Naturalizing Jurisprudence Essays On American Legal Realism And Naturalism In Legal Philosophy

This book explores the experiences and philosophical work product of mixed race philosophers, as well as possible links between the two. Some books address mixed-race identity, and some anthologies focus on mixed-race identity, but this is the first anthology on the philosophy of mixed-race, and the first anthology by mixed-race philosophers.

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.

This book bridges a scholarly divide between empirical and normative theorizing about procedural justice in the context of relations of power between citizens and the state. Empirical research establishes that people’s understanding of procedural justice is shaped by relational factors. A central premise of this volume is that this research is significant but needs to be complemented by normative theorizing that draws on relational theories of ethics and justice to explain the moral significance of procedures and make normative sense of people’s concerns about relational factors. The chapters in Part 1 provide comprehensive reviews of empirical studies of procedural justice in policing, courts and prisons. Part 2 explores empirical and normative perspectives on procedural justice and legitimacy. Part 3 examines philosophical approaches to procedural justice. Part 4 considers the implications of a relational perspective for the design of procedures in a range of legal contexts. This collection will be of interest to a wide academic readership in philosophy, law, psychology and criminology.

Gathering together Brian Leiter's most influential essays on the subject of American legal realism, this book provides an overview of his redefinition of legal realism and its relationship with other models of legal and philosophical thought, from naturalism in philosophy to critical legal studies.

Cognitive neuroscientists have deepened our understanding of the complex relationship between mind and brain and complicated the relationship between mental attributes and law. New arguments and conclusions based on functional magnetic resonance imaging (fMRI), electroencephalography (EEG), and other increasingly sophisticated technologies are being applied to debates and processes in the legal field, from lie detection to legal doctrine surrounding criminal law, including the insanity defense to legal theory. In Minds, Brains, and Law, Michael S. Pardo and Dennis Patterson analyze questions that lie at the core of implementing neuroscientific research and technology within the legal system. They examine the arguments favoring increased use of neuroscience in law, the scientific evidence available for the reliability of neuroscientific evidence in legal proceedings, and the integration of neuroscientific research into substantive legal doctrines. The authors also explore the basic philosophical questions that lie at the intersection of law, mind, and neuroscience. In doing so, they argue that mistaken inferences and conceptual errors arise from mismatched concepts, such as the disconnect between lying and what constitutes "lying" in many neuroscientific studies. The empirical, practical, ethical, and conceptual issues that Pardo and Patterson seek to redress will deeply influence how we negotiate and implement the fruits of neuroscience in law and policy in the future. This paperback edition contain a new Preface covering developments in this subject since the hardcover edition published in 2013.

Canadian Law and Indigenous Self-Determination demonstrates how, over the last few decades, Canadian law has attempted to remove Indigenous sovereignty from the Canadian legal, social, and political landscape.

In this volume, Patterson uses the modern debate between realism and anti-realism to examine what legal knowledge is. He explores how the principal contemporary theories of jurisprudence define legal knowledge, but concludes that their definitions are inextricably bound up with the nature of justification. As an alternative to the definitions provided by the theories of jurisprudence, Patterson offers a novel account of legal knowledge as pragmatism.

This book offers an accessible introduction to all aspects of American contract law, useful to both first-year law students and advanced contract scholars. The book takes the reader from contract formation through interpretation and remedies, considering both the practical and theoretical aspects throughout.

Why it's wrong to single out religious liberty for special legal protections This provocative book addresses one of the most enduring puzzles in political philosophy and constitutional theory—why is religion singled out for preferential treatment in both law and public discourse? Why are religious obligations that conflict with the law accorded special toleration while other obligations of conscience are not? In Why Tolerate Religion?, Brian Leiter shows why our reasons for tolerating religion are not specific to religion but apply to all claims of conscience, and why a government committed to liberty of conscience is not required by the principle of toleration to grant exemptions to laws that promote the general welfare.

With over half of Americans now in favor of marriage equality, it is clear that societal norms of marriage are being quickly redefined. The growing belief that the state may not discriminate against gays and lesbians calls into question whether the state may limit other types of marital unions, including plural marriage. While much has been written about same-sex marriage, as of yet there has been no book-length legal treatment of unions among three or more individuals. The first major study on plural marriage and the law, In Defense of Plural Marriage begins to fill this lacuna in the scholarly literature. Ronald C. Den Otter shows how the constitutional arguments that support the option of plural marriage are stronger than those against. Ultimately, he proposes a new semi-contractual marital model that would provide legal recognition for a wide range of intimate relationships.

This book examines the role and importance of reason and emotion in justice and the law. Eight lawyers and philosophers of law consider law's basis in the universal human need for society, our innate sense of justice, and many other powerful inclinations and emotions, including the desire for fairness and even for law itself. Human beings are deeply social creatures, inspired by social and other emotions, which can ennoble, support, or undermine the law. Law gains legitimacy and effectiveness when reason recognizes and embraces human emotions for the benefit of society as a whole. This volume explores the power and purposes of reason and emotion in the law.

The principle of legal certainty is of fundamental importance for law and society: it has been vital in stabilising normative expectations and in providing a framework for social interaction, as well as defining the scope of individual freedom and political power. Even though it has not always been fully realised, legal certainty has also functioned as a normative ideal that has structured legal debates, both at the national and transnational level. This book presents research from a range of substantive areas regarding the meaning, possibility and desirability of legal certainty in the context of a rapidly changing global society. It aims to address these issues by bringing together scholars from various jurisdictions in order to examine changes in the shifting meaning of legal certainty in a comparative and transnational context. In particular, the book explores some of the tensions that now exist between the conventional expectation of legal certainty and the various challenges associated with regulating highly complex, late modern economies and societies. The book will be of interest to lawyers concerned with understanding the transformation of core rule of law values in the context of contemporary social change, as well as to political scientists and

social theorists.
This anthology of classical and contemporary philosophical and legal essays and legal cases focuses on legal philosophy as its own subject--rather than as an outgrowth of social or political philosophy or applied ethics. The essays focus on how law is organized and the particular philosophical issues that law raises-- and gives readers the opportunity to think through actual debates—many of them still live in the courts. Provides short introductions and thought-provoking questions for each selection. The Practice of Law. The Rule of Law. The Moral Force of Law. Elements of Legal Reasoning. Natural Law and Legal Positivism: Classical Perspectives. Formalism and Legal Realism. The Contemporary Debate: Hart v. Dworkin. Law and Economics. Critical Legal Theory and Feminist Jurisprudence. Punishment: Theory and Practice. Problems of Criminal Liability. The Rights of Defendants. Compensating for Private Harms: The Law of Torts. Private Ownership: The Law of Property. Private Agreements: the Law of Contract. Constitutional Government and the Problem of Interpretation. Freedom of Religion, Speech and Privacy. Equality and the Constitution. For anyone interested in the law.
This collection, written by legal scholars from around the world, offers insights into a variety of topics from children’s rights to criminal law, jurisprudence, medical ethics and more. Its breadth reflects the fact that these are all elements of what can broadly be called ‘law and society’, that enterprise that is interested in law’s place or influence in diffferent aspects of real lives and understands law to be simultaneously symbol, philosophy and action. It also testament to the broad range of vision of Professor Michael Freeman, in whose honour the volume was conceived. The contributions are divided into categories which reflect his distinguished career and publications, over 85 books and countless articles, including pioneering work on children’s rights, domestic violence, religious law, jurisprudence, law and culture, family law and medicine, ethics and the law, as well as his enduring commitment to interdisciplinarity.
The Nature of International Law provides a comprehensive analytical account of international law within the prototype theory of concepts.
Naturalizing JurisprudenceEssays on American Legal Realism and Naturalism in Legal PhilosophyOxford University Press on Demand
This book discusses the question of whether legal interpretation is a scientific activity. The law’s dependency on language, at least for the usual communication purposes, not only makes legal interpretation the main task performed by those whose work involves the law, but also an unavoidable step in the process of resolving a legal case. This task of decoding the words and sentences used by normative authorities while enacting norms, carried out in compliance with the principles and rules of the natural language adopted, is prone to all of the difficulties stemming from the uncertainty intrinsic to all linguistic conventions. In this context, seeking to determine whether legal interpretation can be scientific or, in other words, can comply with the requirements for scientific knowledge, becomes a central question. In fact, the coherent application of the law depends on a knowledge regarding the meaning of normative sentences that can be classified (at least) as being structured, systematically organized and tendentially objective. Accordingly, this book focuses on analyzing precisely these problems; its respective contributions offer a range of revealing perspectives on both the problems and their ramifications.
The articles in this new edition of A Companion to Philosophy ofLaw and Legal Theory have been updated throughout, and theaddition of ten new articles ensures that the volume continues tooffer the most up-to-date coverage of current thinking inlegal philosophy. Represents the definitive handbook of philosophy of law andcontemporary legal theory, invaluable to anyone with an interest inlegal philosophy Now features ten entirely new articles, covering the areas ofrisk, regulatory theory, methodology, overcriminalization,intention, coercion, unjust enrichment, the rule of law, law andsociety, and Kantian legal philosophy Essays are written by an international team of leadingscholars
This timely Handbook contains a wide-ranging overview of the diverse research methods used within international law. Providing an insightful examination of how international legal knowledge is analysed and adopted, this Handbook offers the reader a deeper understanding on the role and place of research methods in international legal theory, reasoning and practice.
The Judicial Process: Law, Courts, and Judicial Politics is an all-new, concise yet comprehensive core text that introduces students to the nature and significance of the judicial process in the United States and across the globe. It is social scientific in its approach, situating the role of the courts and their impact on public policy within a strong foundation in legal theory, or political jurisprudence, as well as legal scholarship. Authors Christopher P. Banks and David M. O’Brien do not shy away from the politics of the judicial process, and offer unique insight into cutting-edge and highly relevant issues. In its distinctive boxes, “Contemporary Controversies over Courts” and “In Comparative Perspective,” the text examines topics such as the dispute pyramid, the law and morality of same-sex marriages, the “hardball politics” of judicial selection, plea bargaining trends, the right to counsel and “pay as you go” justice, judicial decisions limiting the availability of class actions, constitutional courts in Europe, the judicial role in creating major social change, and the role lawyers, juries and alternative dispute resolution techniques play in the U.S. and throughout the world. Photos, cartoons, charts, and graphs are used throughout the text to facilitate student learning and highlight key aspects of the judicial process.
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.
This book defines the characteristics of a new discipline that is both legal and scientific: user-friendly legal science.Focusing on how legal tools and practices can be used to achieve objectives in different contexts, it offers an alternative to doctrinal research, law-and-something disciplines, and the traditional interdisciplinary approach.The book not only defines the new discipline’s research approach, point of view, theory-building, and research methods, it also shows how it relates to other scientific disciplines and how existing doctrinal legal disciplines can be upgraded into scientific disciplines.
A comprehensive, in-depth discussion of the most influential movement in American legal history, and one which remains more than fifty years later the subject of lively debate, this collection of readings, written largely between 1900 and 1940, includes works from prominent writers on the subject that have never before been generally available. Introduced and edited by noted scholars in the field, the anthology includes such contributors as Oliver Wendell Holmes, James Thayer, Roscoe Pound, John Chipman Gray, Wesley Hohfeld, Karl Llewellyn, Arthur Corbin, Nathan Issacs, Robert Hale, Harold Laski, Max Radin, and others. With concise biographical notes as well as introductions to provide historical context, each selection addresses a different debate involving Legal Realism. Included is a selective bibliography, making the text valuable to a broad range of scholars.
This book critically examines the conception of legal science and the nature of law developed by Hans Kelsen. It provides a single, dedicated space for a range of established European scholars to engage with the influential work of this Austrian jurist, legal philosopher, and political philosopher. The introduction provides a thematization of the Kelsenian notion of law as a legal science. Divided into six parts, the chapter contributions feature distinct levels of analysis. Overall, the structure of the book provides a sustained reflection upon central aspects of Kelsenian legal science and the nature of law. Parts one and two examine the validity of the project of Kelsenian legal science with particular reference to the social fact thesis, the notion of a science of positive law and the specifically Kelsenian concept of the basic norm (Grundnorm). The next three parts engage in a critical analysis of the relationship of Kelsenian legal science to constitutionalism, practical reason, and human rights. The last part involves an

examination of the continued pertinence of Kelsenian legal science as a theory of the nature of law with a particular focus upon contemporary non-positivist theories of law. The conclusion discusses the increasing distance of contemporary theories of legal positivism from a Kelsenian notion of legal science in its consideration of the nature of law.

A volume of original essays that discusses the applicability of H. L. A. Hart's rule of recognition model of a legal system to U. S. Constitutional law as discussed in his book "The concept of law".

According to conventional wisdom in American legal culture, the 1870s to 1920s was the age of legal formalism, when judges believed that the law was autonomous and logically ordered, and that they mechanically deduced right answers in cases. In the 1920s and 1930s, the story continues, the legal realists discredited this view by demonstrating that the law is marked by gaps and contradictions, arguing that judges construct legal justifications to support desired outcomes. This often-repeated historical account is virtually taken for granted today, and continues to shape understandings about judging. In this groundbreaking book, esteemed legal theorist Brian Tamanaha thoroughly debunks the formalist-realist divide. Drawing from extensive research into the writings of judges and scholars, Tamanaha shows how, over the past century and a half, jurists have regularly expressed a balanced view of judging that acknowledges the limitations of law and of judges, yet recognizes that judges can and do render rule-bound decisions. He reveals how the story about the formalist age was an invention of politically motivated critics of the courts, and how it has led to significant misunderstandings about legal realism. Beyond the Formalist-Realist Divide traces how this false tale has distorted studies of judging by political scientists and debates among legal theorists. Recovering a balanced realism about judging, this book fundamentally rewrites legal history and offers a fresh perspective for theorists, judges, and practitioners of law.

Reading Modern Law identifies and elaborates upon key critical methodologies for reading and writing about law in modernity. The force of law rests on determinate and localizable authorizations, as well as an expansive capacity to encompass what has not been pre-figured by an order of rules. The key question this dynamic of law raises is how legal forms might be deployed to confront and disrupt injustice. The urgency of this question must not eclipse the care its complexity demands. This book offers a critical methodology for addressing the many challenges thrown up by that question, whilst testifying to its complexity. The essays in this volume - engagements direct or oblique, with the work of Peter Fitzpatrick - chart a mode of resisting the proliferation of social scientific methods, as much as geo-political empire. The authors elaborate a critical and interdisciplinary treatment of law and modernity, and outline the pivotal role of sovereignty in contemporary formations of power, both national and international. From various overlapping vantage points, therefore, Reading Modern Law interrogates law's relationship to power, as well as its relationship to the critical work of reading and writing about law in modernity.

This book brings together twelve of the most important legal philosophers in the Anglo-American and Civil Law traditions. The book is a collection of the papers these philosophers presented at the Conference on Neutrality and Theory of Law, held at the University of Girona, in May 2010. The central question that the conference and this collection seek to answer is: Can a theory of law be neutral? The book covers most of the main jurisprudential debates. It presents an overall discussion of the connection between law and morals, and the possibility of determining the content of law without appealing to any normative argument. It examines the type of project currently being held by jurisprudential scholarship. It studies the different approaches to theorizing about the nature or concept of law, the role of conceptual analysis and the essential features of law. Moreover, it sheds some light on what can be learned from studying the non-essential features of law. Finally, it analyzes the nature of legal statements and their truth values. This book takes the reader a step further to understanding law.

This unique study offers a comprehensive analysis of American jurisprudence from its emergence in the later stages of the nineteenth century through to the present day. The author argues that it is a mistake to view American jurisprudence as a collection of movements and schools which have emerged in opposition to each other. By offering a highly original analysis of legal formalism, legal realism, policy science, process jurisprudence, law and economics, and critical legal studies, he demonstrates that American jurisprudence has evolved as a collection of themes which reflect broader American intellectual and cultural concerns.

This book brings together leading legal theorists to present original philosophical work on the concept of law - the central question of jurisprudence. It covers five broad topics: firstly it addresses debates concerning the methodology of jurisprudence. In Part II it focuses on the notion of a legal system and its coercive nature, while Part III explores the relationships between law and morality, the traditional point of contention between positivist and non-positivist theories of law. Part IV then examines questions regarding law's normative character and relationships with practical reason. Lastly, the final part introduces two novel theoretical approaches to conceptual jurisprudence.

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This is the first collective study of the development of philosophy in America, from the 18th century to the present. Leading experts examine distinctive features of American philosophy, trace notable themes, and consider the legacy of key figures. A fascinating resource for anyone interested in modern philosophy or American intellectual history.

Oxford Studies in the Philosophy of Law is an annual forum for new philosophical work on law. The essays range widely over general jurisprudence (the nature of law, adjudication, and legal reasoning), philosophical foundations of specific areas of law (from criminal to international law), and other philosophical topics relating to legal theory.

A Treatise of Legal Philosophy and General Jurisprudence is the first-ever multivolume treatment of the issues in legal philosophy and general jurisprudence, from both a theoretical and a historical perspective. The work is aimed at jurists as well as legal and practical philosophers. Edited by the renowned theorist Enrico Pattaro and his team, this book is a classical reference work that would be of great interest to legal and practical philosophers as well as to jurists and legal scholar at all levels. The work is divided in two parts. The theoretical part (published in 2005), consisting of five volumes,

covers the main topics of the contemporary debate; the historical part, consisting of six volumes (Volumes 6-8 published in 2007; Volumes 9 and 10, published in 2009; Volume 11 published in 2011 and Volume 12 forthcoming in 2016), accounts for the development of legal thought from ancient Greek times through the twentieth century. Volume 12 Legal Philosophy in the Twentieth Century: The Civil Law World Volume 12 of A Treatise of Legal Philosophy and General Jurisprudence, titled Legal Philosophy in the Twentieth Century: The Civil-Law World, functions as a complement to Gerald Postema's volume 11 (titled Legal Philosophy in the Twentieth Century: The Common Law World), and it offers the first comprehensive account of the complex development that legal philosophy has undergone in continental Europe and Latin America since 1900. In this volume, leading international scholars from the different language areas making up the civil-law world give an account of the way legal philosophy has evolved in these areas in the 20th century, the outcome being an overall mosaic of civil-law legal philosophy in this arc of time. Further, specialists in the field describe the development that legal philosophy has undergone in the 20th century by focusing on three of its main subjects—namely, legal positivism, natural-law theory, and the theory of legal reasoning—and discussing the different conceptions that have been put forward under these labels. The layout of the volume is meant to frame historical analysis with a view to the contemporary theoretical debate, thus completing the Treatise in keeping with its overall methodological aim, namely, that of combining history and theory as a necessary means by which to provide a comprehensive account of jurisprudential thinking.

This collection of original essays brings together leading legal historians and theorists to explore the oft-neglected but important relationship between these two disciplines. Legal historians have often been sceptical of theory. The methodology which informs their own work is often said to be an empirical one, of gathering information from the archives and presenting it in a narrative form. The narrative produced by history is often said to be provisional, insofar as further research in the archives might falsify present understandings and demand revisions. On the other side, legal theorists are often dismissive of historical works. History itself seems to many theorists not to offer any jurisprudential insights of use for their projects: at best, history is a repository of data and examples, which may be drawn on by the theorist for her own purposes. The aim of this collection is to invite participants from both sides to ask what lessons legal history can bring to legal theory, and what legal theory can bring to history. What is the theorist to do with the empirical data generated by archival research? What theories should drive the historical enterprise, and what wider lessons can be learned from it? This collection brings together a number of major theorists and legal historians to debate these ideas.

Crossing the usual boundaries of abstract legal theory, this book considers actual charter systems - legal systems with explicitly posited moral-political rights, such as those of Canada and the United States - as well as cases in constitutional adjudication. It shows the worth of careful reflection on methodological and meta-theoretical issues for a comprehensive account of a present-day legal system which is fast becoming the norm. The author explicitly connects the ongoing Methodology Debate within legal philosophy to constitutional adjudication and Canadian law. By drawing out the implications of the Methodology Debate and the challenge of giving a proper account of constitutional adjudication in a general theory of law, the study examines how a descriptive, morally and politically neutral legal theory can deal with epistemic uncertainty - uncertainty about the actual status of moral-political legal provisions and their jurisprudential function - in a thoroughgoing manner. It also demonstrates the merits of a minimalist version of Legal Positivism with regard to the practical importance of charters in charter systems and societies.

This collection of essays is the outcome of a workshop with Scott Shapiro on The Planning Theory of Law that took place in December 2009 at Bocconi University. It brings together a group of scholars who wrote their contributions to the workshop on a preliminary draft of Shapiro's Legality. Then, after the workshop, they wrote their final essays on the published version of the book. The contributions clearly highlight the difference of the continental and civil law perspective from the common law background of Shapiro but at the same time the volume tries to bridge the gap between the two. The essays provide a critical reading of the planning theory of law, highlighting its merits on the one hand and objecting to some parts of it on the other hand. Each contribution discusses in detail a chapter of Shapiro's book and together they cover the whole of Shapiro's theory. So the book presents a balanced and insightful discussion of the arguments of Legality.

The book brings together 33 state-of-the-art chapters on the import and the pros and cons of legal positivism.

The Pragmatism and Prejudice of Oliver Wendell Holmes, Jr. examines the varied categories scholars have used to describe the philosophy of Oliver Wendell Holmes, Jr. These include, "Jobbist," Nihilist, Realist, Social Darwinist, Utilitarian, Positivist, Natural Law Theorist, and Pragmatist.

What is the nature of law and what is the best way to discover it? This book argues that law is best understood in terms of the social functions it performs wherever it is found in human society. In order to support this claim, law is explained as a kind of institution and as a kind of artefact. To say that it is an institution is to say that it is designed for creating and conferring special statuses to people so as to alter their rights and responsibilities toward each other. To say that it is an artefact is to say that it is a tool of human creation that is designed to signal its usability to people who interact with it. This picture of law's nature is marshalled to critique theories of law that see it mainly as a product of reason or morality, understanding those theories via their conceptions of law's function. It is also used to argue against those legal positivists who see law's functions as relatively minor aspects of its nature. This method of conceptualizing law's nature helps us to explain how the law, understood as social facts, can make normative demands upon us. It also recommends a methodology for understanding law that combines elements of conceptual analysis with empirical research for uncovering the purposes to which diverse peoples put their legal activities.

Brian Leiter is widely recognized as the leading philosophical interpreter of the jurisprudence of American Legal Realism, as well as the most influential proponent of the relevance of the naturalistic turn in philosophy to the problems of legal

philosophy. This volume collects newly revised versions of ten of his best-known essays, which set out his reinterpretation of the Legal Realists as prescient philosophical naturalists; critically engage with jurisprudential responses to Legal Realism, from legal positivism to Critical Legal Studies; connect the Realist program to the methodology debate in contemporary jurisprudence; and explore the general implications of a naturalistic world view for problems about the objectivity of law and morality. Leiter has supplied a lengthy new introductory essay, as well as postscripts to several of the essays, in which he responds to challenges to his interpretive and philosophical claims by academic lawyers and philosophers. This volume will be essential reading for anyone interested in jurisprudence, as well as for philosophers concerned with the consequences of naturalism in moral and legal philosophy.