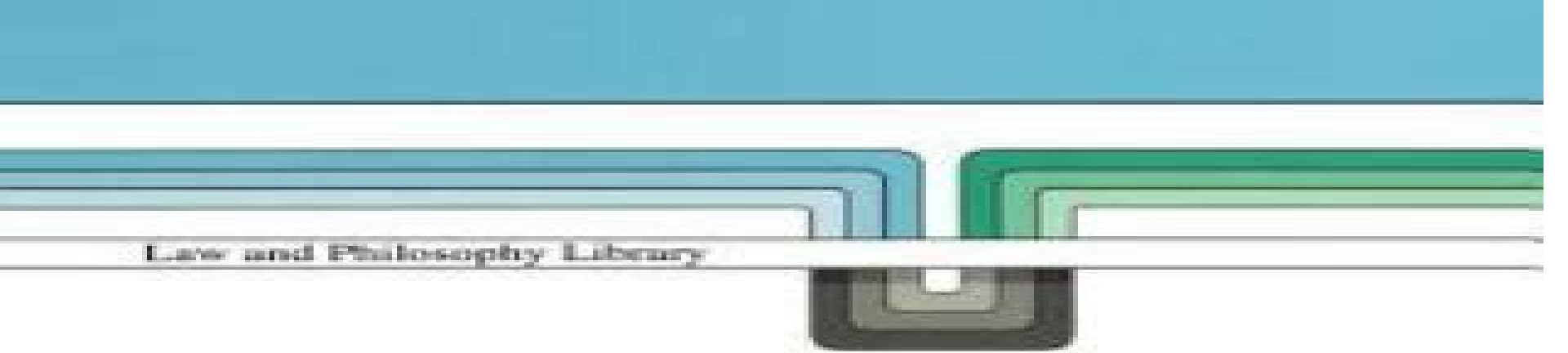




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The Legal Essays Of Michael Bayles Law And Philosophy Library

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The Legal Essays Of Michael Bayles Law And Philosophy Library:

The Legal Essays of Michael Bayles W.L. Robison, 2002-06-30 The legal essays by Michael Bayles in this collection display his commitment to utilitarianism both as a moral theory and an analytical device A utilitarian must choose between the best of all possible alternatives and so must lay out the alternatives and thus their consequences carefully and completely As it happens there is no better way of understanding why something is as it is in the law and no better way to lay the foundations for criticism and improvement than to lay out what the alternatives are carefully distinguishing them their justifications and their implications for changing other areas of the law and for changing our relation to the law Bayles was a master at such work and each essay thus repays careful study for anyone concerned about the law The essays cover a wide variety of topics from contract law to the criminal law from torts to theory and form a natural set Laying out the alternatives in one area makes it much clearer how and why alternatives in other areas are acceptable or required Interconnections within the legal system as a whole not readily visible when studying one area of the law become obvious when several are laid out side by side using the analytical skill required by a good utilitarian

The Concept of Rights George W. Rainbolt, 2006-03-09 What does it mean to have a right Previous answers to this question fall into two groups interest benefit theories of rights and choice will theories This book proposes an alternative to these traditional views the justified constraint theory of rights which avoids the pitfalls of earlier theories and solves the puzzle of the relational nature of rights The analysis shows that this theory applies without modification to past present and future beings

Studies in Legal Logic Jaap Hage, 2006-03-30 Studies in Legal Logic is a collection of nine interrelated papers about the logic epistemology and ontology of law All of the papers were written after the publication of the author's Reasoning with Rules and supplement the issues addressed therein Some of the papers are new others have been revised substantially after the publication of their original versions The emphasis is on analysis not on logical technicalities Studies in Legal Logic contains chapters about the nature of norms the role of coherence in the law the nature of defeasibility the role of dialectics in law and artificial intelligence the statics and dynamics of the law and the consistency of rules Moreover it contains a new simplified and yet more powerful version of Reason based Logic and extensive examples of how it can be used for the analysis of legal reasoning The examples deal with legal theory construction case based reasoning and judicial proof

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

Law as Symbolic Form Deniz Coskun, 2007-07-17 This book describes the rule of law as the reign of persuasion rather than the reign of force and democracy as the reign by persuasion rather than the reign by force It synthesizes a vast amount of current Cassirer

literature and makes a contribution to jurisprudence The book is the first systematic elaboration on law as a symbolic form and it sheds new light on a still dark area of intellectual and jurisprudential thought

The Market of Virtue Michael Baurmann, 2002-08-31 The Market of Virtue Morality and Commitment in a Liberal Society is a contribution to the present controversy between liberalism and communitarianism This controversy is not only confined to academic circles but is becoming of increasing interest to a wider public It has become popular again today to criticize a liberal market society as being a society in which morality and virtues are increasingly being displaced by egoism and utility maximization According to this view the competition between individuals and the dissolution of community ties erode the respect for the interests of others and undermine the commitment to the common good The present book however develops quite a different picture of a liberal society An analysis of its fundamental principles shows that anonymous market relations and competition are by no means the only traits of a liberal society Such a society also provides the framework for freedom of cooperation and association It gives its citizens the right to cooperate with other people in pursuit of their own interests Just as the rivalry between competitors is a basic element of a liberal society so is the cooperation between partners Thus not only self centred individualism is rewarded The main part of the book explains how the freedom to cooperate and to establish social ties lays the empirical foundation for the emergence of civil virtues and moral integrity It is the basic insight of this analysis that it can no longer be maintained that a liberal society is incapable of producing moral attitudes and social commitment If a civil society can develop under a liberal order then one can reckon with citizens who voluntarily contribute to public goods and who commit themselves of their own accord to the society its constitution and institutions However this book not only develops further arguments for the current debate between liberalism and communitarianism by explaining the emergence of morality and virtue in a market society It also provides new aspects for the present theoretical and methodological controversies over the fundamentals of the social sciences and contributes to the advancement of the modern individualistic approach in social theory In this context it aims especially at an improvement of a sociological model of behaviour

The Principle of Legal Certainty in EC Law J. Raitio, 2013-03-14 The intertwinement of EC law and national law may create unforeseeability in situations where EC law invades the national cases which gives rise to the very question of legal certainty in EC law This study contributes to the contemporary discussion which wrestles with the following questions in particular What have been the visions and objectives for European integration in the last decades How to describe European Union as a political entity and a legal system What is the relationship between legal certainty rule of law various general principles and human rights What is the core of legal certainty on the basis of the case study What kind of legal arguments and patterns of justification are there from a comparative perspective How has the term legal certainty been defined in the Nordic legal theory How predictable and acceptable are the interpretations of the European Court of Justice is it running wild Legal certainty relates to the principle of non retroactivity and the protection of legitimate expectations in particular but more

profoundly it can be related to the conceptual scale for weighing up and balancing between formal justice and material fairness in legal decision making This scale is illustrated by presenting the terms formal factual and substantive legal certainty

Group Rights as Human Rights Neus Torbisco Casals, 2006-06-30 Liberal theories have long insisted that cultural diversity in democratic societies can be accommodated through classical liberal tools in particular through individual rights and they have often rejected the claims of cultural minorities for group rights as illiberal Group Rights as Human Rights argues that such a rejection is misguided Based on a thorough analysis of the concept of group rights it proposes to overcome the dominant dichotomy between individual human rights and collective group rights by recognizing that group rights also serve individual interests It also challenges the claim that group rights so understood conflict with the liberal principle of neutrality on the contrary these rights help realize the neutrality ideal as they counter cultural biases that exist in Western states Group rights deserve to be classified as human rights because they respond to fundamental and morally important human interests Reading the theories of Will Kymlicka and Charles Taylor as complementary rather than opposed Group Rights as Human Rights sees group rights as anchored both in the value of cultural belonging for the development of individual autonomy and in each person's need for a recognition of her identity This double foundation has important consequences for the scope of group rights it highlights their potential not only in dealing with national minorities but also with immigrant groups and it allows to determine how far such rights should also benefit illiberal groups Participation not intervention should here be the guiding principle if group rights are to realize the liberal promise

The Concept of Ideals in Legal Theory Sanne Taekema, 2002-12-31 Talk about law often includes reference to ideals of justice equality or freedom But what do we refer to when we speak about ideals in the context of law This book explores the concept of ideals by combining an investigation of different theories of ideals with a discussion of the role of ideals in law A comparison of the theories of Gustav Radbruch and Philip Selznick leads up to a pragmatist theory of legal ideals which provides an interesting new position in the debate about values in law between legal positivists and natural law thinkers Attention for law's central ideals enables us to understand law's autonomous character while at the same time tracing its connection to societal values Essential reading for anyone interested in the role of values or ideals in law

Constitutionalism and Legal Reasoning Massimo La Torre, 2007-04-10 This book which consists of three chapters and two appendices is intended to connect subjects that have usually been considered as detached or not strongly connected constitutionalism legal argumentation and legal ethics Its main contention is that contemporary constitutionalism pushes towards a new style of legal reasoning which needs to take into account moral criteria and principles and that eventually the interpretative and moralist approach will lead to a somewhat unorthodox and less authoritarian concept of law A constitution to be taken seriously and as a distinct and superior source of law will end up referring to some sort of constitutional justice or judicial review And constitutional reasoning and justice need to make recourse to principles but principles to be given an operative content should be elaborated through

some form of moral reasoning This reasoning however if it does not want to betray the spirit of constitutional democracy and the very idea of a constitution as a special moment of self determination could not be just Platonism a cognitivism without roots in the practice of public discourse and deliberation So that constitutionalism will not really do without a public sphere and some activism of the latter But if this is so the traditional concept of law based on hierarchy commands prescription sanction and in the last instance violence becomes obsolete A law which is a command cannot be congruent with a practice ruled by discourse that is I argue with constitution

Hart's Legal Philosophy M.E. Bayles, 2013-03-09 During the last half of the twentieth century legal philosophy or legal theory or jurisprudence has grown significantly It is no longer the domain of a few isolated scholars in law and philosophy Hundreds of scholars from diverse fields attend international meetings on the subject In some universities large lecture courses of five hundred students or more study it The primary aim of the Law and Philosophy Library is to present some of the best original work on legal philosophy from both the Anglo American and European traditions Not only does it help make some of the best work available to an international audience but it also encourages increased awareness of and interaction between the two major traditions The primary focus is on full length scholarly monographs although some edited volumes of original papers are also included The Library editors are assisted by an Editorial Advisory Board of internationally renowned scholars Legal philosophy should not be considered a narrowly circumscribed field Insights into law and legal institutions can come from diverse disciplines on a wide range of topics Among the relevant disciplines or perspectives contributing to legal philosophy besides law and philosophy are anthropology economics political science and sociology Among the topics included in legal philosophy are theories of law the concepts of law and legal institutions legal reasoning and adjudication epistemological issues of evidence and procedure law and justice economics politics or morality legal ethics and theories of legal fields such as criminal law contracts and property

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

distinguish several components These are basically bodily movements intentions and intentionally or unintentionally produced changes in the world

Being Apart from Reasons Cláudio Jr. Michelon, 2006-04-23 *Being Apart from Reasons* deals with the question of how we should go about using reasons to decide what to do More particularly the book presents objections to the most common response given by contemporary legal and political theorists to the moral complexity of decision making in modern societies namely the attempt to release public agents from their argumentative burden by insulating a particular set of reasons from the general pool of reasons and assigning the former systematic priority over all other reasons That strategy is apparent both in Rawls claim that reasons concerning the right are systematically prior to reasons concerning the good and in Raz s claim that pre-emptive reasons are systematically prior to first order reasons The same strategy is also instantiated by certain arguments for the procedural value of law such as Jeremy Waldron s In the book each of those arguments for the insulation of reasons is objected to in order to defend the thesis the reasoning by public agents must always be as comprehensive as possible The remaining chapters object to those arguments mentioned above which aim at justifying the exclusion of certain reasons from public agents decision making

Influence and Power Ruth Zimmerling, 2005-07-19 Exact but not exacting this is a fine work of overview and analysis it makes an excellent contribution to the literature on power and freedom Philip Pettit William Nelson Cromwell Professor of Politics Princeton University In this work the author assumes the task of a logical clean up an extremely valuable contribution to the promotion of scientific rigour and clarity in political scholarship This book gives the reader orientation in a conceptual jungle It is an excellent analysis of the relationships between normative and social power Ernesto Garzón Valdés Prof em

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

Law, Institution and Legal Politics Ota

Weinberger,2012-12-06 It gives me great pleasure to offer this foreword to the present work of my admired friend and respected colleague Ota Weinberger Apart from the essays of his which were published in our joint work An Institutional Theory of Law New Approaches to Legal Positivism in 1986 relatively little of Weinberger's work is available in English This is the more to be regretted since his work is of particular interest to jurists of the English speaking world both in view of its origins and in respect of its content As to its origins Weinberger was reared as a student of the Pure Theory of Law a theory which in its Kelsenian form has aroused very great interest and has had considerable influence among anglophone scholars perhaps even more than in the Germanic countries Less well known is the fact that the Pure Theory itself divided into two schools that of Vienna and that of Brno It was in the Brno school of Frantisek Weyr that Weinberger's legal theory found its early formation and perhaps from that early influence one can trace his continuing insistence on the dual character of legal norms both as genuinely normative and yet at the same time having real social existence

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

Legal Method and the Rule of Law Sebastián Urbina,2002-08-31 We cannot see the world as it is because we face it in a contaminated vein That is our conceptual scheme and biological constitution condition our world view The legal normative world we are dealing with has some special features like the primacy of practical reason over theoretical reason and the primacy of the internal point of view over the external point of view Although it is not a feature of all legal traditions legal dogmatics is a privileged way of knowing legal normative object that is our legal orders But we are not undertaking as legal scholars an empiricist enterprise because among other reasons we are not interested in the reality in itself but in the relevant reality at least for us In this respect we do not only depend on theories like physicists but also on legal authoritative sources that is power and legitimacy Legal scholars and other participants in the legal life are not neutral observers of their own world trying to discover some hidden truth They are committed experts trying to describe justify and improve the legal order

Essays in Legal Theory Robert Summers,2013-11-11 As I explain in the introduction this is the third in a series of collections of my previously published essays in legal theory All of the essays here but three have been revised for this volume I now wish to record my gratitude and indebtedness to various persons I am most indebted and grateful to my wife

Dorothy Kopp Summers to whom I dedicate this book I also wish to record my gratitude for his interest and patience to Hendrik Jan van Leusen of Kluwer Academic Publishers He strongly encouraged me to put this collection together and without his efforts it certainly would not have appeared in this timely fashion I also wish to thank his successor Sabine Wesseldijk for assistance In the course of my academic career I have benefitted greatly from the many Cornell Law School students serving as my research assistants I have also been privileged to have the fine aid of many Cornell Law School secretaries and administrative assistants Foremost here is Mrs Pamela Finnigan who has so ably seen this collection put together from start to finish

Law, Interpretation and Reality P.J. Nerhot, 2013-04-17 PATRICKNERHOT Since the two operations overlap each other so much speaking about fact and interpretation in legal science separately would undoubtedly be highly artificial To speak about fact in law already brings in the operation we call interpretation Equally to speak about interpretation is to deal with the method of identifying reality and therefore in large part to enter the area of the question of fact By way of example Bernard Jackson's text which we have placed in section 11 of the first part of this volume could no doubt just as well have found a home in section I This work is aimed at analyzing this interpretation of the operation of identifying fact on the one hand and identifying the meaning of a text on the other All philosophies of law recognize themselves in the analysis they propose for this interpretation and we too shall seek in this volume to furnish a few elements of use for this analysis We wish however to make it clear that our endeavour is addressed not only to legal philosophers the nature of the interpretive act in legal science is a matter of interest to the legal practitioner too He will find in these pages we believe elements that will serve him in reflection on his daily work

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