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HANS Kelsen's
pure theory of law

LEGALITY AND LEGITIMACY

LARS VINX

Hans Kelsens Pure Theory Of Law Legality And Legitimacy

Jorge E. Núñez



Hans Kelsens Pure Theory Of Law Legality And Legitimacy:

Hans Kelsen's Pure Theory of Law Lars Vinx,2007 By showing how Kelsen s theory of law works alongside his political philosophy the book shows the Pure Theory to be part of a wider attempt to understand how political power can be legitimately exercised in pluralist societies *Legality and Legitimacy in Hans Kelsen's Pure Theory of Law* Lars Vinx,2006 Positivist legal theorists inspired by Kelsen s work failed to appreciate the political theoretical potential of the Pure Theory of Law and thus turned to a narrow agnosticism about the functions of law The Pure Theory of Law I conclude may offer a paradigm of jurisprudential thought that could reconnect jurisprudence with political theory as it was traditionally understood namely as a reflection on the best constitution and on the contribution that different legal actors and institutions can make to its realization **Cosmopolitanism, State Sovereignty and International Law and Politics** Jorge E.

Núñez,2023-08-25 This book assesses the relationship between cosmopolitanism and sovereignty Often considered to be incompatible it is argued here that the two concepts are in many ways interrelated and to some extent rely on one another By introducing a novel theory the work presents a detailed philosophical analysis to illustrate how these notions might theoretically and practically work together This theoretical inquiry is balanced with detailed empirical discussion highlighting how the concepts are related in practice and to expose the weaknesses of stricter interpretations of sovereignty which present it as exclusionary Finally the book looks at territorial disputes to explore how sovereignty and cosmopolitanism can successfully operate together to deal with global issues The work will be of interest to academics and researchers in the areas of Legal Philosophy Legal Theory and Jurisprudence Public International Law International Relations and Political Science Sovereignty and the Limits of International Law Todd Berry,2023-11-29 The inspiration for this book comes from negotiations that are taking place under the auspices of the United Nations by an intergovernmental conference for a new International Legally Binding Instrument ILBI under the United Nations Convention on the Law of the Sea UNCLOS on the conservation and sustainable use of marine biological diversity of Areas Beyond National Jurisdiction ABNJ The proposed ILBI is attempting to fill existing gaps under international law over marine biodiversity and Marine Genetic Resources MGR in ABNJ One way it is attempting to do this is by having an Access and Benefit Sharing ABS schema over these resources in ABNJ that the United Nations Convention on Biological Diversity CBD and its Nagoya Protocol NP do not currently cover These existing frameworks that regulate genetic resources are grounded in the notion of sovereignty Effectively States have sovereign rights over their biological resources The ILBI however is attempting to regulate marine biodiversity and MGR in ABNJ Thus the notion that negotiators representing nation States under the auspices of the United Nations can regulate ABNJ is paradoxical are these areas beyond nation States jurisdiction or not Implicitly the negotiators are acting as though they have sovereignty over resources located in what has been historically a sovereign free space Thus the purpose of this book is to investigate this paradox Essentially this book critiques the notion that ABNJ can actually be

regulated under the auspices of the United Nations by nation State negotiators

A Treatise of Legal Philosophy and General Jurisprudence Enrico Pattaro, Corrado Roversi, 2016-07-13 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

Legal Monism Paul Gragl, 2018-03-23 In response to a climate in which respect for international law and the law of the European Union is rapidly losing ground Paul Gragl advocates for the revival of legal monism as a solution to potentially irresolvable normative conflicts between different bodies of law In this first comprehensive monograph on the theory as envisaged by the Pure Theory of Law of the Vienna School of Jurisprudence the author defends legal monism against the competing theories of dualism and pluralism Drawing on philosophical epistemological legal moral and political arguments this book argues that only monism under the primacy of international law takes the law and the concept of legal validity seriously On a practical level it offers policy makers and decision makers methods of dealing with current problems and a means to restore respect for international law and peaceful international relations While having the potential to revive and elicit further interest and research in monism and the Pure Theory of Law the comprehensiveness and scope of the book also make it a choice text for

inter disciplinary scholars **The Oxford Handbook of Carl Schmitt** Jens Meierhenrich, Oliver Simons, 2016 The Oxford Handbook of Carl Schmitt collects thirty original chapters on the diverse oeuvre of one of the most controversial thinkers of the twentieth century Uniquely located at the intersection of law the social sciences and the humanities it brings together sophisticated yet accessible interpretations of Schmitt s sprawling thought and complicated biography **Democracy despite Itself** Benjamin A. Schupmann, 2024-07-13 Recent developments including anti democratic moves by governments in Hungary India and Turkey and the rise of populist leaders demonstrate the threat posed to democratic values by legal revolution and other acts committed within the confines of the system Militant democracy a form of constitutional entrenchment can protect these values from the harmful influence of illiberal regimes However critics and proponents alike wonder whether these tactics risk undermining democracy in the process of trying to save it Democracy despite Itself advances a liberal normative theory of militant democracy by combining American philosopher John Rawls political liberalism with German jurist Carl Schmitt s state theory It argues for the adoption of three constitutional mechanisms of militant democracy explicit unamendability political rights restrictions and the guardianship of a constitutional court to prevent the subversion and erosion of democracy by the abuse of legal measures Rawls thought provides the substantive democratic content of this theory establishing basic liberal rights as a precondition for legitimate government Schmitt s thought provides the militant political form justifying the state s use of proactive militant measures to preserve the political identity of its constitution This blending of works by two thinkers rarely regarded as complementary is a novel approach that offers a compelling vision for how liberal democracy can be protected from anti democratic actors Inverting the Norm Trevor N. Wedman, 2022-11-21 Trevor N Wedman seeks to understand the key assumptions underlying modern legal theory Going back to Hobbes but also making use of the developments in the theory of action and language philosophy over the past century he breaks down the static conception of the state into one dependent on the actions and reflections of individuals i e its citizens He develops a social ontological theory of the law in which the law is not taken as a mere given but as an institutional fact He criticizes both the Kelsenian conception of the Basic Norm and the Hartian notion of the Rule of Recognition as failing to account for the agency of individuals The author turns to the work of one of Kelsen s contemporaries Felix Somlo in order to develop an alternative conception of the law that operates not from the top down but from the bottom up In this way the law itself comes into focus as that which results from the reasoned jurisprudential reflection on the reality of meanings and actions **Sovereignty Across Generations** Alessandro Ferrara, 2023-02-16 Every cohort of voters may dream of being the people under the sway of serial visions of sovereignty or understand itself more modestly as co author of a constitutional project in a cross generational sequence rooted in the past and extending into the future Sovereignty Across Generations offers a theory of democratic sovereignty and constituent power grounded in John Rawls s political liberalism Neither exegetic nor abstractly analytic this book assumes that political liberalism is broader than Political Liberalism In answering

the question How is it possible for there to exist over time a just and stable society of free and equal citizens who remain profoundly divided by reasonable religious philosophical and moral doctrines the paradigm implicit in Political Liberalism enables us to address facets of that question that Rawls sidelined in the context of his time Following populist threats to democracy which were still latent in 1993 this book responds to the urgency of clarifying the proper relation of the people as transgenerational author of the constitution to its pro tempore living segment in its capacity as electorate and as co author of the constitution An explanation of that relation brings constituent power into the picture and unfolds in seven steps that form the conceptual backbone of this book By taking new steps in updating and revisiting political liberalism this book reconstructs Rawls s implicit view of constituent power beyond the pages dedicated to it in Political Liberalism and brings that view into conversation with major constitutional theories of the twentieth century This book is a must read for all those interested in the fields of politics philosophy and constitutional law

Carl Schmitt's State and Constitutional Theory

Benjamin A. Schupmann, 2017 Can a constitutional democracy commit suicide Can an illiberal antidemocratic party legitimately obtain power through democratic elections and amend liberalism and democracy out of the constitution entirely In Weimar Germany these theoretical questions were both practically and existentially relevant By 1932 the Nazi and Communist parties combined held a majority of seats in parliament Neither accepted the legitimacy of liberal democracy Their only reason for participating democratically was to amend the constitution out of existence This book analyses Carl Schmitt s state and constitutional theory and shows how it was conceived in response to the Weimar crisis Right wing and left wing political extremists recognized that a path to legal revolution lay in the Weimar constitution s combination of democratic procedures total neutrality toward political goals and positive law Schmitt s writings sought to address the unique problems posed by mass democracy Schmitt s thought anticipated constrained or militant democracy a type of constitution that guards against subversive expressions of popular sovereignty and whose mechanisms include the entrenchment of basic constitutional commitments and party bans Schmitt s state and constitutional theory remains important the problems he identified continue to exist within liberal democratic states Schmitt offers democrats today a novel way to understand the legitimacy of liberal democracy and the limits of constitutional change

The Legal Theory of

Carl Schmitt Mariano Croce, Andrea Salvatore, 2013-10-11 The Legal Theory of Carl Schmitt provides a detailed analysis of Schmitt s institutional theory of law mainly developed in the books published between the end of the 1920s and the beginning of the 1930s By reading Schmitt s overall work through the lens of his institutional turn the authors offer a strikingly different interpretation of Schmitt s theory of politics law and the relation between these two domains The book argues that Schmitt s adherence to legal institutionalism was a key theoretical achievement based on serious reconsideration of the main flaws of his own decisionist paradigm in the light of the French and Italian institutional theories of law In so doing the authors elucidate how Schmitt was able to unravel many of the impasses that affected his previous conceptual

framework The authors also make comparisons between Schmitt and other leading legal theorists H Kelsen M Hauriou S Romano and C Mortati and explain why the current legal debate should take into serious account his legacy

International Legal Positivism in a Post-Modern World Jörg Kammerhofer, Jean D'Aspremont, 2014-10-06 The first comprehensive study of international legal positivism and how this theory operates in twenty first century international legal scholarship
Hans Kelsen and the Case for Democracy Sandrine Baume, 2017-05-19 Hans Kelsen and the Case for Democracy is a contextual analysis of this famous jurist's political thought Kelsen's works are usually reduced to his theory of law and his reflections on democracy are often ignored The great strength of Kelsen's political thinking lies in the largely original arguments that it musters against the critics who condemn or debunk the institutions of parliamentary democracies This study assesses Kelsenian democratic theory by exploring three questions first how is Kelsen's political theory intertwined with his legal theory Second how does Kelsen combine his reflections on the democratic ideal with his appreciation of a reality that more often than not quite distant from that ideal Third how does Kelsen conceive of the sources of the state's cohesion in a democracy

New Legal Approaches to Studying the Court of Justice Claire Kilpatrick, Joanne Scott, 2020 This title provides tools and approaches to study the activities of the European Court of Justice Using new primary sources and an interdisciplinary approach this volume develops a more holistic methodology for studying law and courts especially the Court of Justice
Ethics Out of Law Dana Hollander, 2021-06-29 Hermann Cohen 1842-1918 was a leading figure in the Neo Kantian philosophical movement that dominated European thought before 1918 He is also the inaugural figure for what is meant by modern Jewish philosophy in the twentieth and twenty first centuries This book explores Cohen's striking claim that ethics is rooted in law a claim developed in both his philosophical ethics and his philosophy of Judaism in particular in his writings on love of neighbor up to and including his well known Religion of Reason Dana Hollander proposes that neither Cohen's systematic philosophy nor his Jewish philosophy should be seen as the dominant framework for his oeuvre as a whole but that his understanding of key philosophical questions takes shape in the passages between both corpuses a trait that could be seen as paradigmatic for modern Jewish philosophy Ethics Out of Law taps into one of the prime topics of current interest in the field of Jewish philosophy the nature of Jewish political existence and the changing configurations of law that this entails

Peace, Discontent and Constitutional Law Martin Belov, 2021-05-23 This book offers a multi discursive analysis of the constitutional foundations for peaceful coexistence the constitutional background for discontent and the impact of discontent and the consequences of conflict and revolution on the constitutional order of a democratic society which may lead to its implosion It explores the capacity of the constitutional order to serve as a reliable framework for peaceful coexistence while allowing for reasonable and legitimate discontent It outlines the main factors contributing to rising pressure on constitutional order which may produce an implosion of constitutionalism and constitutional democracy as we have come to know it The collection presents a wide range of views on

the ongoing implosion of the liberal democratic constitutional consensus which predetermined the constitutional axiology the institutional design the constitutional mythology and the functioning of the constitutional orders since the last decades of the 20th century The constitutional perspective is supplemented with perspectives from financial EU labour and social security law administrative law migration and religious law Liberal viewpoints encounter radical democratic and critical legal viewpoints The work thus allows for a plurality of viewpoints theoretical preferences and thematic discourses offering a pluralist scientific account of the key challenges to peaceful coexistence within the current constitutional framework The book provides a valuable resource for academics researchers and policymakers working in the areas of constitutional law and politics

Kelsen's Legacy Jorge Emilio Núñez, Gonzalo Villa-Rosas, Jorge Luis Fabra-Zamora, 2025-02-20 This volume offers a comprehensive examination of Hans Kelsen's legal and political philosophy focusing on four central themes The first part analyses Kelsen's theory of norms including its periodisation and concepts of validity and coercion The second part explores his perspectives on international law addressing its structural analysis primitive law characterisation and teleology The third part examines Kelsen's theory of democracy its relationship with the pure theory of law collective will and democratisation of the administration The final part discusses Kelsen's influence on the Vienna School of Legal Theory and its impact on case law and jurisprudence beyond Europe This collection is essential for scholars and practitioners seeking to understand Kelsen's legacy

The Long Arc of Legality David Dyzenhaus, 2022-01-27 The Long Arc of Legality breaks the current deadlock in philosophy of law between legal positivism and natural law by showing that any understanding of law as a matter of authority must account for the interaction of enacted law with fundamental principles of legality This interaction conditions law's content so that officials have the moral resources to answer the legal subject's question But how can that be law for me David Dyzenhaus brings Thomas Hobbes and Hans Kelsen into a dialogue with H L A Hart showing that philosophy of law must work with the idea of legitimate authority and its basis in the social contract He argues that the legality of international law and constitutional law are integral to the main tasks of philosophy of law and that legal theory must attend both to the politics of legal space and to the way in which law provides us with a public conscience

The Oxford Handbook of Global Legal Pluralism Paul Schiff Berman, 2020-06-01 Over the past two decades Global Legal Pluralism has become one of the leading analytical frameworks for understanding and conceptualizing law in the 21st century Wherever one looks there is conflict among multiple legal regimes Some of these regimes are state based some are built and maintained by non state actors some fall within the purview of local authorities and jurisdictional entities and some involve international courts tribunals and arbitral bodies and regulatory organizations Global Legal Pluralism has provided first and foremost a set of useful analytical tools for describing this conflict among legal and quasi legal systems At the same time some pluralists have also ventured in a more normative direction suggesting that legal systems might sometimes purposely create legal procedures institutions and practices that encourage interaction among multiple communities These scholars argue that

pluralist approaches can help foster more shared participation in the practices of law more dialogue across difference and more respect for diversity without requiring assimilation and uniformity Despite the veritable explosion of scholarly work on legal pluralism conflicts of law soft law global constitutionalism the relationships among relative authorities transnational migration and the fragmentation and reinforcement of territorial boundaries no single work has sought to bring together these various scholarly strands place them into dialogue with each other or connect them with the foundational legal pluralism research produced by historians anthropologists and political theorists Paul Schiff Berman one of the world's leading theorists of Global Legal Pluralism has gathered over 40 diverse authors from multiple countries and multiple scholarly disciplines to touch on nearly every area of legal pluralism research offering defenses critiques and applications of legal pluralism to 21st century legal analysis Berman also provides introductions to every part of the book helping to frame the various approaches and perspectives The result is the first comprehensive review of Global Legal Pluralism scholarship ever produced This book will be a must have for scholars and students seeking to understand the insights of legal pluralism to contemporary debates about law At the same time this volume will help energize and engage the field of Global Legal Pluralism and push this scholarly trajectory forward into another two decades of innovation

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