

OXFORD SOCIO-LEGAL STUDIES

**REALISTIC
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THEORY**

**PRAGMATISM AND
A SOCIAL THEORY OF LAW**

BRIAN Z. TAMANAHA



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Realistic Socio Legal Theory Pragmatism And A Social Theory Of Law

Wibren van der Burg, Sanne Taekema

Realistic Socio Legal Theory Pragmatism And A Social Theory Of Law:

Realistic Socio-legal Theory Brian Z. Tamanaha, 1997 Combining philosophical pragmatism with a methodological foundation Tamanaha formulates a framework for a realistic approach to socio legal theory The strengths of this approach are contrasted with that of the major schools of socio legal theory by application to core issues in this area Thus Tamanaha explores the problematic state of socio legal studies the relationship between behaviour and meaning the notion of legal ideology the problem of indeterminacy in rule following and application and the structure of judicial decision making These issues are tackled in a clear and concise fashion while articulating a social theory of law which draws equally from legal theory and socio legal theory

A Realistic Theory of Law Brian Z. Tamanaha, 2017-04-24 The book re orients jurisprudence and develops an empirically informed theory of law that applies throughout history and across different societies

Theory and Method in Socio-Legal Research Reza Banakar, Max Travers, 2005-12-19 Socio legal researchers increasingly recognise the need to employ a wide variety of methods in studying law and legal phenomena and the need to be informed by an understanding of debates about theory and method in mainstream social science The papers in this volume illustrate how a range of topics including EU law ombudsmen judges lawyers Shariah Councils and the quality assurance industry can be researched from a socio legal perspective The objective of the collection is to show how different methods can be used in researching law and legal phenomena how methodological issues and debates in sociology are relevant to the study of law and the importance of the debate between structural and action traditions in researching law It also approaches the methodological problem of how sociology of law can address the content of legal practice from a variety of perspectives and discusses the relationship between pure and applied research The editors provide a critical introduction to each of the six sections and a general introduction on law sociology and method The collection will provide an invaluable resource for socio legal researchers law school researchers and postgraduates

Law in Modern Society Denis Galligan, 2006-09-14 Providing an introduction to law in modern society D J Galligan considers how legal theory and particularly H L A Hart's The Concept of Law has developed the idea of law as a highly developed social system which has a distinctive character and structure and which shapes and influences people's behaviour The concept of law as a distinct social phenomenon is examined through reference to and analysis of the work of prominent legal and social theorists in particular M Weber E Durkheim and N Luhmann Galligan's approach is guided by two main ideas that the law is a social formation with its own character and features and that at the same time it interacts with and is affected by other aspects of society In analysing these two ideas Galligan develops a general framework for law and society within which he considers various aspects including the nature of social rules and the concept of law as a system of rules whether law has particular social functions and how legal orders run in parallel the place of coercion the characteristic form of modern law and the social conditions that support its implementation and compliance and what happens when laws are used to change society Law in Modern Society

encourages legal scholars to consider the law as an expression of social relations examining the connections and tensions between the positive law of modern society and the spontaneous relations they often try to direct or change *Rethinking Historical Jurisprudence* Samuel, Geoffrey, 2022-10-18 This stimulating book considers the ways in which historical jurisprudence deserves to be rethought arguing that there is much more to the history of legal thought than the ideas and ideology of the nineteenth and early twentieth century jurists such as Karl von Savigny and Sir Henry Maine **The Dynamics of Law and Morality** Wibren van der Burg, 2016-03-23 This book investigates the dynamic intertwinement of law and morality with a focus on new and developing fields of law Taking as its starting point the debates and mutual misunderstandings between proponents of different philosophical traditions it argues that this theoretical pluralism is better explained once law is accepted as an essentially ambiguous concept Continuing on the book develops a robust theory of law that increases our grasp on global legal pluralism and the dynamics of law This theory of legal interactionism inspired by the work of Lon Fuller and Philip Selznick also helps us to understand apparent anomalies of modern law such as international law the law of the European Convention on Human Rights and horizontal interactive legislation In an ecumenical approach legal interactionism does justice to the valuable core of truth in natural law and legal positivism Shedding new light on familiar debates between authors such as Fuller Hart and Dworkin this book is of value to academics and students interested in legal theory jurisprudence legal sociology and moral philosophy [The Importance of Ideals](#) Wibren van der Burg, Sanne Taekema, 2004 Ideals are important in social reality but they have been neglected in theories of law politics and morality This book has the role of ideals as its central theme More specifically it argues that ideals are necessary to understand pluralism that they are key elements in controversy and debate and that they enable development It combines theoretical analysis of the concept of ideals with discussion of concrete debates and cases including philosophical debates about politics and equality sociological studies of the diverse interpretations of the rule of law and accounts of the development of environmental law and privacy law Thus the functioning of ideals is critically examined showing the merits and limitations of an ideal oriented approach **Beyond Law in Context** David Nelken, 2017-09-08 This intriguing collection of essays by David Nelken examines the relationship between law society and social theory and the various ideas social theorists have had about the actual and ideal fit between law and its social context It also asks how far it is possible to get beyond this mainstream paradigm The value of social theorising for studying law is illustrated by specific developments in substantive areas such as housing law tort law the law of evidence and criminal law Throughout the chapters the focus is on the following questions What is gained and what may be lost by putting law in context What attempts have been made to go beyond this approach What are their necessary limits Can law be seen as anything other than in some way both separate from and relating to the social The distinctiveness of this approach lies in its effort to keep in tension two claims Firstly that social theorising about legal practices is vitally important for understanding the connections between legal and social structures

and revealing what law means and does for and to various social actors The second point is that it does not follow that what we learn in this way can be assumed to be necessarily relevant to re shaping legal practices without further argument that pays heed to law s specificity *Asian Discourses of Rule of Law* Randall P. Peerenboom,2004 Rule of law one of the pillars of the modern world has emerged in Western liberal democracies This book considers how rule of law is viewed and implemented in the different cultural economic and political context of Asia **Encyclopedia of Law and Society** David S. Clark,2007-07-10 Introduction to and survey of the field of law and society Includes interdisciplinary perspectives on law from sociology criminology cultural anthropology political science social psychology and economics Communitarianism in Law and Society Paul van Seters,2006 In this new collection of essays Paul van Seters brings together an international group of scholars from diverse academic backgrounds to reflect upon the remarkable rise of communitarianism in contemporary studies of law and society These essays critically assess the communitarian perspective in order to gain a more systematic insight into its distinctive constraints and the special opportunities it provides The Meaning of Ideology Michael Freeden,2013-10-18 This is the first collection to bring together leading scholars from diverse disciplines to offer a variety of perspectives on ideology and its analysis emphasizing the input of different intellectual and scholarly traditions to the meaning of ideology The articles explore commonalities in the use and understanding of ideology as well as delineating constructive differences in its interpretation while illuminating the changes that the concept of ideology as well as the practices it signifies has undergone in recent years Contributions are included from the fields of political theory history literature political science cultural studies post Marxism discourse analysis language studies law and sociology The Meaning of Ideology advances our understanding of the intricacy and relevance of ideology and offers the latest theories and insights that currently inform scholarship on the subject Ideology emerges through the pages of this collection more strongly than ever as a major tool of understanding political language and as a durable and normal phenomenon that is inherent in the many ways we conceive the world around us This book was previously published as a special issue of The Journal of Political Ideologies and will be of interest to students of political ideologies and political and social theory *Flexible Regional Economic Integration in Africa* Timothy Masiko,2022-04-21 This book examines the relationship between flexible regional economic integration in the East African Community EAC through its application of variable geometry and the establishment of the African Continental Free Trade Area AfCFTA as a continent wide form of integration It uses a historical political legal and economic analysis of the processes that led to the adoption of flexible regional integration in Africa with particular regard to the EAC This takes place in the inescapable context of pan Africanism showing how regional integration efforts in Africa are based on pan Africanist ideals and how an evolution of these ideals has led to an evolution in the goals of integration With growing awareness of the weaknesses and impracticality of consensus based decision making on a global level it makes the case for the pursuit of flexibility in multilateral trade drawing lessons from the experience of the AfCFTA

and blocs in other regions This book is a historical evaluation of regional economic integration efforts in Africa and it follows the path of attempts to integrate the economies on the continent from colonial times to the birth of the AfCFTA While it is a study in law it relies heavily on politics economics and history to weave together a more complete theory of economic integration based on the African experience Flexible Regional Economic Integration in Africa was awarded the 2020 SIEL Hart Prize in International Economic Law Research Handbook on Soft Law Mariolina Eliantonio, Emilia Korkea-aho, Ulrika Mörtz, 2023-11-03 This pioneering Research Handbook provides an in depth scholarly overview of the field of soft law exploring the scope of current thinking in the field as well as proposing future pathways for soft law research Through theoretical and empirical analyses by established voices in the field the Research Handbook offers important insights and much needed clarity into the dynamic and complex nature of soft law This title contains one or more Open Access chapters

Crime and Regulation Fiona Haines, 2017-11-30 This volume brings together key articles in the burgeoning field of regulation The collection is interdisciplinary in keeping with study of regulation itself yet the book arranges and explores these articles to make the bewildering array of issues and concepts that comprise the study of regulation comprehensible to a criminological audience It will be of interest to all scholars and students of criminology and criminal justice as well as those concerned with reducing the crimes and harms of the powerful *Just Silences* Marianne Constable, 2009-01-10 Is the Miranda warning which lets an accused know of the right to remain silent more about procedural fairness or about the conventions of speech acts and silences Do U S laws about Native Americans violate the preferred or traditional silence of the peoples whose religions and languages they aim to protect and preserve In *Just Silences* Marianne Constable draws on such examples to explore what is at stake in modern law a potentially new silence as to justice Grounding her claims about modern law in rhetorical analyses of U S law and legal texts and locating those claims within the tradition of Nietzsche Heidegger and Foucault Constable asks what we are to make of silences in modern law and justice She shows how what she calls sociolegal positivism is more important than the natural law positive law distinction for understanding modern law Modern law is a social and sociological phenomenon whose instrumental power oriented sometimes violent nature raises serious doubts about the continued possibility of justice She shows how particular views of language and speech are implicated in such law But law like language has not always been positivist empirical or sociological nor need it be Constable examines possibilities of silence and proposes an alternative understanding of law one that emerges in the calling however silently of words to justice Profoundly insightful and fluently written *Just Silences* suggests that justice today lies precariously in the silences of modern positive law *Reconstructing Judicial Review* Sarah Nason, 2016-12-01 This book offers a new interpretation of judicial review in England and Wales as being concerned with the advancement of justice and good governance as opposed to being concerned primarily with ultra vires or common law constitutionalism It is developed both from examining the functions and values that ought to be served by judicial review and from analysis of empirical social facts

about judicial review primarily as experienced in the Administrative Court Based on ground up case law analysis it constructs a new taxonomy on the grounds of judicial review mistake procedural impropriety ordinary common law statutory interpretation discretionary impropriety relevant irrelevant considerations breach of an ECHR protected right or equality duty and constitutional allocation of powers constitutional rights or other complex constitutional principles It explains each of these grounds what academic and judicial support there might be for them outside case law analysis and their similarities and differences when viewed against popular existing taxonomies It concludes that Administrative Court judges are engaged in ordinary common law statutory interpretation in approximately half of all cases and that where discretionary judgement is involved on the part of the initial decision maker judges do indeed consider their task to be one of determining whether the challenged decision was justified by reasoning of adequate quality It finds that judges apply ordinary common law principles of statutory interpretation with historical pedigrees including assessing the initial decision maker s reasoning with reference to statutory purpose and sifting relevant from irrelevant considerations including moral considerations The result is a ground breaking reassessment of the grounds of judicial review in England and Wales and the practice of the Administrative Court

Advances in Experimental Philosophy of Law Karolina Prochownik, Stefan Magen, 2023-05-18 Only recently have philosophers and psychologists begun to consider empirical research methods to inform questions and debates in legal philosophy With the field ripe for further experimental inquiry this collection explores the most topical empirical developments and anticipates future research directions Bringing together legal scholars psychologists and philosophers chapters address questions such as Do people share a stable set of intuitions about what the law is What are common perceptions about causation intentionality and culpability and are they consistent with the corresponding legal concepts To what extent can experimental research methods advance theoretical debates in legal philosophy about the nature of law With fascinating implications for legal philosophy ethics and moral psychology *Advances in Experimental Philosophy of Law* sets the agenda for the emerging field of experimental jurisprudence and will be of interest to both researchers and practitioners alike

Studies in Law, Politics, and Society Austin Sarat, 2012-01-31 Contains an international and interdisciplinary array of legal scholarship This work illuminates the law s response to its social context as well as the way law shapes that context It shows how legal scholars contribute to public debate about contemporary issues as well as how they articulate the nature of rights and the limits of law

The Oxford Handbook of Empirical Legal Research Peter Cane, Herbert Kritzer, 2012-05-17 The empirical study of law legal systems and legal institutions is widely viewed as one of the most exciting and important intellectual developments in the modern history of legal research Motivated by a conviction that legal phenomena can and should be understood not only in normative terms but also as social practices of political economic and ethical significance empirical legal researchers have used quantitative and qualitative methods to illuminate many aspects of law s meaning operation and impact In the 43 chapters of *The Oxford Handbook of Empirical Legal Research* leading

scholars provide accessible and original discussions of the history aims and methods of empirical research about law as well as its achievements and potential The Handbook has three parts The first deals with the development and institutional context of empirical legal research The second and largest part consists of critical accounts of empirical research on many aspects of the legal world on criminal law civil law public law regulatory law and international law on lawyers judicial institutions legal procedures and evidence and on legal pluralism and the public understanding of law The third part introduces readers to the methods of empirical research and its place in the law school curriculum

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