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Moral Pluralism and Legal Neutrality

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Moral Pluralism And Legal Neutrality Moral Pluralism And Legal Neutrality

Agustín José Menéndez



Moral Pluralism And Legal Neutrality Moral Pluralism And Legal Neutrality:

Moral Pluralism and Legal Neutrality Wojciech Sadurski, 2013-12-14 It is a commonplace that law and morality intersect and interpenetrate in all the areas of legal decision making that in order to make sense of constitutional statutory or common law questions judges and other legal decision makers must first resolve certain philosophical issues which include moral judgments of right and wrong_ This is particularly evident with regard to constitutional interpretation especially when constitutions give a mandate for the protection of the substantive norms and values entrenched as constitutional rights In these Situations as a leading contemporary legal philosopher observed the Constitution fuses legal and moral issues by making the validity of a law depend on an answer to complex moral 1 problems But the need for substantive value elucidation is not confined of course only to constitutional interpretation under Bills of Rights This however immediately raises a dilemma stemming from the moral diversity and pluralism of modern liberal societies How can law remain sensitive to this pluralism and yet provide clear answers to the problems which call for a legal resolution Sharply conflicting values in modern societies clash in the debates over the death penalty abortion homosexuality separation of state and religion the scope of the freedom of the press or affirmative action It would often be difficult to discern a broader consensus within which these clashes of values operate unless this consensus were described in such vague terms as to render it practically meaningless

Hate Speech and Human Rights in Eastern Europe Viera Pejchal, 2020-04-03 Hate Speech and Human Rights Democracies need to understand these terms to properly adapt their legal frameworks Regulation of hate speech exposes underlining and sometimes invisible societal values such as security and public order equality and non discrimination human dignity and other democratic vital interests The spread of hatred and hate speech has intensified in many corners of the world over the last decade and its regulation presents a conundrum for many democracies This book presents a three prong theory describing three different but complementary models of hate speech regulation which allows stakeholders to better address this phenomenon It examines international and national legal frameworks and related case law as well as pertinent scholarly literature review to highlight this development After a period of an absence of free speech during communism post communist democracies have sought to build a framework for the exercise of free speech while protecting public goods such as liberty equality and human dignity The three prong theory is applied to identify public goods and values underlining the regulation of hate speech in the Czech Republic and Slovakia two countries that share a political sociological and legal history as an example of the differing approaches to hate speech regulation in post communist societies due to divergent social values despite identical legal frameworks This book will be of great interest to scholars of human rights law lawyers judges government NGOs media and anyone who would like to understand values that underpin hate speech regulations which reflect values that society cherishes the most **Reasoning with Rules** Jaap Hage, 2013-04-17 Rule applying legal arguments are traditionally treated as a kind of syllogism Such a treatment overlooks the fact that legal principles and rules

are not statements which describe the world but rather means by which humans impose structure on the world Legal rules create legal consequences they do not describe them This has consequences for the logic of rule and principle applying arguments the most important of which may be that such arguments are defeasible This book offers an extensive analysis of the role of rules and principles in legal reasoning which focuses on the close relationship between rules principles and reasons Moreover it describes a logical theory which assigns a central place to the notion of reasons for and against a conclusion and which is especially suited to deal with rules and principles *An Approach to Rights* C.P.

Wellman,2013-04-17 *An Approach to Rights* contains fifteen previously published but mostly inaccessible papers that together show the development of one of the more important contemporary theories of the nature grounds and practical implications of rights In a long retrospective essay Carl Wellman explains what he was trying to accomplish in each paper how far he believes that he succeeded and where he failed Thus the author provides a critical perspective both on his own theory and on alternative theories from which he borrows or that he rejects These essays identify the problems any adequate theory of rights must solve describe the more plausible solutions and weigh the merits of each They will be of special interest to any reader concerned with legal theory moral philosophy or any branch of applied ethics or social policy in which appeals to rights are frequently made but seldom rationally satisfactory **The Richness of Contract Law** R.A.

Hillman,2012-12-06 Scholars have produced a wide variety of theoretical work on contract law This is the first book to compile it to present it coherently to evaluate it and to supply numerous references to additional sources The author also offers his own practical perspective that emphasizes contract law s richness and complexity and questions the utility of abstract unitary theories The author argues that notwithstanding contract law s complexity it successfully facilitates the formation and enforcement of private arrangements and ensures a degree of fairness in the process of exchange Each chapter presents a pair of largely contrasting theories to clarify the central issue of contract law and theory to set forth the range of views and to help identify a practical middle ground Among the contract theories discussed and analyzed are promise contextual feminist formal mainstream critical economic empirical and relational The book should interest legal theorists practising lawyers law students and general readers who want to learn more about contract law and theory

Justice to Future Generations and the Environment H.P. Visser 't Hooft,2013-03-09 The analysis of justice between generations proposed in this book is based first of all on a critical reading of Rawls theory of justice but it also pays attention to the existential and cultural context of our intuitions about intergenerational equity Although the desire for justice supplies an independent reason for action the unprecedented character of the context in which that reason must operate necessarily raises the question of its psychological support we want justice for future people but what interest do we have in their welfare in the first place I have tried to capture this double orientation by making use of Thomas Nagel s conceptual dichotomy between the objective detached point of view and the subjective in our case the cuturally and historically situated

perspective There is on the one hand a desire for justice that tends towards the definition of transhistorical standards detached from the particular values of the time and place there is on the other hand a motivational background that is tied to our present position in history and nourished by the values we presently believe in I have attempted to bridge the gap between the one and the other dimension by different conceptual avenues the principal one being a time related interpretation of Rawls concept of equal liberty justice wants us to maintain the worth of liberty over time by perpetuating the conditions of its meaningful exercise

The Scepter of Reason R. Gargarella, 2012-12-06 It is not unusual that formal and informal discussions about the political system its virtues and its many defects conclude in a discussion about impartiality In fact we all discuss impartiality when we talk about the best way to equally consider all viewpoints We show our concerns with impartiality when facing a particular problem we try to figure out the best solution for all of us given our conflicting interests Thus the quest for impartiality tends to be a common objective for most of us although we normally disagree on its particular contents Generally these formal and informal discussions about impartiality conclude in a dispute between different epistemic conceptions That is to say simply that in these situations we begin to disagree about best procedure to define the more neutral impartial solution for all of us Basically trying to answer this question we tend to fluctuate between two opposite positions According to some the best way to know which is the more impartial solution is to resort to a process of collective reflection in those situations we have to consider the opinions of all those who are possibly affected

The Paradoxes of Action Daniel González Lagier, 2013-03-09 Through the combined effects of certain natural facts connected with the passage of time institutional acts performed at various points within the university system and bonds of friendship forged over quite a number of years of academic life I have lately become an occasional writer of forewords It is certainly not a kind of work that displeases me but it would be too much to say that I have learned to do it with ease Quite to the contrary Writing a foreword is it seems to me an example of a rather complex action although of course much less complex than writing the book it accompanies In fact it is not even an action it is rather an activity carried out over a more or less prolonged period of time and typically including something like the following stages deciding to write the foreword carefully reading the book taking notes thinking about what would be appropriate aspects to be mentioned sketching an outline writing a first draft by hand writing several corrected versions typing the last of them into the computer distributing it to several colleagues to see how they like it correcting the text once more sending it to the author of the book delivering it to the publisher In each of these actions leaving aside for a moment purely mental actions such as thinking we can in turn distinguish several components These are basically bodily movements intentions and intentionally or unintentionally produced changes in the world

Influence and Power Ruth Zimmerling, 2005-07-19 Exact but not exacting this is a fine work of overview and analysis it makes an excellent contribution to the literature on power and freedom Philip Pettit William Nelson Cromwell Professor of Politics Princeton University In this work the author assumes the task of a

logical clean up an extremely valuable contribution to the promotion of scientific rigour and clarity in political scholarship This book gives the reader orientation in a conceptual jungle It is an excellent analysis of the relationships between normative and social power Ernesto Garz n Vald s Prof em

Judicial Applications of Artificial Intelligence Giovanni Sartor, L. Karl Branting, 2013-04-17 The judiciary is in the early stages of a transformation in which AI Artificial Intelligence technology will help to make the judicial process faster cheaper and more predictable without compromising the integrity of judges discretionary reasoning Judicial decision making is an area of daunting complexity where highly sophisticated legal expertise merges with cognitive and emotional competence How can AI contribute to a process that encompasses such a wide range of knowledge judgment and experience Rather than aiming at the impossible dream or nightmare of building an automatic judge AI research has had two more practical goals producing tools to support judicial activities including programs for intelligent document assembly case retrieval and support for discretionary decision making and developing new analytical tools for understanding and modeling the judicial process such as case based reasoning and formal models of dialectics argumentation and negotiation Judges squeezed between tightening budgets and increasing demands for justice are desperately trying to maintain the quality of their decision making process while coping with time and resource limitations Flexible AI tools for decision support may promote uniformity and efficiency in judicial practice while supporting rational judicial discretion Similarly AI may promote flexibility efficiency and accuracy in other judicial tasks such as drafting various judicial documents The contributions in this volume exemplify some of the directions that the AI transformation of the judiciary will take

Justifying Taxes Agustín José Menéndez, 2013-03-14 Justifying Taxes offers readers some of the elements of a democratic tax law considered within its political and philosophical context in order to determine the extent of legitimate tax obligations The objective is to revisit some of the issues in the dogmatics of tax law from the viewpoint of a critical citizen always ready to ask questions about the justification underlying her obligations and especially about her paramount burden viz the payment of certain amounts of money Within this purview special attention is paid to the general principles of taxation The argument is complemented by a detailed reconstruction of constitutional reasoning in tax matters close attention being paid to the jurisprudence of the Spanish Tribunal Constitucional Readership Legal scholars political scientists and philosophers Especially recommended to graduate and undergraduate students of Tax Law Constitutional Law Jurisprudence Philosophy of Law and Political Theory

The Law in Philosophical Perspectives Luc J. Wintgens, 2013-04-17 In this age of collections that is ours many volumes of collections are published They contain contributions of several well known authors and their aim is to present a selective overview of a relevant field of study This book has the same purpose Its aim is to introduce students scholars and all those interested in current problems of legal theory and legal philosophy to the work of the leading scholars in this field The large number of publications both books and articles that have been produced over recent decades makes it quite difficult however for those who are making their first steps in this domain to find firm

guidelines The book is new in its genre because of its method The choice was made not to reprint an example of contributors earlier basic articles or a part of one of their books This would only give a partial view of the rich texture of their work Rather the authors were asked to make an original synthesis of their own contributions to the field of legal theory and legal philosophy Brought together in this volume they constitute a truly author ised view of their work This book is also new in that each essay is complemented with bibliographical information in order to encourage further research on the author s self selected work This will help the reader rapidly to become familiar with the whole of the published work of the contributors

Political Friendship and the Good Life Gianfrancesco Zanetti,2002-07-31 The main subject of this book is the rather fascinating link between an acceptable concept of political whole and its legal and moral implications When we face this problem we find that widespread categories like happiness and friendship are at the same time necessary and dangerous crucial and elusive In order to make the case against the so called Legal Enforcement of Morals and to grasp the complex relationship between law and morality from a liberal point of view it is not enough to reject a pattern of happiness or of human flourishing from which to draw normative instructions for men and women it must be recognized that integration of individuals in the comprehensive groups as well as in the political whole itself is not the only valuable option The fragile value of a relative lack of integration a right to unhappiness turns out to be eventually what makes the weak but decisive moral primacy of liberal societies

Arguing Fundamental Rights Agustín J. Menéndez,Erik O. Eriksen,2006-11-22 Arguing Fundamental Rights explores the path breaking Theory of Constitutional Rights of Robert Alexy The critical analysis of the structural elements of Alexy s theory is combined with an assessment of its applied relevance with special attention being paid to the UK Human Rights Act and the fundamental rights protection in the European Union before and after the Charter of Fundamental Rights of 2000 The book is unique in combining a challenging interpretation of one the foremost European conceptions of fundamental rights with the discussion of the pragmatics of constitutional adjudication The chapters combine a focus on key political questions such as whether rights adjudication can be subject to rational assessment and whether judges and not democratically elected parliaments should be the umpires of fundamental rights protection with a concern with key jurisprudential issues such as the determination of the limits of fundamental rights the binding effect of fundamental rights to private parties or whether certain fundamental rights should or should not be regarded as ultimate reasons for action and as such could be not be limited not even when it conflict with other rights Robert Alexy himself opens the book with an insightful contextualisation of his theory of fundamental rights within his general legal theory The book is a timely defence of practical reason against claims that emergencies justify trumping fundamental rights

The Rule of Law History, Theory and Criticism Pietro Costa,Danilo Zolo,2007-05-06 Authors Costa and Zolo share the conviction that a proper understanding of the rule of law today requires reference to a global problematic horizon This book offers some relevant guides for orienting the reader through a political and legal debate where the rule of law and the doctrine of human rights is

a concept both controversial and significant at the national and international levels Group Rights as Human Rights Neus Torbisco Casals, 2006-06-30 Liberal theories have long insisted that cultural diversity in democratic societies can be accommodated through classical liberal tools in particular through individual rights and they have often rejected the claims of cultural minorities for group rights as illiberal Group Rights as Human Rights argues that such a rejection is misguided Based on a thorough analysis of the concept of group rights it proposes to overcome the dominant dichotomy between individual human rights and collective group rights by recognizing that group rights also serve individual interests It also challenges the claim that group rights so understood conflict with the liberal principle of neutrality on the contrary these rights help realize the neutrality ideal as they counter cultural biases that exist in Western states Group rights deserve to be classified as human rights because they respond to fundamental and morally important human interests Reading the theories of Will Kymlicka and Charles Taylor as complementary rather than opposed Group Rights as Human Rights sees group rights as anchored both in the value of cultural belonging for the development of individual autonomy and in each person's need for a recognition of her identity This double foundation has important consequences for the scope of group rights it highlights their potential not only in dealing with national minorities but also with immigrant groups and it allows to determine how far such rights should also benefit illiberal groups Participation not intervention should here be the guiding principle if group rights are to realize the liberal promise The Opposite Mirrors Eerik Lagerspetz, 1995-02-28 How do social institutions exist How do they direct our conduct The Opposite Mirrors defends the thesis that the existence of institutions is a conventional matter Ultimately they exist because we believe in their existence and because they play a role in our practical reasoning Human action necessarily has an unpredictable aspect human institutions perform an important task by reducing uncertainty in our interactions The author applies this thesis to the most important institutions the law and the monetary system In his analysis he connects many traditional topics of the philosophy of law social philosophy and the philosophy of social sciences in a new way He discusses the nature of rules authority and power and analyzes the Hobbesian presuppositions which have been dominant in legal theory and in the economic analyses of the state The book is written for legal theorists as well as for political and social philosophers and theoretically oriented social scientists **Adam Smith and the Philosophy of Law and Economics** R.P. Malloy, J. Evensky, 2012-12-06 Adam Smith and the Philosophy of Law and Economics is a unique book Malloy and Evensky bring together a team of international and interdisciplinary scholars to address the work of Adam Smith as it relates to law and economics In addition to their own contributions the book includes works by Dr John W Cairns of the University of Edinburgh Dr J Ralph Lindgren of Lehigh University Professor Kenneth A B Mackinnon of the University of Waikato and the Honorable Richard A Posner of the United States Circuit Court of Appeals Together these authors bring expertise from the areas of law philosophy history economics and law and economics to a new study of Adam Smith and his work Part One of the book presents new and important observations on Smith's views on

community ethics the court system criminal law and delictual or tort law liability In this part of the book Smith's work is also examined from the perspective of his use as persuasive authority in the works of modern legal economists In Part Two the living Smith is explored by way of a debate between two major contributors in the field of law and economics The debate and its analysis create a unique and contemporary opportunity to study Smith as a foundational source in the midst of a current academic and social policy dispute The understanding of Adam Smith that emerges from this book is new and complex It will challenge the one dimensional portrayals of Smith as a promoter of self interest and it will correct many of the misinterpretations of Smith that are currently fashionable in the worlds of law and economics and the philosophy of law

On Criminalization J. Schonsheck, 2013-06-29 I begin by introducing the main issues of the work and inviting their consideration as enticement I offer a sketch of their practical importance and of the philosophical challenge they present And I provide a preview of the work's organization and central argument There is something so obvious that it is easily and often overlooked the enforcing of criminal statutes is the most intrusive and coercive exercise of domestic power by a state Forcibly preventing people from doing that which they wish to do forcibly compelling people to do that which they do not wish to do and wielding force merely attempting to compel or prevent these state activities have extraordinarily serious ramifications Indeed no state institutions are likely to have more profound an impact on the lives of individual citizens than those of the criminal justice system I endorse Herbert Packer's assessment The criminal sanction is the law's ultimate threat Being punished for a crime is different from being regulated in the public interest or being forced to compensate another who has been injured by one's conduct or being treated for a disease The sanction is at once uniquely coercive and in the broadest sense uniquely expensive As a consequence these state activities are in special need of moral warrant Given the great potential for doing grave injustice the power of the state embodied in the criminal justice system ought not be exercised in the absence of a complete and compelling moral justification

The Judicial Application of Law Jerzy Wróblewski, 2013-06-29 This is the English version of Jerzy Wróblewski's major work in Polish *Słowe Stosowania Prawa* translated in his own preferred terms as *The Judicial Application of Law* The present translation arose out of a visit by the author to Scotland in 1989 In that year the Carnegie Trust for the Universities of Scotland made it possible for Jerzy Wróblewski to spend six months as a Carnegie Fellow in the Centre for Criminology and the Social and Philosophical Study of Law at the University of Edinburgh During that time he took a notably active part in the intellectual life of the Centre and the Faculty of Law He gave freely of his time in teaching and advising students and also produced a series of original articles on topics connected with legal reasoning and law and computers His major task while he was here however was to prepare a translation of *Słowe Stosowania Prawa* and this he accomplished to the extent of completing a preliminary draft Zenon Bankowski and Neil McCormick were to help him in improving this linguistically and preparing the final text for publication Wróblewski warned us having finished his draft with great labour that the greater labour would be in the polishing of it For

we would have as he joked to translate my English into English And certainly we found it extremely time consuming so as to defy completion during his stay in Edinburgh

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