its all in the game a nonfoundationalist account of law and adjudication

#nonfoundationalist law #legal adjudication #philosophy of law #jurisprudence theory #legal interpretation

Explore a nonfoundationalist perspective on law and adjudication, presenting the legal system not as a fixed structure but as a dynamic 'game' of interpretation and context. This account delves into how legal outcomes are shaped by continuous interaction and evolving understandings, rather than absolute, unchanging principles.

It's All in the Game

Three questions concerning modern legal thought provide the framework for It’s All in the Game: What should judges do? What do judges do? What can judges do? Contrasting his own answers to traditional responses and moving playfully between debates of high theory, daily practices of appellate judges, and his own enlightening analyses of significant court rulings, Allan C. Hutchinson examines what it means to treat adjudication as an engaged game of rhetorical justification. His resulting argument enables the reader to grasp more fully the practical operation, political determinants, and the transformative possibilities of law and adjudication. Taking on leading contemporary theories to explore the claim that “law is politics,” Hutchinson delineates a route toward professional, relevant, and responsible—if radical—judicial practices. After discussing the difference between foundationalist, antifoundationalist, and nonfoundationalist legal critiques, he offers a focused, unequivocal, and positive account of the advantages of operating within a nonfoundationalist framework. Although such an approach centralizes the role of rhetoric in law, Hutchinson claims that this does not necessitate a turn away from politics or, more particularly, from a progressive politics. Driving home the political and jurisprudential impact of his critique and of his account of nonfoundationalist alternatives, he urges judges and jurists to engage in law’s language game of politics. This engaging book will interest linguistic philosophers, legal theorists, law students, attorneys, judges, and jurists of all stripes.

It's All in the Game

In a readable, informed and absorbing discussion of cricket's defining controversies - bodyline, chucking, ball-tampering, sledging, walking and the use of technology, among many others - Fraser explores the ambiguities of law and social order in cricket.

Cricket and the Law

There is an enormous scholarly literature on law's treatment of religion. Most scholars now recognize that although the US Supreme Court has not offered a consistent interpretation of what 'non-establishment' or religious freedom means, as a general matter it can be said that the First Amendment requires that government not give preference to one religion over another or, although this is more controversial, to religion over non-belief. But these rules raise questions that will be addressed in Legal Responses to Religious Practices in the United States: namely, what practices constitute a 'religious activity' such

that it cannot be supported or funded by government? And what is a religion, anyway? How should law understand matters of faith and accommodate religious practices?

Legal Responses to Religious Practices in the United States

This book offers a radical challenge to accounts of the common law's development. Contrary to received jurisprudential wisdom, it maintains there is no grand theory which will explain satisfactorily the dynamic interactions of change and stability in the common law's history. Offering original readings of Charles Darwin's and Hans-Georg Gadamer's works, the book shows that law is a rhetorical activity that can only be properly appreciated in its historical and political context; tradition and transformation are locked in a mutually reinforcing but thoroughly contingent embrace. In contrast to the dewy-eyed offerings of much contemporary work, it demonstrates that, like life, law is an organic process (i.e., events are the products of functional and localized causes) rather than a miraculous one (i.e., events are the result of some grand plan or intervention). In short, common law is a perpetual work-in-progress - evanescent, dynamic, messy, productive, tantalising, and bottom-up.

Evolution and the Common Law

Providing another key contribution to the immensely popular field of law and economics, this book, written by the doyen of the history of economic thought in the US, explores the dynamic relationship between economics, law and polity. Combining a selection of old and new essays by Warren J. Samuels that chart a number of key themes, it provides an important commentary on the development of an academic field and demonstrates how policy is structured and manipulated by human social construction. The areas covered include: the role of manufactured belief power the nature and sources of rights the construction of markets by firms and governments and the problem of continuity and change in the form of the question of the selectively defined status quo and its status the absolutist character of government, rights, markets and legal principles and the accepted ideational structure of law. The Legal-Economic Nexus is an essential read both economists and legal professionals as well as those researching the history of economic thought and the social construction of law.

The Legal-Economic Nexus

A liberal state is a representative democracy constrained by the rule of law. Richard Posner argues for a conception of the liberal state based on pragmatic theories of government. He views the actions of elected officials as guided by interests rather than by reason and the decisions of judges by discretion rather than by rules. He emphasizes the institutional and material, rather than moral and deliberative, factors in democratic decision making. Posner argues that democracy is best viewed as a competition for power by means of regular elections. Citizens should not be expected to play a significant role in making complex public policy regarding, say, taxes or missile defense. The great advantage of democracy is not that it is the rule of the wise or the good but that it enables stability and orderly succession in government and limits the tendency of rulers to enrich or empower themselves to the disadvantage of the public. Posner’s theory steers between political theorists’ concept of deliberative democracy on the left and economists’ public-choice theory on the right. It makes a significant contribution to the theory of democracy—and to the theory of law as well, by showing that the principles that inform Schumpeterian democratic theory also inform the theory and practice of adjudication. The book argues for law and democracy as twin halves of a pragmatic theory of American government.

Law, Pragmatism, and Democracy

Challenging the dominant account of medical law as normatively and conceptually subordinate to medical or bioethics, this book provides an innovative account of medical law as a rhetorical practice. The aspiration to provide a firm grounding for medical law in ethical principle has not yet been realized. Rather, legal doctrine is marked, if anything, by increasingly evident contradiction and indeterminacy that are symptomatic of the inherently contingent nature of legal argumentation. Against the idea of a timeless, placeless ethics as the master discipline for medical law, this book demonstrates how judicial and academic reasoning seek to manage this contingency, through the deployment of rhetorical strategies, persuasive to concrete audiences within specific historical, cultural and political contexts. Informed by social and legal theory, cultural history and literary criticism, John Harrington’s careful reading of key judicial decisions, legislative proposals and academic interventions offers an original, and significant, understanding of medical law.

Towards a Rhetoric of Medical Law

The contemporary legal theory is gradually departing from traditional theory of the hierarchical legal system. Some authors announce the supposed death of the concept of law within the state. The so-called multicentrism might become an attractive alternative to the traditional monocentric approach. The essence of multicentrism may be characterized as coexistence of many adjudicating bodies, especially courts, whose verdicts are equally effective within the national legal system. Such a situation takes place e. g. within the European legal area where multicentrism could be perceived as the existence of «sensitive» liaisons, entanglements and relations of dependence between the European Court of Human Rights in Strasbourg, the European Court of Justice in Luxemburg and national (especially constitutional) courts in member states. The coexistence of many centres of adjudication may thus become a constant feature of the system of regional and global law.

Multicentrism as an Emerging Paradigm in Legal Theory

This book argues, from a normative perspective, for the incorporation of an egalitarian sensitivity into tort law, and more generally, into private law. It shows how an egalitarian sensitivity can reformulate tort doctrine, with an emphasis on the tort of negligence. Rather than a comprehensive descriptive account of existing tort law, this book pro-actively searches for new approaches and conceptual tools to meet the challenges faced by egalitarians. The understanding of tort law offered in this book will bring about better practical results in specific cases. It supports the progressive troops in the ongoing philosophical and social battles that take place in the field of tort law and also adds another voice - rich, nuanced and sensitive - to the chorus that is tort theory.

Torts, Egalitarianism and Distributive Justice

It is in the intellectual context of the new possibility of philosophy, and the great new challenge facing philosophy, that I place Stéphane Beaulac’s important book. His work takes advantage, in particular, of several of the hard-earned lessons of twentieth-century philosophy and social experience. From the Foreword.

The Power of Language in the Making of International Law

Capturing the Change: Universalising Tendencies in Legal Interpretation Joanna Jemielniak and Przemys aw Mik aszewicz International and supranational integration on the European continent, as well as the harmonisation of the rules of international trade and the accompanying dev- opment and global popularity of the resolution of commercial disputes through arbitration, constantly exerts a considerable in uence on modern legal systems. The sources of each of these phenomena are different, and their action is dissimilar. Each can be described as reaching either from the top to the bottom, through the direct involvement of interested States and consequently affecting their internal legal s- tems (international and supranational integration; harmonisation of trade regulations through public international law instruments), or bottom-up, as a result of activity by private parties, leading to the achievement of uniform practices and standards (ar- tration, lex mercatoria). Nonetheless, they both enrich national legal cultures and contribute to transgressing the limits of national (local) particularisms in creating, interpreting and applying the law. The aim of this book is to demonstrate how these processes have in uenced the interpretation of law, how they have shaped the methods and techniques of the interpretation and with what consequences for the outcomes of the interpretative procedures. In assessing the extent of this in uence, due regard must be paid to the fact that the interpretation of law is not, in principle, directly determined by the provisions of law itself.

Interpretation of Law in the Global World: From Particularism to a Universal Approach

Normative texts are meant to be highly impersonal and decontextualised, yet at the same time they also deal with a range of human behaviour that is difficult to predict, which means they have to have a very high degree of determinacy on the one hand, and all-inclusiveness on the other. This poses a dilemma for the writer and interpreter of normative texts. The author of such texts must be determinate and vague at the same time, depending upon to what extent he or she can predict every conceivable contingency that may arise in the application of what he or she writes. The papers in this volume discuss important legal and linguistic aspects relating to the use of vagueness in legal drafting and demonstrate why such aspects are critical to our understanding of the way normative texts function.

Vagueness in Normative Texts

International lawyers have long recognised the importance of interpretation to their academic discipline and professional practice. As new insights on interpretation abound in other fields, international law and international lawyers have largely remained wedded to a rule-based approach, focusing almost exclusively on the Vienna Convention on the Law of Treaties. Such an approach neglects interpretation as a distinct and broader field of theoretical inquiry. Interpretation in International Law brings international legal scholars together to engage in sustained reflection on the theme of interpretation. The book is creatively structured around the metaphor of the game, which captures and illuminates the constituent elements of an act of interpretation. The object of the game of interpretation is to persuade the audience that one's interpretation of the law is correct. The rules of play are known and complied with by the players, even though much is left to their skills and strategies. There is also a meta-discourse about the game of interpretation - 'playing the game of game-playing' - which involves consideration of the nature of the game, its underlying stakes, and who gets to decide by what rules one should play. Through a series of diverse contributions, Interpretation in International Law reveals interpretation as an inescapable feature of all areas of international law. It will be of interest and utility to all international lawyers whose work touches upon theoretical or practical aspects of interpretation.

Interpretation in International Law

Adopting a multi-disciplinary and comparative approach, this book focuses on the emerging and innovative aspects of attempts to target the accumulated assets of those engaged in criminal and terrorist activity, organized crime and corruption. It examines the ’follow-the-money’ approach and explores the nature of criminal, civil and regulatory responses used to attack the financial assets of those engaged in financial crime in order to deter and disrupt future criminal activity as well as terrorism networks. With contributions from leading international academics and practitioners in the fields of law, economics, financial management, criminology, sociology and political science, the book explores law and practice in countries with significant problems and experiences, revealing new insights into these dilemmas. It also discusses the impact of the ’follow-the-money’ approach on human rights while also assessing effectiveness. The book will appeal to academics and researchers of financial crime, organized crime and terrorism as well as practitioners in the police, prosecution, financial and taxation agencies, policy-makers and lawyers.

Dirty Assets

Although most law schools recognise the value of introducing students to a broader sociological perspective on law, this usually falls short of a full engagement with sociology as an academic discipline. This book introduces a wide range of sociological traditions, and how they can be used in investigating law and legal institutions. The book is organised into six sections, each with an introduction by the editors, on classical sociology of law, structural functionalism and systems theory, critical approaches, interpretive approaches, postmodernism, and pluralism and globalisation, and a conclusion that discusses the relationship between law and sociology. Each of the chapters is written by a specialist who reviews the literature, and discusses how the approach can be used in researching different topics. CONTENTS: Introduction (Reza Banakar and Max Travers) 1. CLASSICAL SOCIOLOGY AND LAW: The Problematization of Law in Classical Social Theory (Alan Hunt); Sociological Jurisprudence (Reza Banakar) 2. STRUCTURAL FUNCTIONALISM AND SYSTEMS THEORY: The Thick Description of Law: An Introduction to Niklas Luhmann's Theory (Klaus A. Ziegert); Jurgen Habermas and the Sociology of Law (Bo Carlsson) 3. CRITICAL APPROACHES: Marxism and the Social Theory of Law (Robert Fine); Sharing the Paradigms? CLS and the Sociology of Law (Jiri Priban), Feminist Legal Theory (Ruth Fletcher); A Race and Gendered Organisational Logic in Law Firms (Jennifer Pierce); Putting Gender and Sexuality on the Agenda (Nico J Beger); The Power of the Legal Field (Mikael R. Madsen and Yves Dezalay) 4. INTERPRETIVE APPROACHES: Symbolic Interactionism and Law (Max Travers); Ethnomethodology and Law (Robert Dingwall) 5. POSTMODERNISM: Foucault and Law (Gary Wickham); Postmodernism and Common Law (Shaun McVeigh) 6. LEGAL PLURALISM (Anne Griffiths); Globalistion and Law (John Flood); Comparative Sociology of Law (David Nelken) CONCLUSIONS: Law and Sociology (Reza Banakar and Max Travers).

The Rule of Law and Delivering Justice in Africa

This book examines the use, principally in economics, of the concept of the invisible hand, centering on Adam Smith. It interprets the concept as ideology, knowledge, and a linguistic phenomenon. It shows

how the principal Chicago School interpretation misperceives and distorts what Smith believed on the economic role of government. The essays further show how Smith was silent as to his intended meaning, using the term to set minds at rest; how the claim that the invisible hand is the foundational concept of economics is repudiated by numerous leading economic theorists; that several dozen identities given the invisible hand renders the term ambiguous and inconclusive; that no such thing as an invisible hand exists; and that calling something an invisible hand adds nothing to knowledge. Finally, the essays show that the leading doctrines purporting to claim an invisible hand for the case for capitalism cannot invoke the term but that other nonnormative invisible hand processes are still useful tools.

Current Publications in Legal and Related Fields

This coherent collection of papers examines some of the fundamental issues in political economy in a non-judgemental and non-ideological way. The political economy is a process of decision making and these papers attempt to identify the deepest levels of conduct of collective choice. These include official and private government, the rule of law, the nature of poverty, rules and markets, deliberative and non-deliberative choice, and the operation of selective perception and of intellectual fraud in politics.

South African Journal of Philosophy

The book explores the broad range of legal, personal, social, political and historical foundations of international law. The book is a collective effort of qualified authors- law school deans and professors, national and international court judges, young and old international law scholars and government lawyers from varying legal cultures across the oceans of the world, representing diverse legal philosophical and corresponding practices bringing their stories to life, telling tales helpful for those well-acquainted with the issues. Although one book of Liber Amicorum cannot address all the important issues in the vast arena of international law, these essays provide a rich and lucid understanding of issues of modern public international and comparative law. The beauty of the book lies in the fact that the issues discussed in the compendium by the diverse authors though familiar to comparatists, are given perspectives different from the usual Euro-American centrist standpoint that dominated the current writings in international law. The collected essays will be found most useful as an informative tool in the discovery of progressive development of international law as well as in the study of comparative legal systems. *** The legal essays contained in this treatise on various important issues of public international and comparative law are interesting, well researched, and written from multi-disciplinary perspectives by very well-qualified legal scholars from different backgrounds and cultures of the world. All the authors are exceptionally knowledgeable and experts in their chosen fields. It is strongly urged that people should read these essays in order to fully appreciate the contributions of international legal scholars to world peace, international development, understanding and progress. Nothing can be more befitting in honoring Professor Dr. Christian Nwachukwu Okeke for his enormous contributions to the positive development of the legal academy nationally and internationally. Professor Dr. Emmanuel Omoh Esiemokhai Ph.D., Academic Chancellor, Bosas International Law Bureau, Abuja, Nigeria Chima Nweze's Contemporary Issues on Public International and Comparative Law: Essays in Honor of Professor Christian Nwachukwu Okeke, is a magisterial work of enormous scope and depth that brings together a diverse group of internationally distinguished authors from academia, government and private practice. The Liber Amicorum is impressive both in range of subject matter and quality of analysis and merits the attention of scholars and global policy makers. Ndiva Kofele Kale, Ph.D., J.D., Professor of Law, Southern Methodist University, Dedman School of Law, Dallas, Texas Professor C.N. Okeke is a very fine scholar in international law. He has taught the subject in Universities in Africa, Europe and the United States. In all these continents, he has made tremendous impact on students of the subject. I regard the essays as a useful epilogue to his successful career as a teacher and researcher of international law. I heartily recommend the essays to all that are interested in the study of international law. I have no doubt in my mind that the essays will provide a useful addition to the growing literature in international law. I commend the contributors for a worthy compendium.

An Introduction to Law and Social Theory

As a social process that places great stock in its stability and predictability, law does not deal easily or well with change. In a modern world that is in a constant and rapid state of flux, law is being placed under considerable stress in its efforts to fulfill its task as a primary regulator of social and economic behaviour. This challenge is particularly acute in the realm of technology and its profound ramifications

for social and economic behaviour. The innovative Techno-Age not only offers fresh ways of handling old problems, but also throws up entirely new problems; traditional ways of thinking about and responding to these old and new problems and their optimal resolution are no longer as tenable as many once thought. One such example is the burgeoning world of cryptocurrencies – this peer-to-peer digital network presents a profound challenge to the status quo of the financial services sector, to the established modes of state-backed fiat currency, and to the regulatory authority and reach of law. Taken together, these related challenges demand the urgent attention of jurists, lawyers and law reformers. It is the future and relevance of legal regulation as much as cryptocurrency that is at stake. This book proposes an approach to regulating cryptocurrency that recognises and retains its innovative and transformative potential, but also identifies and deals with some of its less appealing qualities and implications.

California Law Review

Now in its ninety-eighth year of publication, this standard Canadian reference source contains the most comprehensive and authoritative biographical information on notable living Canadians. Those listed are carefully selected because of the positions they hold in Canadian society, or because of the contribution they have made to life in Canada. The volume is updated annually to ensure accuracy, and 600 new entries are added each year to keep current with developing trends and issues in Canadian society. Included are outstanding Canadians from all walks of life: politics, media, academia, business, sports and the arts, from every area of human activity. Each entry details birth date and place, education, family, career history, memberships, creative works, honours and awards, and full addresses. Indispensable to researchers, students, media, business, government and schools, Canadian Who's Who is an invaluable source of general knowledge. The complete text of Canadian Who's Who is also available on CD-ROM, in a comprehensively indexed and fully searchable format. Search 'astronaut' or 'entrepreneur of the year,' 'aboriginal achievement award' and 'Order of Canada' and discover a wealth of information. Fast, easy and more accessible than ever, the Canadian Who's Who on CD-ROM is an essential addition to your electronic library.

Erasing the Invisible Hand

The art of living the "good life" requires skilful attunement to the lovely presences in everyday life. Lodged in a psychoanalytic sensibility, and drawing from ancient and modern religious and spiritual wisdom, this book provides the details, conceptual structures, and inner meanings of a number of easily accessible, everyday activities, including gardening, sport, drinking coffee, storytelling, and listening to music. It also suggests how to best engage these activities, to consecrate the ordinary in a way that points to experiential transcendence, or what the author calls "glimpsing immortality\

Studies in Mediaeval Halakhah in Honor of Stephen M. Passamaneck

This collection of essays on the rule of law focuses on the traditional question whether the rule of law is necessarily the rule of moral principles, the question of the legitimacy of law. Essays by lawyers, philosophers, and political theorists illuminate and take forward both that question and debate about issues to do with the reach of the rule of law which complicate its answer. The essays are divided into sections which deal, first, with legal orders where the rule of law is under severe stress, second, with the question of the value of the rule of law as a conceptual problem, and, third, with the question of the limits of legal order. Contributors: Richard Abel, Jody Freeman, Robert Alexy, Neil MacCormick, Kenneth Winston, Andras Sajo, Alon Harel, Anton Fagan, Anthony Sebok, Christine Sypnowich, Allan Hutchinson, Bill Scheuerman, John MacCormick, Julian Rivers, Henry Richardson, David Dyzenhaus.

Economics, Governance and Law

Ambitious legal thinkers have become mesmerized by moral philosophy, believing that great figures in the philosophical tradition hold the keys to understanding and improving law and justice and even to resolving the most contentious issues of constitutional law. They are wrong, contends Richard Posner in this book. Posner characterizes the current preoccupation with moral and constitutional theory as the latest form of legal mystification--an evasion of the real need of American law, which is for a greater understanding of the social, economic, and political facts out of which great legal controversies arise. In pursuit of that understanding, Posner advocates a rebuilding of the law on the pragmatic basis of open-minded and systematic empirical inquiry and the rejection of cant and nostalgia--the true professionalism foreseen by Oliver Wendell Holmes a century ago. A bracing book that pulls no punches and leaves no pieties unpunctured or sacred cows unkicked, The Problematics of Moral and

Legal Theory offers a sweeping tour of the current scene in legal studies--and a hopeful prospect for its future.

Contemporary Issues on Public International and Comparative Law

This title is part of UC Press's Voices Revived program, which commemorates University of California Press’s mission to seek out and cultivate the brightest minds and give them voice, reach, and impact. Drawing on a backlist dating to 1893, Voices Revived makes high-quality, peer-reviewed scholarship accessible once again using print-on-demand technology. This title was originally published in 1992.

Cryptocurrencies and the Regulatory Challenge

This primer on legal reasoning is aimed at law students and upper-level undergraduates. But it is also an original exposition of basic legal concepts that scholars and lawyers will find stimulating. It covers such topics as rules, precedent, authority, analogical reasoning, the common law, statutory interpretation, legal realism, judicial opinions, legal facts, and burden of proof.

Canadian Who's Who 2008

Criminal Justice Review