TABLE OF CONTENTS

A Note on the Author and the Contributors
Editor's Preface
Assistant Editor's Preface

Part One - The Reality That Ought to Be: Problems and Critical Issues

Chapter 1 - A First Glance
1.1. The Reality That Ought to Be as Opposed to the Reality That Is
1.2. The Law and the Right. What Is Objectively Right and What Is Subjectively Right
1.3. What Is Objectively Right as the Content of Norms. Four Meanings of "Right"

Chapter 2 - Dualism and Interaction between the Reality That Ought to Be and the Reality That Is: Validity as a Pineal Gland
2.1. Constitutive Types and Valid Tokens as Independent of Norms
2.1.1. Validity as Congruence
2.1.2. Some People Speak of Types. The So-called Typicality of Law
2.1.3. Other People Presuppose Types
2.1.4. Types Are Constitutive, Rules Are Regulative
2.1.5. Simple and Compound Types and Tokens
2.1.6. Competence, or Capacity
2.2. The Chain of Normative Production. The So-called Typicality of Law
2.2.1. The Prima of the Reality That Ought to Be
2.2.2. Valid and Invalid Behaviours
2.2.2.1. Noblesse Oblige
2.2.2.2. Four Possibilities
2.2.3.Ought-Effects Are neither Valid nor Invalid

Chapter 3 - Taking a Dive into the Sources of Law
3.1. Where to Jump in From
3.2. Facts, Acts, and Transactions as Valid Is-Events Which Cause Ought-Effects in What Is Subjectively Right
3.2.1. Generalia
3.2.2. Is-Facts Strictly Understood
3.2.3. Is-Acts Strictly Understood
3.2.4. Transactions, or Declarations of Will
3.3. Distinguishing Ought-Effects in What Is Subjectively Right from Ought-Effects in What Is Objectively Right
3.4. Sources of Law as Valid Is-Events (Facts, Acts, and Declarations of Will) Which Cause Ought-Effects in What Is Objectively Right
3.5. Sources of Law as Ought-Effects (in What Is Objectively Right) Caused by Sources of Law as Valid Is-Events
3.6. The Sovereign Normative Will as the Source of Positive

Law in the Natural-Law School and in German Legal Positivism Alike
3.6.1. Two Glorious Examples
3.6.2. The State of Nature and the Promise
3.6.3. What Divides and What Unites the Natural-Law School and German Legal Positivism

Chapter 4 - The Problem of the Matrix
4.1. The Matrix of Normativeness as the Ultimate Source of What Is Right by Virtue of Human-Posited Norms
4.2. A Problem of Authenticity
4.2.1. Orthogonal Norms and Straight Rules
4.2.2. A Few Qualifying Remarks
4.2.3 Umm a1-Kitāb: The Mother of the Book, or the Matrix of the Koran
4.2.4. The Great-Grandmother of Positive Human Law
4.3. Nature as the Matrix of Normativeness
4.3.1. A Traditional Starting Point
4.3.2. Nature as the Will of God
4.3.3. Nature as Biological Instinct
4.3.4. Nature as Divine and Human Reason
4.3.5. Nature as the Cosmic Order
4.4. The Origin of the Term *Jus Positivum*

Part Two - The Reality That Ought to Be: A Monistic Perspective. Norms as Beliefs and as Motives of Behaviour

Chapter 5 - The Motives of Human Behaviour
5.1. Summary of Part One and Brief Considerations on Some Legal-Philosophical Orientations
5.2. Encoding of Behaviour Types: Human Personality and Culture
5.3. The Conditional Connection between Types of Action and Types of Circumstance. Habits and Practices
5.4. Needs, Interests, Values, and Norms

Chapter 6 - Norms as Beliefs
6.1. The Concepts of Norm and Custom
6.2. The Existence of a Norm Presupposes at Least One Believer (Doxia)
6.3. The Conditionality of the Content of a Norm: The Type of Action and the Type of Circumstance. More on What Is Objectively Right
6.4. The Referents of a Norm: Being a Duty-Holder (Deontia) or a Right-Holder (Exousia). More on What Is Subjectively Right
6.5. The Being-in-Force of a Norm: Being a Duty Holder and a Believer (Nomia). The Not-Being-in-Force of a Norm: Being a Duty-Holder and a Nonbeliever (Anomia)
6.6. The Efficaciousness and Inefficaciousness of a Norm: Abiding

and Deviant Duty-Holders. The Whited Sepulchres and the Jesuits. Efficacious Norms as a Subset of Effective Norms
6.7. In the Case of Anomia, a Norm Can Be either Obeyed (Conformism of Duty-Holding Nonbelievers) or Not Obeyed (Nonconformism of Duty-Holding Nonbelievers), but It Cannot Be Efficacious or Inefficacious
6.8. Practising Duty-Holders and Non-Practising Duty-Holders

Chapter 7 - How Norms Proliferate in Human Brains
7.1. Subsuming Valid Tokens under a Type of Circumstance and Producing Derivative Norms from the Type of Action Conditionally Connected with the Type of Circumstance
7.2. Proliferation from Norms of Conduct. Static Systems and Dynamic Systems
7.3. Proliferation from Competence Norms

Part Three - Family Portraits. Law as Interference in the Motives of Behaviour

Chapter 8 - No Law without Norms
8.1. Family Portraits. A Normativistic Gallery: Axel Hägerström, Karl Olivecrona, and H. L. A. Hart 1961
8.1.1. A Caution for All Visitors
8.1.2. A Critique of Voluntarism in Favour of Normativism
8.1.3. Norms versus Commands
8.1.3.1. Diversity among the Contextual Requirements
8.1.3.2. What Is Objectively Right: The Internal Point of View, a Point of View Internalised in the Brains of Believers, and Which Manifests Itself in Their Use of a Typically Normative Language
8.1.3.3. Universalisability of Norms (Catholodoxia)
8.1.3.4. Justified Reaction to Transgression (Dikedoxia)
8.1.4. In What Sense Can a Norm Be Said to Exist (Doxia)
8.1.5. Constitutional Norms (Hägerström and Olivecrona) and the Rule of Recognition (Hart)
8.1.6. Misinformation about Scandinavian Legal Realism
8.2. A More Targeted Reckoning with “Validity” in Legal Discourse
8.2.1. The Broad and the Narrow Sense of Competence Norms and Norms of Conduct
8.2.2. On the Function of a Valid Slap
8.2.3. The Metonymic Validity of Legal Directives and Texts of Law
8.2.4. The Slippery Slope of Validity. Norms Cannot Be Issued, or Enacted
8.2.5. Validity in Its Traditional Sense as a Source of Misguided Legal Normativism. Validity, Law in Force, and Normativeness
8.2.6. Going beyond Hart in Treating the Relationship between

Validity and Normativeness in Law
8.2.6.1. Intra-Systemic Norms
8.2.6.2. The Difference between Criteria and Rules as a Difference between Types and Norms
8.3. Hart's "Postscript" Compared with Hart 1961: An Abjuration of Normativeness in Law
8.3.1. Hart's Masterpiece of 1961
8.3.2. Hart the Iconoclast: The Postscript Destruction of the 1961 Portrait
8.3.3. Summing up on Hart 1961 and on Hart's "Postscript"

Chapter 9 - But Norms Are Not Enough
The Interaction between Language and Motives of Behaviour
9.1. From Norms to Propositions: The Analytical Emasculation
9.2. Indices, Symbols, and Conative Effects. Directives
9.3. Language That Bypasses the Motives of Behaviour: Suggestion and Charisma
9.4. Language That Overwhelms the Motives of Behaviour: Power
9.5. Language That Affects the Motives of Behaviour: Influence
9.5.1. Influence Affecting Needs, Interests, and Values
9.5.2. Influence Affecting Norms
9.6. Language That Modifies the Internalised Reality That Ought to Be: Authority (Integration between Norms and Validly Enacted Directives or Texts)

Chapter 10 - The Law in Force: An Ambiguous Intertwining of Normativeness and Organised Power
10.1. Underscoring the Role of Force in Law in order to Avoid Misunderstandings with regard to Normativism
10.2. The Law in Force
10.2.1. Orthodoxia and Catholodoxia. The Normative Social Control on Believers: Dogmas, Heterodoxia, Paradoxia, Heresy
10.2.2. Dikedoxia. The Normative Social Control on Duty-Holders: The Idea of Just Coercion
10.2.3. The Characters of the Play, the Play of Characters
10.2.4. Who Is to Say What Is the Law in Force: The Judges as Managers of What Is Subjectively Right (*Dikaspoloi*)
10.2.5. The Law in Force as Domination (*Herrschaft*)
10.2.6. On Authority, Autonomy, and Heteronomy

Part Four - In Search of Confirming Others

Chapter 11 - The Reality That Ought to Be as Fate
11.1. Consciousness of Death, Anxiety, and Self-Defensive Creation of Myth
11.2. *Heimarmenē* and *Moira*: To Each His Own
11.3. The Double Conditionality of Fate. *Huper Moron* at the Origins of Chisholm's Paradox
11.3.1. *Kata Moiran*: In Accordance with the Norm

11.3.2. The Possibility of Acting beyond the Norm: *Huper Moron*
11.3.3. The Fulfilment of the Second Condition: *Huper Moron* Behaviour, the Violation of the Norm. Chisholm's Paradox

Chapter 12 - What Is Right in Homeric Epic
12.1. Homage to Eric A. Havelock
12.1.1. Why Havelock?
12.1.2. A Heresy Unaccomplished
12.1.3. The Anthropology of the Homeric Poems: The Didactic Function of Epic in the Oral Civilisation of the Early Greek City-States
12.2. A Revisitation of Homeric *Dikē* in the Light of the Distinction among "Norms," "What Is Objectively Right," and "What Is Subjectively Right"
12.2.1. Premise
12.2.2. Norms and Society
12.2.3. *Dikē* as What Is Objectively Right
12.2.4. *Dikai* as What Is Subjectively Right and Its Management, That Is, *Dikē* as the Restoration of What Is Right
12.2.5. "Right' and "Wrong as Adjectives Used to Qualify Things and People

Chapter 13 - What Is Right, What Is Just, *Ratio* as Type: *Sanctus Thoma Docet*
13.1. *Jus* in the History of the Idea of What Is Right
13.2. Three Senses of *Quod Est Rectum*, or What Is Right. *Jus* as What Is Right (*Quod Est Rectum*) toward Others
13.3. *Jus* as the Objective of Justice: *Justitia Est Rectitudo Causaliter Tantum*
13.4. The Justice of Human-Posited Norms (*Justitia Legalis*) Presupposes the Constant and Perpetual Just Will of the Ruler Who Has the Community in His Care
13.5. In What Sense Is the Justice of Human-Posited Norms (*Justitia Legalis*) General
13.6. Prudence and Justice in the Judgments That Judges Are To Pass
13.7. *Jus* (What Is Right toward Others) Is Made Right, in What Concerns Its Essence (*Essentialiter*), by the Type (*Ratio*) Contained in a *Lex* (Norm)
13.8. The *Redde Rationem* (the Day of Reckoning): *Ratio* as Type in the Rendition of the Fathers of the English Dominican Province

Chapter 14 - The Law and What Is Right. Hans Kelsen under Suspicion
14.1. Prologue
14.2. Kelsen in the 1940s
14.3. A Few Other Contemporary English Translations of *objektives*

Recht and *subjektives Recht*
14.4. The "Dualism" between *objektives Recht* and *subjektives Recht:* A Further Investigation into Kelsen
14.5. Kelsen's Reduction of What Is Subjectively Right to What Is Objectively Right. A Textual Analysis (or Rather a Crossword Puzzle)
14.6. How What Is Subjectively Right, Having Been Pushed out the Front Door, Slips in through the Back Disguised as an Individualised Norm

Chapter 15 - Nature and Culture
15.1. Summing up on My Confirming Others
15.2. Eighteen Thousand Centuries of Culture
15.2.1. From *Homo Habilis* to *Homo Sapiens Sapiens*
15.2.2. Culture Encoded in Human Brains and Culture Inscribed in Documents and Artifacts
15.2.3 Types and Memory
15.2.4. What Is Mind? No Matter. What Is Matter? Never Mind. Social Construction of Reality and the Construction of Social Reality
15.2.5. Norms in the Formation of Individual Personality. Socialisation and Normative Revolution (*Metanoia*)
15.3. The Micro-Macro Link
15.3.1. Cognitive and Social Action: A Society of Minds
15.3.2. The Interaction between Social Structure and Character Structure
15.3.3. Norms and the Mental Implementation of a Social System
15.3.4. Internalising the Reality That Ought to Be: From Significant Others to the Generalised Other
15.4. The Palingenesy of the Psychological Aspects of the Internal Point of View. Overcoming the Analytical Paradigm: Willard Van Orman Quine, John R. Searle, and the Neurosciences
15.5. A Few Closing Remarks That Go Back to What Is Right and Law: What Is Right by Nature and What Is Right by Law as Cultural Products

Appendix - Elements for a Formalisation of the Theory of Norms Developed in This Volume
(by Alberto Artosi, Antonino Rotolo, Giovanni Sartor, and Silvia Vida)
1. Preliminaries
2. The Definition of "Norm"
3. Duty-Holder (Deontia) and Right-Holder (Exousia). The Being-in-Force and Not-Being-in-Force of a Norm. Efficaciousness and Inefficaciousness of a Norm
4. How Norms Proliferate in Human Minds

Bibliography
(Compiled by Antonino Rotolo)

Index of Subjects

Index of Names

TABLE OF CONTENTS

A Note on the Authors
Preface

Chapter 1 - What Does "Foundations" Mean?
1.1. Basic, Fundamental Concepts
1.2. Basic Research
1.3. Logical and Epistemological Foundations
1.4. Moral or Legitimacy Foundations
1.5. Historical, Genetic Foundations of Law
1.6. Extra-legal Foundations of Law
1.7. Preconditions for the Efficacy of Law

Chapter 2 - The Explanandum: What Is Law?
2.1. Normativism and Realism
2.2. Concept of Law and Theory of Law
2.3. Concept of Law and Ideal or Idea of Law
2.4. Actor and Observer—Internal and External Point of View
    2.4.1. Actor and Rules
    2.4.2. Actor and Observer
    2.4.3. A Proposal: Scaling Internality
2.5. The Concept of Law—A Realist Approach
    2.5.1. Regularities and Rules
    2.5.2. A Realist Approach to Legal Norms
    2.5.3. Etatism versus Pluralism
    2.5.4. Realism in Practice: Socio-Legal Research
2.6. Dimensions of a Legal Order
2.7. Functions of Law

Chapter 3 – Extra Legal Foundations of Law—
Variations on Legally External Foundations
3.1. Transcendent Foundations of Law
    3.1.1. Mythological Foundations of Law
        3.1.1.1. On the Notion of Myth
        3.1.1.2 The *Oresteia* of Aeschylus
        3.1.1.3. Sophocles' *Antigone*
    3.1.2. Religious Foundations of Law
        3.1.2.1. The Process of Civilization in Jewish Law
        3.1.2.2. Christian Elements
        3.1.2.3. Islamic Law
3.2. Immanent but Legally External Foundations of Law
    3.2.1. Natural Foundations of Law
        3.2.1.1. Natural, Extra-Human Foundations: Montesquieu
            (1) The Approach
            (2) Counsel to the Legislator
            (3) Explanations of Social Institutions
            (4) Résumé
            (5) After Montesquieu
            (6) Recent Studies

3.2.1.2. Natural, Human Foundations of Law: Biology and Anthropology
3.2.1.3. The Cognitive Foundations of Law—An Introduction to the Mentalist Theory of Ethics and Law (by Matthias Mahlmann)
3.2.1.3.1. The Human Rights Culture and Its Philosophical Reflection
3.2.1.3.2. The Moral Faculty and Human Rights
3.2.1.3.3 The Properties of the Moral Faculty and the Problem of Justification
3.2.1.4. Natural Law Theories—Problems of Transition
3.2.2. Economic Foundations of Law
3.2.2.1. The Economic Foundationalism of Marx and Engels: Basic Assumptions
3.2.2.2. Critique
3.2.2.3. The Future of Law
3.2.2.4. Economic Analysis of Law
3.2.3. Moral Foundations of Law
3.2.3.1. Law and Morality
3.2.3.2. Emile Durkheim
(1) The Approach
(2) Law as an Indicator of Social Solidarity
(3) Law as an Instrument of Social Integration
(a) The Problem of Social Integration
(b) Private Law: the Extra-Contractual Foundations of Contracts
(c) Penal Law: Crime and Punishment—Innovation and Integration
(d) The Law of the Welfare State: Integration, Inclusion, and Exclusion
3.2.4. Societal Foundations of Law: Eugen Ehrlich
3.2.5. Political Foundations of Law
3.2.5.1. Law and State
3.2.5.2. Law and Politics
3.2.5.3. Law and Power (Violence, Force)
3.2.6. Historical Foundations of Law

Chapter 4 - Internal Foundations of Law

4.1. Kelsen’s Grundnorm
4.2. Luhmann’s Autopoietic Theory of Law
4.3. Fuller’s Internal Morality of the Law

Chapter 5 - Anti-Foundationalism

Chapter 6 - General Tendencies

6.1. Secularization?
6.2. Further Secularization of Explanations and Justifications—Internalization

Chapter 7 - Problems of Explanation

Chapter 8 - Summary

Bibliography
Index of Subjects
Index of Names

TABLE OF CONTENTS

A Note on the Authors
Preface

Chapter 1 - Introduction

Chapter 2 - Legislation

2.1. Introduction
2.2. Legislation as a Source of Law
    2.2.1 Sources of Legislation vs. Legislation as a Source of Law
    2.2.2. What Counts as Legislation?
    2.2.3. Codification vs. Consolidation
    2.2.4. Statutory Interpretation
    2.2.5. Legislation and Common Law
    2.2.6. Legislation vs. Adjudication
2.3. Legislation vs. Sovereignty
2.4. Taking Legislation Seriously
2.5. Conclusion

Chapter 3 - Precedent

3.1. A Characterization of Precedent
3.2. The Functioning of Precedent in Law
    3.2.1. The Doctrine of *Stare Decisis*
    3.2.2. Binding vs. Persuasive Precedent
    3.2.3. The *Ratio Decidendi* of a Precedent
3.3. Precedent and Legislation
3.4. The Modalities of Binding Precedent
    3.4.1. Precedent and Logical Necessity
    3.4.2. Precedent and Rule-scepticism
    3.4.3. Precedent and Judicial Comity
3.5. Precedent, Bindingness, and Ruleness
    3.5.1 Precedent and Hart's Social Rules
    3.5.2. Precedent, Wittgenstein and Rule-following
        3.5.2.1. Wittgenstein and Following a Rule
        3.5.2.2. Precedent and Following a Rule
3.6. The Justification of Precedent
    3.6.1 Introduction
    3.6.2. The Structure of *Stare Decisis*
    3.6.3. The Justification of Precedent

Chapter 4 - Custom

4.1. Historical Foundations of Custom as a Source of Law
    4.1.1. From Social Norm to Common Law
    4.1.2. General Custom and Local Custom
4.2. The Conceptual Framework for Custom
4.3. The Common Law Rules for the Validity of Custom
4.4. Puzzles Concerning Custom as a Source of Law

4.4.1. Reasonableness
4.4.2. Derivation and Abrogation

Chapter 5 - Delegation

5.1. Introduction
5.2. Labour Arbitration
5.2.1. A Sketch of Labour Arbitration Law
5.2.2. *Res judicata* & Collateral Estoppel
5.2.2.1. Statement of the Principle
5.2.2.2. Status Under Arbitration Jurisprudence
5.2.2.3. Emergence of the Principles
5.2.2.4. Assessment
5.2.3. Stare Decisis
5.2.3.1. Statement of Principle
5.2.3.2. Status Under Arbitration Jurisprudence
5.2.3.3. Emergence of "Quasi-stare decisis" in Arbitration jurisprudence
5.2.3.4. Assessment
5.2.4. Conclusion
5.3. Mediation
5.3.1. Introduction
5.3.2. The Saskatchewan Farm Security Act
5.3.2.1. The Provisions of the Act
5.3.2.2. Assessment
5.3.3. The Alberta Human Rights Act
5.3.3.1. The Provisions of the Act
5.3.3.2. Assessment
5.3.4. Other Examples of Mediation
5.4. Conclusion

Chapter 6 - Constitutions

6.1. Definitional Issues
6.1.1. The "Thin" Sense of "Constitution"
6.1.2. The "Thick" Sense of 'Constitution"
6.1.3. Constitutional Conventions
6.1.4. *Prima Facie* Grounds for Constitutions as Sources of Law
6.1.5. The Fundamental Challenge
6.2. The Supreme Court of Canada and "Reading in"
6.3. The High Court of Australia and Implied Rights
6.4. The Supreme Court of Canada and Unwritten Constitutional Law
6.4.1. Unwritten Principles as Fundamental Law
6.4.2. "New Brunswick Broadcasting"
6.4.3. The "Provincial Judges" Case
6.4.4. The "Quebec Secession" Case
6.5. Conclusions

Chapter 7 - Sources of Law in the Civil Law (by Antonino Rotolo)

7.1. Introduction. The Theoretical Framework: Basic Concepts

on the Sources of Law in Continental Legal Doctrine
7.2. Constitution and Legislation
7.2.1. The Historical Background. The *Rechtsstaat* and the Paradigm of Legislation in Continental Legal Doctrine
7.2.2. The Change of Paradigm: Contemporary Constitutional Democracies
7.3. Other Sources of Law
7.3.1. Some Notes on Private Autonomy and Precedent
7.3.1.1. Private Autonomy
7.3.1.2. Judicial Decision and Precedent
7.3.2. Custom
7.3.3. The Role of EC/EU Law: A Sketch

Chapter 8 International Law

8.1. Introduction
8.2. Article 38
8.3. Treaties
8.4. Customary International Law
8.4.1. Introduction
8.4.2. State Practice
8.4.3. *Opinio Juris*
8.5. General Principles
8.5.1. General Principles of Municipal Law
8.5.2. *Jus Cogens*
8.6. Conclusion

Chapter 9 - Authority

9.1. Deeply and Contextually Justified Authority: First Thoughts
9.2. The Authority of Ancient Manuscripts
9.3. Interpretive Authority
9.4. Ancient Authorities Revisited
9.5. Legal Authorities Revisited
9.6. Post-postmodernist Conclusions

Bibliography
Index of Subjects
Index of Names

TABLE OF CONTENTS

A Note on the Author
Preface

Chapter 1 - Legal Doctrine and Legal Theory

1.1. Introduction
    1.1.1. The Purpose, Method, and Materials of This Volume
    1.1.2. Legal Doctrine and Legal Dogmatics
    1.1.3. Particular and General Doctrine
    1.1.4. Justification, Description, Explanation
    1.1.5. Influence of Legal Doctrine
    1.1.6. Kinds of Legal Research
1.2. General Legal Doctrine
    1.2.1. General Legal Doctrine and Normative Legal Theory
    1.2.2. Defeasible Norms of General Legal Doctrine
1.3. The Sources of Law
    1.3.1. Causal Factors, Legal Justification, and Sources of Law
    1.3.2. Classification of the Sources of Law
    1.3.3. Legal Doctrine as a Source of Law
1.4. Statutory Interpretation
    1.4.1. Types of Argument in Statutory Interpretation
    1.4.2. Systemic Arguments
    1.4.3. Restricting and Extending a Norm's Area of Application
    1.4.4. Analogy
    1.4.5. Teleological Construction of Statutes
1.5. Interpreting Precedents
    1.5.1. What Is Binding in a Precedent?
    1.5.2. The Binding Force of Precedent
    1.5.3. Justification of Precedent
1.6. The Doctrine of Fact-Finding

Chapter 2 - Particular Legal Doctrine

2.1. Preliminary Remarks
    2.1.1. Juristic Theories
    2.1.2. The Distinction between Public and Private Law
    2.1.3. Inner and Outer System in Private Law
    2.1.4. Principles of Private Law
2.2. Philosophical and Juristic Theories of Property
    2.2.1. Philosophical Theories of Property
    2.2.2. Juristic Theories—Transfer of the Right of Ownership
    2.2.3. Benson's Formalistic Analysis of Property
    2.2.4. Philosophy as a Tool of the Doctrine of Property
2.3. Juristic Theories in Contracts
    2.3.1. What Justice? What Freedom?
    2.3.2. The Binding Force of Contracts
    2.3.3. Moral Philosophy, Economics, Legal Research
    2.3.4. Good Faith
    2.3.5. The Theory of Assumptions
2.4. Juristic Theories in Torts
    2.4.1. Philosophical Theories of Justification in Tort Law

2.4.2. Ernest Weinrib‘s Theory of Corrective Justice in Torts
2.4.3. The *Pro Tanto* Locality of Corrective Justice in Torts
2.4.4. Three Intellectual Moves of Legal Doctrine
2.4.5. Theories of Negligence
2.4.6. Theories on Adequacy in Torts
2.5. Some Theories of Criminal Law
2.5.1 Philosophical Justification of Punishment
2.5.2. Some Juristic Questions
2.5.3. *Dolus* Crimes and *Culpa* Crimes
2.5.4. Causation in Criminal Law
2.6. Law and Economics as the Main Juristic Theory?

Chapter 3 - Criticism and Defence of Legal Doctrine

3.1. Criticism
3.1.1. Reform Movements and the Alleged Deficiencies Of Legal Doctrine
3.1.2. The Alleged Irrationality of All Normative Theories
3.1.3. Indeterminacy and Façade Legitimation
3.1.4. Ontological Obscurity
3.1.5. Unjustified Normative Claims
3.1.6. The Risk of Fragmentation
3.1.7. Unscientific Character
3.1.8. Philosophical Background of the Criticism
3.2. Defence of Legal Doctrine
3.2.1. The Copernican Turn: Philosophy Tailored to Legal Doctrine
3.2.2. Saying and Doing in Legal Doctrine
3.2.3. The Philosophical Background of Anti-Critique
3.2.4. Contextually Sufficient Justification and Preference for Weak Theories

Chapter 4 - Law and Morality

4.1. Links between Morality and Law
4.2. Natural Law
4.2.1. Strong Natural Law
4.2.2. A Recent Development: Weak Theories of National Law
4.2.3. The Claim to Correctness
4.3. Exclusive Legal Positivism
4.3.1 Exclusive Legal Positivism—The Normative-Meaning Component
4.3.2. Defeasible *Grundnorm*, Conditional *Grundnorm*, and Transformation into Law
4.3.1 Positivist and Non-Positivist Criteria of Valid Law
4.3.4. Progressing Sophistication
4.3.5. Political Legitimacy instead of Philosophical Justification
4.4. Inclusive Positivism and Propositions *de Lege Lata*
4.4.1. Legal Positivism Inherent in Legal Doctrine?
4.4.2. Inclusive Legal Positivism and Tuori’s Critical Legal

Positivism
4.4.3. Criteria of Validity and Hypothetical Imperatives
4.4.4. The Fused Descriptive and Normative Modality of Propositions *de Lege Lata*
4.5. The Justification of Morality
4.5.1. Positivism, Natural Law, and Moral Theory
4.5.2. The Controversialism of Strong Moral Theories
4.5.3. Strong Contractarianism
4.5.4. Weak Contractarianism
4.5.5. Society-Centred Moral Normativity
4.6. Pluralism and Common Ground in the Law
4.6.1. The One-Right-Answer Ideal and Moral Relativism
4.6.2. Plurality of Cultures
4.6.3. The Plurality of Objective Values in General and the Common Core
4.7. Social Normativity, Morality, and the Law

Chapter 5 Coherence in Legal Doctrine

5.1. Weighing and Defeasibility
5.1.1. Space for Defeasibility and Weighing in Legal Justification
5.1.2. General Theories of Weighing
5.1.3. Extending the Domain of Reason
5.1.4. Decisive Reasons, Defeasible Reasons, Rules, Principles
5.1.5. Defeasibility, Not Indeterminacy
5.1.6. Logic and Rhetoric in Legal Argumentation
5.2. Reflective Equilibrium in Legal Doctrine
5.2.1. Wide, Constrained, and Segmented Reflective Equilibrium in Legal Doctrine
5.2.2. Equilibrium around Platitudes—Philosophical Background
5.2.3. The Philosophy of Platitudes for Legal Doctrine
5.2.4. Reflective Equilibrium and Society-Centred Morality
5.3. The Coherence of Legal Knowledge
5.3.1. Aspects of Coherence in Legal Doctrine
5.3.2. Foundationalism, Scepticism, and Coherentism
5.3.3. Conceptions of Coherence
5.3.4. A Complex Web of Big Circles
5.3.5. Epistemic Coherence, Truth, Knowledge, and Segmented Coherence
5.3.6. Criteria of Coherence in Legal Doctrine
5.3.7. Coherence over Time
5.4. Coherence and Justice in Law
5.4.1. Coherence in Practices and Norms, Not Only in Knowledge
5.4.2. Justice as the Weighing of All Considerations
5.4.3. Different Justice in Different Contexts?
5.4.4. Procedural Justice?
5.4.5. Justice, Coherence, Law, and Morality
5.4.6. The Importance of Justice for Judges, Legal Scholars, and Politicians
5.5. Coherence and Concepts in Legal Doctrine

5.5.1. Value-Open Legal Concepts and the Nature of Things
5.5.2. Intermediate Concepts
5.5.3. Concepts and System
5.6. Is Coherence Contrary to Facts?

Chapter 6 - Metatheory and Ontology for Legal Doctrine

6.1. The Question of Cognitivism
6.1.1. The Controversy over the Truth of Normative and Evaluative Statements
6.1.2. Normative and Descriptive Meaning
6.1.3. Four Possibilities
6.2. Ontology for Legal Doctrine
6.2.1. The Problem of the Ontology of Law
6.2.2. Law as a Dependent Entity
6.2.3. A Theory of Legal Conventions and Institutions
6.2.4. The Law as a Product of Convention and Morality

Chapter 7 - Conclusions

Bibliography
Index of Subjects
Index of Names

TABLE OF CONTENTS

A Note on the Author
Preface
Introduction

Part I - Legal Reasoning and Practical Rationality

Chapter 1 - Practical Rationality

1.1. Implicit Cognition
- 1.1.1 Fixed Reflexes
- 1.1.2. Conditioned Reflexes

1.2. Explicit Cognition
- 1.2.1. Cognitive Functions and Cognitive Organs
- 1.2.2. Reason As a Mental Organ
- 1.2.3. Epistemic Reasoning
- 1.2.4. Practical Reasoning
- 1.2.5. The Foundations of Rationality

1.3. The Nature of Practical Cognition
- 1.3.1. Basic Conative States
- 1.3.2. Adoption and Withdrawal of Conative States
- 1.3.3. Abstract Plans and Subplanning
- 1.3.4. The Structure of Plans
- 1.3.5. The Evaluation of Plans
- 1.3.6. Epistemic Desires: Knowledge and Interest
- 1.3.7. Strategies, Standing Plans, and Instructions

1.4 The Function of Intentions
- 1.4.1 Intentions and Instructions
- 1.4.2. Reasoning with Intentions
- 1.4.3. Behavioural and Cognitive Instructions
- 1.4.4. Other-Directed Intentions and Commands
- 1.4.5. General and Collective Intentions
- 1.4.6. May-Instructions and Intentions

1.5. Reasoning and Cognition
- 1.5.1. Failures of Reasoning
- 1.5.2. Reasoning’s Dependency on Implicit Cognition
- 1.5.3. Reasoning’s Contribution to Cognition

Chapter 2 - Basic Forms of Reasoning

2.1. Ratiocination
- 2.1.1. Mental States, Noemata, Sentences, and Speech Acts
- 2.1.2. Reasoning Schemata and Instances
- 2.1.3. The Adoption of a Reasoning Schema

2.2. Conclusive and Defeasible Reasoning
- 2.2.1. Validity and Truth-Preservation
- 2.2.2. Monotonic and Nonmononic Reasoning
- 2.2.3. The Rationale of Defeasibility
- 2.2.4. The Logical Function of Defeasible Reasoning Schemata
- 2.2.5. Collision and Defeat
- 2.2.6. Collisions and Incompatibility
- 2.2.7. Undercutting Collisions
- 2.2.8. Preference-Based Reasoning

2.2.9. Reinstatement
2.2.10. Undercutting in Practical Reasoning
2.2.11. Defeasible Reasoning and Probability
2.3. Some Notes on Defeasibility in Law and Morality
2.3.1. The Idea of Defeasibility in the Practical Domain
2.3.2. Defeasibility in Legal Language
2.3.3. The Defeasibility of Legal Concepts and Principles
2.3.4. Defeasibility and Legal Procedures
2.3.5. Overcoming Legal Defeasibility?
2.4. Heuresis and Coherence Evaluation
2.4.1 The Construction of Conjectures
2.4.2. Functions of Heuresis
2.4.3. Heuresis and Ratiocination: An Overview

Chapter 3 - The Doxification of Practical Reasoning

3.1. Doxification
3.1.1. Adoption-Worthiness and Bindingness
3.1.2. The Notion of Doxification
3.1.3. The Rationale for Doxification
3.1.4. The Doxification of Conative States
3.1.5. The Idea of Cognitive Bindingness
3.1.6. The Doxification of Cognitive Instructions
3.2. The Projection of Practical Beliefs
3.2.1. Doxed Shall-Intentions
3.2.2. Doxifying May-Intentions
3.3. Normative Beliefs and Normative States of Affairs
3.3.1. Normative States of Affairs and Current Cognitive States
3.3.2. Normative States of Affairs and Optimal Cognitive States
3.3.3. Cognitive Optimality and Collective Inquiry
3.3.4 Cognitive Optimality and Dialogues
3.3.5 The Supervenience of Normative States of Affairs
3.3.6. The Relativisation of Practical Cognition
3.3.7 Practical Cognition and the Existence of Normative States of Affairs

Chapter 4 - Rationalisation, Reflexivity, Universality

4.1. Rationalisation
4.1.1. Upwards Practical Reasoning
4.1.2. Rationalisation and Critical Thinking
4.1.3. Rationalisation in Legal Reasoning
4.1.4. Practical Theories and Their Coherence
4.2. Reflexive Reasoning and Universality
4.2.1. Planar and Reflexive Reasoning
4.2.2. Reasoning and Meta-Reasoning
4.2.3. Descriptive and Ideal Rationality
4.2.4. Particularised and Universal Rationality
4.2.5 Limits of Rationality
4.3. An Example in Practical Reasoning
4.3.1. Creon’s Reasoning
4.3.2. Antigone’s Reasoning

4.3.3. Comparison of the Two Reasonings

Chapter 5 Bounded Rationality: Cognitive Delegation

5.1. The Notion of Bounded Rationality
5.1.1. The Limitations of Human Rationality
5.1.2. Substantive and Procedural Rationality
5.2. Bounded Rationality and Teleology
5.2.1. Failure to Achieve Teleological Optimality
5.2.2. The Evaluation of Outcomes
5.2.3. Pareto Efficiency
5.2.4. Weighing Alternatives
5.2.5. Simplifying Evaluations
5.3. Cognitive Delegation and Authority
5.3.1. The Concept of Delegation
5.3.2. Types of Cognitive Delegation
5.3.3 Authority and Normative Power
5.3.4. Rules and Teleology
5.3.5. The Notion of an Exclusionary Reason
5.3.6. Exclusionary Reasons and Normative Delegation
5.3.7. Authorities as Exclusionary or Independent Reasons
5.3.8. Commands and Reasons
5.3.9. The Independence of Normative Syllogism from Teleological Reasoning

Chapter 6 - Bounded Rationality: Factors

6.1. Propensities
6.1.1. Propensities and Intentions
6.1.2. Factors and Teleology
6.1.3. Logical Function of Propensities
6.2. Factors
6.2.1. Binary Factors and Dimensions
6.2.2. Factors and Principles
6.2.3. Factors, Dimensions and Standards
6.2.4. Factors in Legislation
6.2.5. Factors in Case-Based Reasoning
6.2.6. The Role of Factors in Practical Inference
6.2.7. Factors, Dimensions, and Prototypes

Chapter 7 - Preference-Eased Reasoning: Rules

7.1. Rules and Preferences
7.1.1. Undecided Conflicts
7.1.2. Priority Beliefs
7.2. Kinds of Rule Preferences
7.2.1 Source-Based Priority
7.2.2. Time-Based Priority
7.2.3. Specificity-Based Priority
7.2.4. Checking Specificity
7.2.5. Priority of Exceptions
7.2.6. Value-Based Priorities

7.2.7. Factor-Based Priorities
7.3. Reasoning with Rule-Priorities
7.3.1. Multiple Priorities and Their Ordering
7.3.2. General Priority-Rules
7.3.3. Meta-Priorities
7.3.4 Reasoning with Priorities and Belief Revision

Chapter 8 - Preference-Based Reasoning: Factors

8.1. Reasoning with Factors
8.1.1. An Example in Factor-Based Reasoning
8.1.2. Factor-Based A-Fortiori Reasoning
8.1.3. Factor-Based Inference
8.1.4. From Binary Factors to Dimensions
8.1.5. Dimension-Based Inference
8.1.6. Dimensional A-Fortiori Reasoning
8.2. The Accrual of Reasons
8.2.1. The Accrual Thesis
8.2.2. The Negation of the Accrual Thesis
8.2.3. A Terminological Clarification
8.2.4. Merging and Adding Reasons

Chapter 9 - Multi-Agent Practical Reasoning

9.1. The Concerns of an Agent
9.1.1. Three Types of Concerns
9.1.2. The Construction of Collective-Directed Concerns
9.1.3. Reasoning and Collective-Directed Concerns
9.2. Acting in a Social Context
9.2.1 External Motivation and Threats
9.2.2. Double Contingency
9.3. Strategic Dilemmas
9.3.1. Prisoner’s dilemmas
9.3.2. Prisoner-Dilemma Structured Situations
9.3.3. The Tragedy of the Commons
9.3.4. Strategic Dilemmas and Collective Concerns
9.3.5. Coordination Dilemmas
9.3.6. Salience
9.3.7. Assurance Dilemmas

Chapter 10 - Collective Intentionality

10.1. Coordination and Collective Intentionality
10.1.1. Collective Cognitive States
10.1.2. Collective Rationality and Collective Cognitive States
10.1.3. Rational Adoption of a Collective Cognitive State
10.1.4. Collective and Plural Optimality
10.15. The Gamble of Participation
10.2. Participation as a Coordination Game
10.2.1. Salience as a Guide to Success
10.2.2. Rational Participation and Consent
10.2.3. Rational Participation in a Future Collective State of Mind
10.2.4. The Intrinsic Value of Participation

10.2.5. The Process of Collective Reasoning
10.2.6. Collective Practical Theories
10.2.7. Collective Adoption of Multi-Agent Plans
10.2.8. Collective Adoption of Acceptance Policies
10.2.9. Collective Normative Beliefs
10.3. Sanctions and Assurance
10.3.1. The Possibility of Non-Compliance
10.3.2. The Role of Sanctions
10.4. Plural Legal Intentionality
10.4.1 Collective Reasoning and Authoritarianism
10.4.2. Collective Values

Chapter 11 - Collective Cognition and Dialogues

11.1. Dialogues and Cognition
11.1.1 Dialogues and Dialectical Systems
11.1.2. How to Characterise Dialectical Systems
11.1.3. The Structure of Dialectical Systems
11.1.4. The Persuasion Dialogue: The Structure
11.1.5. The Persuasion Dialogue: The Position of the Parties
11.1.6. Other Kinds of Dialogue: Information Seeking, Negotiation and Reconciliation
11.1.7. Combination of Dialogues, Dialogue Shifts, and Inversion of the Burden of Proof
11.2. Dialogues and Procedures
11.2.1. What Dialogues for What Procedures
11.2.2. Dialogue and Collective Choices
11.2.3. Deliberation, Democracy and Cognition
11.2.4. Adversarial Models of Legal Argumentation
11.2.5. Formal Analyses of Legal Disputation

Chapter 12 - Cognitive and Legal Bindingness

12.1. The Paradox of Legal Validity
12.2. A Legal Example
12.2.1. Prima-Facie Reasoning
12.2.2. The Adoption (Endorsement.) of a Legal Rule
12.2.3. Substantive Adoption Policies
12.3. Validity, Bindingness, Adoptability
12.3.1. The Social Impact of Legal Reasoning
12.3.2. Legal Reasoning as a Contribution to the Legal Process
12.3.3. Participation in Legal Beliefs
12.3.4. Reasoning about Legal Bindingness
12.4. Bindingness and Rationality
12.4.1. Convergence as a Ground for Bindingness
12.4.2. Why Share Legal Rules and Meta-Rules
12.4.3. Participation in Currently Shared Rules
12.4.4. Participation in Future Rules
12.4.5. Coordination and Prioritisation

Chapter 13 - The Foundation of Legal Bindingness

13.1. Definitional and Substantive Issues

13.1.1 Definitions of Legal Bindingness
13.1.2. Grounds for Bindingness
13.1.3. Terminological Disputes and Substantive Disagreement: The Stance of the Enactment Positivist
13.1.4. Terminological Disputes and Substantive Disagreement: The Stance of the Practice Positivist
13.1.5. Terminological Disputes and Substantive Disagreement: The Stance of the Inclusive Positivist
13.1.6. The Normativity of Legal Bindingness (Validity)
13.2. Political Conflicts and Legal Bindingness
13.2.1. Legal Bindingness and Optimal Law
13.2.2. Unacceptability on Substantive Grounds
13.2.3. Constitutions and Constitutionalism
13.2.4. Lau Power, Sovereignty
13.2.5. Legal Bindingness and Moral Bindingness
13.2.6. Bindingness Propositions
13.2.7. Legal Reasoning and Detachment
13.2.8. Legal Reasoning and Shared Legal Opinions
13.2.9. Overcoming the Paradox of Legal Validity

Part II - Legal Logic

Chapter 14 Law and Logic

14.1. Introduction: Logic and Legal Reasoning
14.1.1. The Attraction between Law and Logic
14.1.2. The Conflict between Law and Logic
14.2. Deduction and Formal Logic in Legal Reasoning
14.2.1. The Deductive Model of Legal Reasoning
14.2.2. Deduction and Anticipation
14.2.3. The Tension between Legal Logic and Legal Practice
14.2.4. The Anti-Deductive Critiques
14.2.5. Defences of the Axiomatic-Deductive Model
14.2.6. Legal Logic Beyond Deduction

Chapter 15 - Classical Logic and the Law

15.1. Propositional Logic
15.1.1 Propositional Formalisation
15.1.2. Propositional Connectives
15.1.3. Normalisation
15.1.4. Inference Rules or Propositional Logic
15.2. The Application of Propositional Logic to the Law
15.2.1. Material Conditional and Hypothetical Propositions
15.2.2. *Ex Falso Sequitur Quod libet* in Legal Reasoning
15.2.3. Logical Inference and Truth Preservation
15.3. Predicate Logic and the Law
15.3.1. Predicates and Terms
15.3.2. Quantifiers
15.3.3. Inference Rules for Predicate Logic

15.3.4. Normative Syllogism
15.4. Time in Predicate Logic
15.4.1. Propositions and Fluents
15.4.2. From Fluents to Propositions
15.4.3. Representing Temporally-General Rules
15.5. Conclusions on Predicate Logic in the Law

Chapter 16 - Actions

16.1. The Characterisation of Actions
16.2. Logical Analysis of Action
16.2.1. Two Action-Operators
16.2.2. The Logic of Action
16.2.3. Actions-Descriptions as Propositions and as Terms
16.2.4. Connections Between Behavioural and Productive Actions
16.3. Omission
16.3.1. The Notion of an Omission
16.3.2. Logical Analysis of Omission
16.3.3. Some Abbreviations for Representing Actions

Chapter 17 - Deontic Notions

17.1. Obligation
17.1.1 The Representation of Obligations
17.1.2. Positive and Negative Obligations
17.2. Prohibition
17.2.1. The Representation of Prohibitions
17.2.2. Connections between Obligation and prohibition
17.3. Permission
17.3.1. The Representation of Permissions
17.3.2. Positive and Negative Permission
17.3.3. Connections between Obligations, Prohibitions and Permissions
17.3.4. A Fourth Deontic Status: Facultativeness
17.3.5. Commands and Deontic Statuses
17.4. An Axiomatisation for Deontic Reasoning
17.4.1 Relationships between Obligations and Permissions
17.4.2. Reasoning Schemata for Action Logic and Deontic Logic
17.5. Negative Corollaries on Permission
17.5.1 Permission Does Not Entail Facultativeness
17.5.2. Permission Does not Entail Prohibition to Prevent
17.5.3. Permission Does Not Presuppose Prohibition
17.6. General Deontic Propositions
17.6.1 The Representation of Categorical Deontic Propositions
17.6.2. Personally-Gener1l and Specific Deontic Propositions
17.7. Standard Deontic Logic and Deontic Paradoxes
17.7.1. Standard Deontic Logic
17.7.2. Paradoxes of Standard Deontic Logic
17.7.3. How to Avoid Deontic Paradoxes

Chapter 18 - Negation, Permission, and Completeness

18.1. Permission, Ignorance, Non-Derivability

18.1.1. Being Permitted and Not Being Prohibited
18.1.2. Permission as Ignorance
18.1.3. The Case of Socrates, the Judge Who Knows That He Does not Know
18.1.4. Permission as Non-Derivability
18.2 Completeness of the Law
18.2.1. The Completeness of Legal Cognition: A Noble Dream?
18.2.2. Completeness of Sections of the Law
18.2.3. Closure Meta-Rules
18.2.4. Strong Permission and Weak Permission
18.2.5. Closure Rules and Bounded Legal Cognition
18.2.6. Ignorance and Autoepistemic Inferences
18.2.7. Some Conclusions on Negation, Permission, and Completeness

Chapter 19 - Obligational Concepts

19.1. Teleology of Normative Propositions
19.1.1. The Teleological Stance toward Normative Proposition
19.1.2. A Notation for Normative Teleology
19.2. Directed Obligations
19.2.1. Other-Directed Obligations
19.2.2. The Representation of Other-Directed Obligations
19.2.3. Other-Directed Permissions
19.2.4. Reasoning with Directed Obligations
19.3. Obligational Rights
19.3.1. Representation of Obligational Rights
19.3.2. The Benefit Theory of Rights
19.4. A Formalisation the Hohfeldian Obligational Set
19.4.1. The Hohfeldian Obligational Set: Original Formulation
19.4.2. The Hohfeldian Obligational Set: Logical Reformulation
19.5. Further Kinds of Rights
19.5.1. Permissive Rights
19.5.2. Absolute and Relative Rights
19.5.3. Exclusionary Rights
19.6. Rights and Norms
19.6.1. Rights in Authoritarian Legal Systems
19.6.2. The Supposed Conflict between Rights and “Norms”

Chapter 20 - Normative Conditionals and Legal Inference

20.1. The Cognitive Function of Normative Conditionals
20.1.1. Conditional Instructions and Propositions
20.1.2. Kinds of Normative Conditionals
20.2. Specific and General Normative Conditionals
20.2.1. Specific Normative Conditionals
20.2.2. Normative Conditionals and Causality
20.2.3. General Normative conditionals
20.2.4. Operative Facts, Precondition-Types and Tokens
20.2.5. Must and Relative Necessity
20.3. The Negation of Normative Conditionals
20.4. Inferences for Normative Conditionals
20.4.1. Detachment

20.4.2. Specification and Universal Conditionals
20.4.3. Normative Syllogism
20.4.4. Chaining Syllogisms
20.4.5. Syllogism and Subsumption
20.4.6. Subsumption Rules
20.4.7. Subsumption and Learning
20.5. Inapplicable Inferences
20.5.1. Inferring a Conditional from a Falsity
20.5.2. Normative Conditionals and Contraposition

Chapter 21 - Varieties of Normative Conditionals

21.1 Types of Normative Conditionals
21.1.1 Different Kinds of Normative Determination
21.1.2. Counts-as Connections and Constitutive Rules
21.2 Intermediate Legal Concepts
21.2.1. Alf Ross's Theory of Legal Concepts
21.2.2. The Inferential Meaning of Intermediate Legal Concepts
21.2.3. Cognitive Function of Non-Deontic Legal Concepts
21.3 Kelsen's View of Legal Conditionality
21.3.1. Causality and Imputation
21.3.2. Problems with the Kelsenian Conditionality
21.4. Normative Conditionals and Time
21.4.1 Temporal Predicates
21.4.2. Temporally Specific Normative Initiation
21.4.3. Temporal Generality and Normative Initiation
21.4.4. Temporal Persistence
21.4.5. Temporalised Normative Syllogism
21.4.6. Time and Normative Emergence
21.4.7. Temporalised Counts-As

Chapter 22 - Potestative Concepts

22.1. Powers and Potestative Rights
22.1.1. Generic Power
22.1.2. Action-Power
22.1.3. Abstract Action-Power
22.1.4. Enabling Power
22.1.5. Potestative Right
22.1.6. Powers and Permissions
22.2. A Formalisation of the Hohfeldian Potestative Set
22.2.1. The Hohfeldian Potestative Set: Original Formulation
22.2.2. The Hohfeldian Potestative Set: Logical Reformulation

Chapter 23 - Proclamations

23.1. The Intentional Production of Legal Results
23.1.1. *Rechtsgeschäft* and Contract
23.1.2. Contracts and Autonomy
23.2. The Notion of a Proclamation
23.2.1. The Definition of a Proclamation
23.2.2. Proclamations and Intentions
23.2.3. Proclamations as Attempts

23.2.4. Proclamation Rules
23.3. The Logic of Proclamation-Based Inference
23.3.1. The Naive Formulation
23.3.2. The Problem of Substitutional Quantification
23.3.3. How to Climb Ramsey's Ladder
23.3.4. Our Representation of Meta-Syllogism
23.4. The Analysis of Proclamations
23.4.1. The Content of Proclamations
23.4.2. Effective and Void Proclamations
23.4.3. Multi-lateral Proclamations (Agreements)
23.4.4. The Logic of Proclamations

Chapter 24 - Proclamative Power

24.1. The Notion and the Inferential Role of Proclamative Powers
24.1.1. Proclamative Power and Legal Inference
24.1.2. Proclamative Power and General Inferences
24.2. Kinds of Proclamative Power
24.2.1. The Power to Create and Terminate Obligations
24.2.2. The Power to confer Permissions
24.2.3. Empowerment to Command
24.2.4. Empowerment to Renounce a Power
24.2.5. Power to Transfer Property
24.3. Empowerment to Empower
24.3.1. Conferring Powers
24.3.2. Representation
24.3.3. Limitations to Individual Legal Autonomy
24.4. Public Powers as Proclamative Powers
24.4.1. Proclamations and the Dynamics of the Law
24.4.2. Legal Dynamics and the Applicability of Logic to the Law
24.4.3. Judicial Powers and Logic in the Law

Chapter 25 - Normative Texts and Sources of Law

25.1. Proclamations and Their Interpretation
25.1.1. The Efficacy of Proclamations
25.1.2. The Double Effect of Proclamations
25.1.3. Proclaimed Sentences
25.1.4. The Bindingness of Proclaimed Sentences
25.1.5. The Interpretation of Proclamations
25.1.6. Problems in Legal Interpretation
25.1.7. Criteria for Interpretation
25.2. Sources of Law
25.2.1. Custom
25.2.2. Precedent
25.2.3. Legal Doctrine as a Source of the Law
25.2.4. The General Idea of a Source of Law
25.3. A Logic for Legal Pluralism
25.3.1. The Need for a Pluralist Legal Logic
25.3.2. An Example in Pluralist Normative Reasoning
25.3.3. An Analysis of Pluralist Normative Reasoning

Chapter 26 - Argumentation Frameworks

26.1. From Inference Steps to Arguments
- 26.1.1. The Notion of an Argument
- 26.1.2. Some Notational Devices
- 26.1.3. The Lebach Example
- 26.1.4. Arguments and Premise Sets
- 26.1.5. Subarguments

26.2. Meta-Leve1 Arguments
- 26.2.1. A Meta-Level Argument
- 26.2.2. Synthetic and Analytic Arguments
- 26.2.3. Another Meta-Level Argument

26.3. Collisions between Arguments
- 26.3.1. The Idea of a Collision between Arguments
- 26.3.2. Rebutting Collisions
- 26.3.3. Undercutting Collisions
- 26.3.4. Locating Undercutting Attacks

26.4. Argument Defeat
- 26.4.1. The Notion of Argument Defeat
- 26.4.2. Decisive Subreasons and the Evaluation of Colliding Reasons
- 26.4.3. The Preference Relation over Reasons
- 26.4.4. The Reinstatement of Defeated Arguments

Chapter 27 - Argument Logic

27.1. The Status of Arguments
- 27.1.1. Requirements of an Argument Logic
- 27.1.2. Justified, Defensible, and Overruled Arguments
- 27.1.3. Semantics and Proof Theory

27.2. The Semantics of Inferential Justifiability
- 27.2.1. *Prima-facie* Defeat
- 27.2.2. Acceptability of Arguments
- 27.2.3. Admissibility of Sets of Arguments
- 27.2.4. Justified Arguments
- 27.2.5. A Formal Characterisation of Inferential Justifiability

27.3. A Proof-Theory for Inferential Justifiability
- 27.3.1. Proof Trees
- 27.3.2. The Proof of an Argument
- 27.3.3. Applications of the Proof-Method
- 27.3.4. Ross's Paradox of the Self-Amending Constitution
- 27.3.5. A Solution to the Self-Amendment Paradox: Non Retroactivity
- 27.3.6. A Second Solution to the Self-Amendment Paradox: An Interpretative Assumption

27.4. Extensions of the Basic Model
- 27.4.1. Representing Non-Provability
- 27.4.2. Non-Provability and Burden of Proof
- 27.4.3. Combining Defeasible and Conclusive Inferences

Chapter 28 - Cases and Theory Construction

28.1. Case-Based Reasoning as Theory Construction
- 28.1.1 Cases and Theories

28.1.2. Levels of Explanation and Justification
28.2. The Construction of a Theory
28.2.1. The Example
28.2.2. The Background of Theory Construction
28.2.3. The Components of a Theory
28.2.4. Including Cases and Factors
28.2.5. Constructing Rules
28.2.6. Constructing Preferences

Chapter 29 - Theory-Based Dialectics

29.1. The Basic Model
29.1.1. Constructing Theories and Explaining Cases
29.1.2. A Simple Theory
29.1.3. The Introduction of a New Case
29.1.4 Theory-Based Distinguishing
29.1.5. Arbitrary and Value-Based Preferences
29.1.6. Evaluating Theories
29.2. Argument Moves and Theory Construction
29.2.1 Citing a Case
29.2.2. Counterexamples and Distinctions
29.2.3. Emphasising Strengths and Showing Weaknesses not Fatal
29.3. Dimensions in Theory Constructions
29.3.1. Dimensions and the Representation of Cases
29.3.2. Dimensions and Values
29.3.3. The Extraction of Factors
29.3.4. Additional Reasoning Moves
29.4. Stratified Legal Theories
29.4.1. Hierarchies of Factors
29.4.2. Downplaying a Distinction
29.4.3. Distinguishing, Downplaying and Distinguishing Again
29.5. Further Extensions of Our Model
29.5.1. Metrics for Theo Coherence
29.5.2. Comparison of Values
29.5.3. Changes in the Social Context
29.5.4. Links to Case-History
29.5.5. Other Ways of Analogising

Conclusion
Bibliography Index of Subjects
Index of Names