CONTENTS

Duofo	100		xvii
Prefa	owledgements		xix
	e of Cases		XXX
	e of Statutes		XXX
Iuoic	, of Statistics		
1. 5	Studying Jurisprud	ence	_ 1
261 261	What is Jurispru		1
	The Relevance o		2 5
	Normative Char	acter of Law	5
	"Ought" and "Is	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	6
	Form (or Structi	ure) and Content	7
	Philosophy of L		7
		Definitions and the Meaning of Law	8
	"Naming a Th		8
	"Essentialism"	,,	9
	Analysis of Wor	ds or Facts	11
	Are Definitions		11
	Ideological Fact		12
	Criteria of Valid		13
	Law and Regula		15
	Law and Morals		16
	Morals as Part of	of Law	18
	Law and Value J	Judgements	19
		EXTRACTS	
			20
	J. Austin	The Uses of the Study of Jurisprudence	
	W.L. Twining	Some Jobs for Jurisprudence	
	J. Shklar	Legalism	
	D. Hume	A Treatise of Human Nature	
	L.L. Fuller	The Case of the Speluncean Explorers	
	N.R. Cahn	The Case of the Speluncean Explorers:	
Pil.	C ## 7'44'	Contemporary Proceedings	
	G. Williams	International Law and the Controversy	15
	*** / **	Concerning the Word "Law"	
	H.L.A. Hart	Definition and Theory in Jurisprudence	
	R. Wollheim	The Nature of Law	
	J. Raz	The Problem About the Nature of Law	
	P. Soper	Choosing a Legal Theory on Moral Grounds	
	J. Finnis	Evaluation and the Description of Law	
	J. Raz	Ethics in the Public Domain	00

Contents

	J. Raz Between Authority and Interpretation	69
	B.Z. Tamanaha Law as a Means to an End	69
	P. Kahn The Cultural Study of Law	74
2.	Natural Law	75
	What is Natural Law?	75
	The Attractions of Natural Law	81
		88
	Greek Origins	89
	Jus Gentium	90
	Medieval Period	
	Renaissance, Reformation and Counter-Reformation	92
	Grotius and International Law	95
	Natural Law and the Social Contract	96
	Kant and Human Freedom	103
	The Enlightenment	104
	Nineteenth and Twentieth Centuries	107
	Fuller and the Morality of Law	108
	Hart on Natural Law	113
	Finnis and the Restatement of Natural Law	116
	Conclusion	124
	EXTRACTS	
	Aristotle Nicomachean Ethics	124
	Cicero De Re Publica	125
	Justinian Institutes	125
		126
	1	130
		130
	Locke Two Treatises of Government	
	J.J. Rousseau The Social Contract	134
	L.L. Fuller The Morality of Law	138
	J.M. Finnis Natural Law and Natural Rights	151
	J. Finnis, J. Boyle, G. Grisez The First Moral Principle	170
	Margaret Mead Some Anthropological Considerations	4.5.4
	Concerning Natural Law	174
	K. Greenwalt How Persuasive is Natural Law Theory?	177
3.	Bentham, Austin and Classical English Positivism	195
	Sovereignty and its Origins	195
	Bentham and the Utilitarians	196
	Bentham's "Of Laws in General"	198
	Austin	202
	Law as a Command	204
	Sovereignty	205
	Law and Morals	209
	Sanctions	211
		215
	Hart's "Concept of Law" and Austin	
	Did Austin Remain an Austinian	216
	Conclusion	216

Contents vii

EXTRACTS

	J. Bentham	A Fragment on Government	217
	J. Bentham	An Introduction to the Principles of Morals	210
		and Legislation	218
	J. Bentham	Of Laws in General	221
	J. Austin	The Province of Jurisprudence Determined	237
4	The Pure Theory of	f Law	249
1.	Normativism		250
	The Pure Science	e of Law	251
	Norms and the I		252
		rms and Law-making Process	254
	Sanctions		255
	Critique		257
	The Basic Nor	rm	258
	International 1	Law	263
	The Rule of R	ecognition: A Comparison	265
	International 1	Law and Sanctions	267
	Law and Fact		268
	Non-legal No:	rms	268
	Conclusion		269
		EXTRACTS	
	H. Kelsen	The Pure Theory of Law	269
	H. Kelsen	General Theory of Law and State	275
	H. Kelsen	Professor Stone and the Pure Theory of Law	282
	H. Kelsen	The Pure Theory of Law	284
	H. Kelsen	The Function of a Constitution	295
	J. Raz	The Purity of the Pure Theory	300
			211
5.	Modern Trends in	Analytical Jurisprudence	311
	Hart's Concept	of Law	315
		Hart's Jurisprudence	316 319
	The "Internal A		322
	The Rule of Rec		326
	Is Law A System	n of Rules?	330
	Raz and Reason		333
	Shapiro and "Lo	eganty	335
	Rights	Diahta	335
	The Nature of I		337
	Hohfeld's Analy		340
		to Obey the Law reement of Morality	343
	The Legal Ellio	icoment of interacty	2 .0
		TAKE A CELC	

H.L.A. Hart

Positivism and the Separation of Law and Morals 348

	L.L. Fuller	Positivism and Fidelity to Law –	
		a Reply to Professor Hart	352
	F. Schauer	The Nature of the Debate	355
	G. Radbruch	Statutory Lawlessness and	
		Supra-Statutory Law	359
	R. Alexy	A Defence of Radbruch's Formula	364
		Definition and Theory in Jurisprudence	380
	J. Raz	Practical Reason and Norms	385
	J. Raz	Authority, Law and Morality	389
	S. Perry	Law and Obligation	405
	S. Perry	Hart's Methodological Positivism	413
	Sir Neil MacCormick	A Very British Revolution?	442
		· · · · · · · · · · · · · · · · · · ·	442
	W.N. Hohfeld	Fundamental Legal Conceptions as	151
	WA Elman	Applied in Judicial Reasoning	454
	W.A. Edmundson	The Duty to Obey the Law	460
	S. Shapiro	Legality	468
_			401
6.	Theories of Justice		481
	Introduction		481
	Rawls and Distributive		481
	Nozick: Justice as Entit		492
	Capabilities and the Front	ontiers of Justice	498
	Justice as Rights		500
	Feminism and Justice		509
	Economic Theories of	Law and Justice	517
	Corrective Justice		524
		EXTRACTS	
	J. Rawls	A Theory of Justice	527
	J. Rawls	Political Liberalism	537
	R. Nozick	Anarchy, State and Utopia	544
	R. Dworkin	A Trump Over Utility	547
	R. Dworkin	The state of the s	J+1
	R. Dworkin	What is Equality? Part 2: Equality of Resources	556
	IM Vous	9	330
	I.M. Young	Defining Injustice as Domination and	5.7
	CM OI:	Oppression	567
	S.M. Okin	Justice as Fairness: For Whom?	582
7	Dworkin and Interpretivis	sm.	593
1.	The Critic of Positivism		593
	Dworkin and "Hard Ca		594
	Dworkin and Discretio		596
	Dworkin and Interpreta	ation	597
	Law as Integrity		599
	One Right Answer?		603
	Integrity and Legitimac		604
	Right Answers and Wro	ong Answers	608
	Justice for Hedgehogs		609

Contents ix

EXTRACTS

	R. Dworkin Taking Rights Seriously	610
	R. Dworkin Law as Interpretation	621
	R. Dworkin Law's Empire	628
	R. Dworkin Justice In Robes	648
	R. Dworkin Justice for Hedgehogs	661
	G. Postema Integrity: Justice in Workclothes	667
	S. Hershovitz Integrity and Stare Decisis	690
	J. Waldron, The Rule of Law as a Theatre of Debate	695
	J. Waldfoll,	0,0
Q	Sociological Jurisprudence and the Sociology	
0.	of Law	701
	Introduction	701
	Comte and Sociology	702
		702
	Laissez Faire and Herbert Spencer	
	Jhering (1818–1892)	704
	Max Weber (1864–1920)	704
	Emile Durkheim (1858–1917)	708
	Eugen Ehrlich (1862–1922)	712
	Roscoe Pound (1870–1964)	715
	Social Engineering	715
	Values	717
	A Consensus Model of Society	718
	Sociological Jurisprudence since Pound	720
	Talcott Parsons	721
	Selznick	722
	Towards a Sociology of Law	724
	Unger and the Development of Modern Law	731
	Habermas and the Centrality of Law	733
	Critical Empiricism	737
	Bourdieu and Habitus	741
	Autopoiesis and Law	743
	Tiestop of other states	, , , ,
	EXTRACTS	
	EXTRACTS	
		716
	R. von Jhering Law as Means to an End	746
	M. Weber Economy and Society	747
	E. Durkheim The Division of Labour in Society	756
	E. Ehrlich Principles of the Sociology of Law	759
	R. Pound Philosophy of Law	763
	P. Selznick The Sociology of Law	765
	R. Cotterrell The Significance of a Concept of Law Not	
	Restricted to State Law	770
	R. Cotterrell Why Must Legal Ideas be Interpreted	
	Sociologically?	773
	D. Nelken Blinding Insights? The Limits of a Reflexive	
	Sociology of Law	783
	S. Silbey & A. Sarat Critical Traditions in Law and	
	Society Research	790
	Society Hebeli en	

X

	N. Luhmann Coupling: 2	Operational Closure and Structur The Differentiation of the Legal System	
	R. Cotterrell	Law and Social Theor Between Facts and Norms: An Author	y 803
	J. 11a001111a5	Reflection	
	R. Banakar & M. Trave		
9. A	American Realism The "Revolt against Fo Mr Justice Holmes	rmalism"	823 823 824
	The American Legal Sy The "Realist" Movement Scientific and Normativ	nt in Law	826 826 834
	Pragmatism in Law Legal Process		837 839
	* .	EXTRACTS	
	O.W. Holmes J. Frank K. Llewellyn K. Llewellyn K. Llewellyn W. Twining	The Path of the La Law and the Modern Min Some Realism About Realism My Philosophy of La The Common Law Tradition The Significance of Realism	nd 841 nn 844 w 848 nn 854
10. T	The Scandinavian Realists Axel Hägerström (1868- Law as Fact Ross's Theory of Law The "Verifiability" Prince Origin of Law "Reductionism" and Let Features of Law Law and Morals Legal Ideology—the Moscandinavian and Amer	–1939) ciple egal Concepts ethod of Justice v Social Welfare	869 870 872 874 877 879 880 881 882 883
	anterior de la servicio	EXTRACTS	
	Axel Hägerström K. Olivecrona A. Ross A. Ross	Inquiries into the Nature of La and Mora Law as Fac On Law and Justic Directives and Norm	ls 886 et 891 ee 899
	A. Ross	T -	t 907
11. H	istorical and Anthropolo The Romantic Reaction Herder and Hegel The German Historical F.K. von Savigny (1779-	School	911 911 911 912 913

Contents	хi
The Volksgeist—Some Problems Legislation and Juristenrecht Sir Henry Maine (1822–1888) Law and Anthropology Dispute Processes Legal Pluralism	914 915 916 917 923 926
EXTRACTS	
F.K. von Savigny Sir Henry Maine E.A. Hoebel M. Gluckman L.L. Fuller System of Modern Roman Law Ancient Law The Law of Primitive Man Judicial Process among the Barotse Human Interaction and the Law	928 932 935 940 943
12. Marxist Theories of Law and State Dialectics, Hegel and Marx Marx and Hegel's Political Philosophy	953 954 955
The Materialist Conception of History Base and Superstructure The Question of Class Marx and Ideology	956 958 963 965
The State and Law Marx and Justice, Morality and Human Rights The "Withering Away" of the State Other Marxisms Karl Renner Antonio Gramsci Pashukanis	968 972 976 978 979 980 981
Marxist Theories of Law and State—a Critique EXTRACTS	984
K. Marx Critique of Hegel's Philosophy of Right K. Marx Preface to Contribution to Critique of Political	
K. Marx & F. Engels F. Engels G. A. Cohen The German Ideology The Housing Question Karl Marx's Theory of History	990 991 991 993
S. Lukes Can the Base be Distinguished from the Superstructure? K. Marx & F. Engels The German Ideology	997
K. Marx Preface to The Critique of Political Economy K. Marx & F. Engels The German Ideology K. Marx The Civil War in France K. Marx Critique of the Gotha Programme Anti-Dühring V. Lenin State and Revolution	1002 1003 1003 1004 1005 1006
E. Pashukanis Law and Marxism	1 1008

xii Contents

13. C		1017	
	Critical Legal Studies and Liberalism's Contradictions		
	Rules and Reasoning		
	Critical Legal Studies and Legal Practice		
	Legal Theory and Social Theory	1028	
	Conclusion	1031	
	EXTRACTS		
	R.W. Gordon Law and Ideology	1033	
	R.W. Gordon New Developments in Legal Theory	1038	
	P. Gabel Reification in Legal Reasoning	1042	
	M. Kelman Interpretive Construction in the Substantive		
	Criminal Law	1050	
	D. Kennedy The Ideological Content of Legal Education	1062	
	R.M. Unger The Spell of Rationalizing Legal Analysis		
	The Spen of Tunionanian's Legal Internation		
14. I	Feminist Jurisprudence	1079	
	Origins	1079	
	The Inquiries of Feminist Jurisprudence	1081	
	Equality and Difference	1084	
	Women and Ideology	1086	
	The Public and the Private	1087	
	Cultural Pluralism and Women's Rights	1089	
	Feminist Legal Methods	1091	
	EXTRACTS		
	A.C. Scales The Emergence of Feminist Jurisprudence:		
	An Essay		
	P.A. Cain Feminism and the Limits of Equality		
	R. West Jurisprudence and Gender	1114	
	C.A. MacKinnon Difference and Dominance: On Sex		
	Discrimination		
	K.T. Bartlett Feminist Legal Methods	1139	
	L.M. Finley Breaking Women's Silence in Law: The Dilemma		
	of the Gendered Nature of Legal Reasoning	1157	
	N. Lacey The Feminist Challenge to Conventional	11/7	
	Legal Scholarship		
	S.M. Okin Is Multiculturalism Bad for Women?	11/9	
15. I	Postmodernist Jurisprudence	1189	
	Postmodernism and Modernism	1189	
	The Death of the Subject	1190	
	The "Subject" and the Legal System	1191	
	Lawyers, their Clients and their Scholarship	1193	
	A Political Agenda	1194	
	Postmodern Law: Postmodern State	1195	
	Semiotics and Legal Theory	1197	

EXTRACTS

	J.F. Lyotard Answering the Question: What is Postmodernism?	1201
	J. Wicke Postmodern Identity and the Legal Subject P. Schlag Normativity and the Politics of Form	1203
	J.M. Balkin Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence	1223
	B. de Sousa Santos The Postmodern Transition: Law and Politics	1239
	C. Douzinas & R. Warrington "A Well-Founded Fear of Justice": Law and Ethics in Postmodernity	1247
16 C	ritical Race Theory	1257
10. C	Introduction	1257
	The Other Movements	1259
	But What Does Race Mean?	1261
	EXTRACTS	
	R. D. Barnes Race Consciousness: The Thematic	
	Content of Racial Distinctiveness in Critical	
	Race Scholarship	1262
	R. Delgado and J. Stefancic Critical Race Theory:	
	An Annotated Bibliography	1265
	A. Harris The Jurisprudence of Reconstruction	1266
	M.S. Ball The Legal Academy and Minority	
	Scholars	1272
	K. Crenshaw Race, Reform and Retrenchment:	
	Transformation and Legitimation in	
	Anti-Discrimination Law	1274
	K.R. Johnson Celebrating LatCrit Theory:	
	What Do We Do When the Music Stops?	1283
		1007
17. T	The Philosophy of Human Rights	1287
	Introduction	1287
	Human Rights	1288
	Illustration 1 – The Right to Health	1294
	Illustration 2 – Freedom of Speech	1297
	Justifying Human Rights	1303
	Do We Need a Philosophy of Human Rights?	1304
	The Interests Theory Approach	1304
	The Will Theory Approach	1305
	Human Rights and Dignity	1305
	Do Children Have Human Rights?	1306
	Globalisation and Human Rights	1308
	EXTRACTS	
	L. Hunt Inventing Human Rights	1309
	L. Hunt Inventing Human Rights J. Griffin On Human Rights	

xiv Contents

	J. Tasioulas	Human Dignity and the Foundations	
		of Human Rights	
	S. Benhabib	Dignity in Adversity	
	A. Sen	Human Rights and Capabilities	
	D. Kennedy	The International Human Rights Movement	1348
	M. Freeman	The Human Rights of Children	1358
	J. Wolff	The Human Right to Health	1363
	S. Mill	On Liberty	1368
	C. MacKinnon	Only Words	
	Israel	Holocaust Denial Law	
18. (Globalisation and th	ne Legal Order	1377
10.	Globalisation – A		1377
	The Nation State		1379
	Global Integration	•	1380
	Global Justice		1380
			1382
	Migration	Oman Dandana	
	Arguments for		1383
		Closed Borders	1384
	Climate Change		1386
		EXTRACTS	
	J. Rawls	The Law of Peoples	1388
	R. Cotterrell	Law and Social Theory	
	A. Brysk	Transnational Threats and Opportunities	
	R. Domingo	The New Global Law	
	R. Falk	Toward Humane Global Governance	
	N. Fraser	Reframing Justice in a Globalizing World	
	A.M. Jaggar	Transnational Cycles of Gendered	1703
	vui	Inerability: A Prologue to a Theory of Global	1/1/
	M Diana	Gender Justice	
	M. Risse	On Global Justice	
	M. Steger	Ideology and the Global Imaginary	
	W. Twining	Globalization & Legal Theory	1450
19. T	Law, Language and	Literature	1457
17. 1	Introduction – Int		1457
	Law and Language		1458
	Law as Language		1464
	Law and Literatur	ra	1466
	Shakespeare and t		1467
	Charles Dickens a		
			1470
	Modernist Literal	ry Critiques of Law	1471
		EXTRACTS	
	J. Ainsworth	Remaining Silent as an Exercise of the	1.450
	D. Comet	Right to Remain Silent	
	R. Carston	Legal Texts and Canons of Construction	14/4

Contents

	M. Freeman	tical Introduction to Law and Literature Truth and Justice in Bertolt Brecht "Where be his quiddities now"? Law and Language in Hamlet	1489
	D. Nabers	The True Image of Authority	1506
	P. Pether	Language	1509
	R. Reichman	The Affective Life of Law	
		The Stuff of Nightmares	
	I. Ward	Shakespeare's Sonnet 18	1540
	J.B. White	Shunespeure & Some 10	10 10
20	Theories of Adjudication		1549
20.	The Nature of Legal S		1549
	The Common Law	ources	1550
	The Common Law The Institution of Adj	udication	1551
	Justiciability	adication	1553
	Stare Decisis		1554
	The Common Law Ap	pproach	1555
	Rules of Law or Rules	of Practice?	1556
	The Civil Law	of fractice.	1558
			1560
	Why Precedent?		1563
	Judges and Discretion		1565
	Judge-made Law		1567
	Judicial Reasoning	12	1572
	Statutory Constructio	n and Democracy	1580
	Statutory Constructio	If and Democracy	1000
		EXTRACTS	
	TT T A TT4	Problems of the Philosophy of Lav	v 1583
	H.L.A. Hart	Nature of the Judicial Proces.	c 1588
	B. Cardozo	Language and the Lav	v 1591
	G. Williams		s 1594
	J. Wisdom	Formal Justice and the Form o	
	D.N. MacCormick	Formal Justice and the Form of Legal Argument	
	·		
	E.H. Levi	An Introduction to Legal Reasoning	5 1377
Tue	lex of Authors		1603
	lex of Subjects		1611
1110	ier of Duojeers		