Yet while we can indeed show that there exists a body of claims dealing with the recovery of mistaken payments and the like without going on to inquire into their rationale the same cannot be said for unjust enrichment's existence as a distinct ground of such claims For if unjust enrichment exists as a body of like cases and claims truly independent of contract and tort then it does so by virtue of the distinct reasons it identifies and to which these claims respond Reason and Restitution offers an analysis of the reasons which support and shape claims in unjust enrichment and how these reasons bear on the law's application and development The identity of these reasons matters since it establishes how and to what extent unjust enrichment really is independent of contract and tort giving us a clearer understanding of unjust enrichment's relationship to these and other concepts and categories But more importantly it matters to those charged with the practical tasks of deciding cases and making laws for it is these reasons alone which can direct how judges and legislators ought to respond to these claims

The Principle of Legality Conor Crummey, 2025-03-07 It is a well-known tenet of public law that judges must interpret a statute consistently with common law rights and principles unless that statute uses clear and express language to license their violation of such rights and principles This is the principle of legality But what rights and principles activate this rule of statutory construction How explicit must statutory language be to permit the violation of common law rights Is there a point at which a potential interference with common law principles is so egregious that even a clearly worded statute cannot license it The Principle of Legality A Moral Theory develops a theory

to help us engage with and answer these questions Professor Conor Crummey challenges prevailing accounts of the principle of legality as a presumption about the intentions of the legislature By engaging with debates in the philosophy of language and general jurisprudence the book reveals the shortcomings of these existing theories Through the lens of a non positivist theory of general jurisprudence The Principle of Legality demonstrates that judges when invoking the principle of legality are engaging in a complex process of moral reasoning This innovative approach provides clear satisfying answers to some of the most pressing and controversial questions in contemporary public law scholarship *MacCormick's Scotland* Neil Walker, 2012-03-26 A Gedenkschrift to one of Scotland's most prominent jurists and legal thinkers Moral Puzzles and Legal Perplexities Heidi M. Hurd, 2019 Engages with the life and work of Larry Alexander to explore puzzles and paradoxes in legal and moral theory **Natural Law and the Nature of Law** Jonathan Crowe, 2019-04-25 Presents a systematic contemporary defence of the natural law outlook in ethics politics and jurisprudence The Methodology of Legal Theory Michael Giudice, Wil Waluchow, 2017-07-05 The last decade has witnessed a particularly intensive debate over methodological issues in legal theory The publication of Julie Dickson's *Evaluation and Legal Theory* 2001 was significant as were collective returns to H L A Hart's *Postscript to The Concept of Law* While influential articles have been written in disparate journals no single collection of the most important papers exists This volume the first in a three volume series aims not only to fill that gap but also propose a systematic agenda for future work The editors have selected articles written by leading legal theorists including among others Leslie Green Brian Leiter Joseph Raz Ronald Dworkin and William Twining and organized under four broad categories 1 problems and purposes of legal theory 2 the role of epistemology and semantics in theorising about the nature of law 3 the relation between morality and legal theory and 4 the scope of phenomena a general jurisprudence ought to address *New Essays on the Nature of Legal Reasoning* Mark McBride, James Penner, 2022-05-19 This is the first book to bring together distinguished jurisprudential theorists as well as up and coming scholars to critically assess the nature of legal reasoning The volume is divided into 3 parts The first part General Jurisprudence and Legal Reasoning addresses issues at the intersection of general jurisprudence those pertaining to the nature of law itself and legal reasoning The second part Rules and Reasons addresses two concepts central to two prominent types of theory of legal reasoning The essays in the third and final part Doctrine and Practice delve into the mechanics of legal practice and doctrine from a legal reasoning perspective **Imposing Risk** John Oberdiek, 2017-08-25 We subject others and are ourselves subjected to risk all the time risk permeates life Despite the ubiquity of risk and its imposition philosophers and legal scholars have devoted little of their attention to the difficult questions stimulated by the pervasiveness of risk When we impose risk upon others what is it that we are doing What is risking's moral significance What moral standards govern the imposition of risk And how should the law respond to it This book highlights these important but neglected questions and offers novel answers to them in a systematic way constructing a normative framework of risk imposition that draws upon a wide range of insights from diverse sources

within philosophy and legal theory Oxford Legal Philosophy publishes the best new work in philosophically oriented legal theory It commissions and solicits monographs in all branches of the subject including works on philosophical issues in all areas of public and private law and in the national transnational and international realms studies of the nature of law legal institutions and legal reasoning treatments of problems in political morality as they bear on law and explorations in the nature and development of legal philosophy itself The series represents diverse traditions of thought but always with an emphasis on rigour and originality It sets the standard in contemporary jurisprudence

Wrongs, Harms, and Compensation Adam Slavny, 2023 In this work Adam Slavny explores our moral duties to respond to wrongs and harms and defends the significance of these duties for the normative foundations of tort law

Altruism and the Criminal Law Andrew Ashworth, Juan Ignacio Piña Rochefort, 2025-09-18 This book explores the foundations of the principle of altruism and its relationship to the criminal law examining the contrasting justifications for the duty of easy rescue and the duty of tolerance both of which are based on altruism Since the days of Lord Macaulay and James FitzJames Stephen it has been said that English law does not usually punish omissions and that altruistic duties are incompatible with the spirit of the common law This book aims to show that this is not an accurate description of English criminal law and that there is a strong case to be made for the opposite understanding based on principles advanced by authors such as Adam Smith Jeremy Bentham John Stuart Mill and others By analysing the duty of easy rescue which imposes on individuals a duty to take steps to rescue a person in danger if this can be done without risk to the rescuer or at least a duty to call the emergency services and by comparing it with the well known duties arising in cases of extreme necessity it can be shown that altruism has plenty to say in different parts of the criminal law Having established the case for criminalising the failure to provide a simple rescue a detailed analysis is made of the form that this criminalisation should take bearing in mind the basic principles of English law and considering the strengths and weaknesses of the duty of easy rescue as it is formulated in various continental systems including the German French Spanish and Italian criminal codes

Animal Lives Matter Raymond Wacks, 2024-02-13 *Animal Lives Matter* provides a comprehensive analysis of the legal philosophical and ethical aspects of animal rights It argues that the subject extends beyond the matter of our obligations towards animals to include our wider responsibilities for protecting the environment Drawing on numerous moral political legal religious and philosophical theories including utilitarianism deontology rights theory social contractarianism and the capabilities approach the author meticulously examines the questions of sentience speciesism personhood and human exceptionalism Lucid nuanced and academically rigorous this important book will be an essential resource for scholars of law politics philosophy ethics as well as policy makers and the general reader

Property Rights: A Re-Examination J. E Penner, 2020-02-14 Ranging over a host of issues *Property Rights: A Re-Examination* pinpoints and addresses a number of theoretical problems at the heart of property theory Part 1 reconsiders and rejects once again the bundle of rights picture of property and the related nominalist theories of property

showing that ownership reflects a tripartite structure of title the right to immediate exclusive possession the power to license what would otherwise be a trespass and the power to transfer ownership Part 2 explores in detail the Hohfeldian theory of jural relations in particular liberties and powers and Hohfeld's concept of multital jural relations and shows that this theory fails to illuminate the nature of property rights and indeed obscures much that it is vital to understand about them Part 3 considers the form and justification of property rights beginning with the relation an owner's liberty to use her property and her right to exclude with particular reference to the tort of nuisance Next up for consideration is the Kantian theory of property rights the deficiencies of which lead us to understand that the only natural right to things is a form of use or usufructory right Part 3 concludes by addressing the ever vexed question of property rights in land **The Right of**

Redress Andrew S. Gold, 2020 The Right of Redress advances the discussion of corrective justice in private law by refocusing the reversal of transactions away from the prevailing account of the wrongdoer's remedial duty and toward the right of an individual to obtain redress which the author terms redressive justice **Facts & Norms** Theresa Scavenius, Kasper

Lippert-Rasmussen, 2021-05-13 What role should non normative facts such as people's confined generosity and scarcity of resources play in the normative theorising of political philosophers The chapters in this book investigate different aspects of this broad question Political philosophers are often silent on questions of what types of facts are relevant if any for normative theory and what methodological assumptions about agency and behaviour need to be made if any such assumptions are necessary However due to recent debates among and between idealists non idealists and realists in political theory the issue about the relation between facts and norms in political philosophy theory is beginning to attract greater attention from political theorists philosophers The chapters in this book were originally published in the journal Critical Review of International Social and Political Philosophy **Legal Theory and the Legal Academy** Maksymilian Del Mar, 2017-07-05

The third in a series of three volumes on Contemporary Legal Theory this volume deals with four topics 1 the role of legal theory in the legal curriculum 2 the teaching of legal theory 3 the relationship of legal theory to legal scholarship and 4 the relationship of legal theory to comparative law The focus of the first two topics is on the common law world where the debates over the aims and proper place of legal theory in the study of law have traversed a good deal of ground since John Austin's 1828 lecture The Uses and the Study of Jurisprudence These first two parts offer a selection of the most important papers including surveys as well as pedagogical viewpoints and particular course descriptions from analytical critical feminist law and literature and global perspectives The last three decades have seen just as many changes for legal scholarship and comparative law These changes such as the rise of empirical legal scholarship have often attracted the attention of legal theorists Within comparative law the last thirty years have witnessed intense methodological reflection within the discipline the results of these reflections are themselves properly recognised as legal theoretical contributions The volume collects the key papers including those by Neil MacCormick Mark Van Hoecke Andrew Halpin William Ewald and

Geoffrey Samuel

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Table of Contents Why Law Matters Oxford Legal Philosophy

1. Understanding the eBook Why Law Matters Oxford Legal Philosophy
 - The Rise of Digital Reading Why Law Matters Oxford Legal Philosophy
 - Advantages of eBooks Over Traditional Books
2. Identifying Why Law Matters Oxford Legal Philosophy
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Why Law Matters Oxford Legal Philosophy
 - User-Friendly Interface
4. Exploring eBook Recommendations from Why Law Matters Oxford Legal Philosophy
 - Personalized Recommendations
 - Why Law Matters Oxford Legal Philosophy User Reviews and Ratings
 - Why Law Matters Oxford Legal Philosophy and Bestseller Lists
5. Accessing Why Law Matters Oxford Legal Philosophy Free and Paid eBooks
 - Why Law Matters Oxford Legal Philosophy Public Domain eBooks
 - Why Law Matters Oxford Legal Philosophy eBook Subscription Services
 - Why Law Matters Oxford Legal Philosophy Budget-Friendly Options

6. Navigating Why Law Matters Oxford Legal Philosophy eBook Formats
 - ePub, PDF, MOBI, and More
 - Why Law Matters Oxford Legal Philosophy Compatibility with Devices
 - Why Law Matters Oxford Legal Philosophy Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Why Law Matters Oxford Legal Philosophy
 - Highlighting and Note-Taking Why Law Matters Oxford Legal Philosophy
 - Interactive Elements Why Law Matters Oxford Legal Philosophy
8. Staying Engaged with Why Law Matters Oxford Legal Philosophy
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Why Law Matters Oxford Legal Philosophy
9. Balancing eBooks and Physical Books Why Law Matters Oxford Legal Philosophy
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Why Law Matters Oxford Legal Philosophy
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Why Law Matters Oxford Legal Philosophy
 - Setting Reading Goals Why Law Matters Oxford Legal Philosophy
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Why Law Matters Oxford Legal Philosophy
 - Fact-Checking eBook Content of Why Law Matters Oxford Legal Philosophy
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

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