African Law And Legal Theory The International Library Of

Theories of human rights are important, as they can be a means to challenging entrenched and oppressive power. These key essays take a philosophical approach to human rights, questioning dominant theories and offering different perspectives on their application.

This book brings together the uBuntu jurisprudence of South Africa, as well as the most cutting-edge critical essays about South African jurisprudence on uBuntu. Can indigenous values be rendered compatible with a modern legal system? This book raises some of the most pressing questions in cultural, political, and legal theory.

This title was first published in 2000: This volume of essays explores a number of fundamental constitutional law questions in a variety of historical and jurisdictional contexts. The contributions focus on the role to be played by courts and legal principles in the resolution of major political controversies and on the progressive development of constitutional jurisprudence in countries sharing a broadly common law legal tradition. The guiding theme pervading the collection is an attempt to measure the legitimacy of judicial (in-)activism when courts are faced with difficult political choices on matters such as slavery, internment, racism and voting rights and radical economic policies and are also confronted with the requirement to attach concrete meanings to such abstract concepts as the separation of powers and the rule of law.

This is an introductory book on African legal philosophy. The book claims that African legal philosophy exists and is intelligible in the context of African culture, just as every other legal philosophy has its cultural foundation. What law is, how it is thought, how it is interpreted, and how it is applied takes place with thing the parameters of African culture. At a time when the imposition of Western culture on Africans has to be reckoned with, African legal philosophy is, in part, a response to this imposition. It ought to have a liberating effect.

Now in its second edition, this textbook presents a critical rethinking of the study of comparative law and legal theory in a globalising world, and proposes an alternative model. It highlights the inadequacies of current Western theoretical approaches in comparative law, international law, legal theory and jurisprudence, especially for studying Asian and African laws, arguing that they are too parochial and eurocentric to meet global challenges. Menski argues for combining modern natural law theories with positivist and socio-legal traditions, building an interactive, triangular concept of legal pluralism. Advocated as the fourth major approach to legal theory, this model is applied in analysing the historical and conceptual development of Hindu law, Muslim law, African laws and Chinese law.

Law is at the heart of every society, protecting rights, imposing duties, and establishing a framework for the conduct of almost all social, political, and economic activity. Despite this, the law often seems a highly technical, perplexing mystery, with its antiquated and often impenetrable jargon, obsolete procedures, and endless stream of complex statutes and legislation. In this Very Short Introduction Raymond Wacks introduces the major branches of the law, describing what lawyers do, and how courts operate, and considers the philosophy of law and its pursuit of justice, freedom, and equality. In this second edition, Wacks locates the discipline in our contemporary world, considering the pressures of globalization and digitalisation and the nature of the law in our culture of threatened security and surveillance. ABOUT THE SERIES: The Very Short Introductions series from Oxford University Press contains hundreds of titles in almost every subject area. These pocket-sized books are the perfect way to get ahead in a new subject quickly. Our expert authors combine facts, analysis, perspective, new ideas, and enthusiasm to make interesting and challenging topics highly readable.

The papers presented in this volume aim to contribute to the development of African legal theory. Issues discussed include: legal anthropology, customary law in the state legal system; legal concepts; and procedural and substantive justice.

This insightful Research Handbook provides a definitive overview of the New Legal Realism (NLR) movement, reaching beyond historical and national boundaries to form new conversations. Drawing on deep roots within the law-and-society tradition, it demonstrates the powerful virtues of new legal realist research and its attention to the challenges of translation between social science and law. It explores an impressive range of contemporary issues including immigration, policing, globalization, legal education, and access to justice, concluding with and examination of how different social science disciplines intersect with NLR.

This book explores the implications of globalisation for the theoretical study of law, justice, and human rights. First published in 2009. Routledge is an imprint of Taylor & Francis, an informa company.

The book is a collection of essays, which aim to situate African legal theory in the context of the myriad of contemporary global challenges; from the prevalence of war to the misery of poverty and disease to the crises of the environment. Apart from being problems that have an indelible African mark on them, a common theme that runs throughout the essays in this book is that African legal theory has been excluded, under-explored or under-theorised in the search for solutions to such contemporary problems. The essays make a modest attempt to reverse this trend. The contributors investigate and introduce readers to the key issues, questions, concepts, impulses and problems that underpin the idea of African legal theory. They outline the potential offered by African legal theory and open up its key concepts and impulses for critical scrutiny. This is done in order to develop a better understanding of the extent to which African legal theory can contribute to discourses seeking to address some of the challenges that confront African and non-African societies alike.

The text makes the case for a revival of general jurisprudence in response to globalisation.

Law and Legal TheoryEdited by brings together some of the most important essays in the area of the philosophy of law written by leading, international scholars and offering significant contributions to how we understand law and legal theory to help shape future debates.

Ambitious legal thinkers have become mesmerized by moral philosophy, believing that great figures in the philosophical tradition hold the keys to understanding and improving law and justice and even to resolving the most contentious issues of constitutional

law. They are wrong, contends Richard Posner in this book. Posner characterizes the current preoccupation with moral and constitutional theory as the latest form of legal mystificationâe"an evasion of the real need of American law, which is for a greater understanding of the social, economic, and political facts out of which great legal controversies arise. In pursuit of that understanding, Posner advocates a rebuilding of the law on the pragmatic basis of open-minded and systematic empirical inquiry and the rejection of cant and nostalgiaâe"the true professionalism foreseen by Oliver Wendell Holmes a century ago.A bracing book that pulls no punches and leaves no pieties unpunctured or sacred cows unkicked, The Problematics of Moral and Legal Theory offers a sweeping tour of the current scene in legal studiesâe"and a hopeful prospect for its future.

The book examines the theory and practice of law and development. It reviews the evolution of law and development studies and presents a general theory of law and development. The general theory sets the conceptual parameters of "law" and "development" and explains the mechanisms by which law impacts development. In the second part, the book applies the general theory to analyze the development cases of South Korea and South Africa from legal and institutional perspectives. The book also adopts, for the first time, the law and development approaches to analyze the economic issues of the United States. It discusses why it is critical to develop the Analytical Law and Development Model or "ADM."

Legal Naturalism advances a clear and convincing case that Marx's theory of law is a form of natural law jurisprudence. It explicates both Marx's writings and the idea of natural law, and makes a forceful contribution to current debates on the foundations of law. Olufemi Taiwo argues that embedded in the corpus of Marxist writing is a plausible, adequate, and coherent legal theory. He describes Marx's general concept of law, which he calls "legal naturalism." For Marxism, natural law isn't a permanent verity; it refers to the basic law of a given epoch or social formation which is an essential aspect of its mode of production. Capitalist law is thus natural law in a capitalist society and is politically and morally progressive relative to the laws of preceding social formations. Taiwo emphasizes that these formations are dialectical or dynamic, not merely static, so that the law which is naturally appropriate to a capitalist economy will embody tensions and contradictions that replicate the underlying conflicts of that economy. In addition, he discusses the enactment and reform of "positive law"—law established by government institutions—in a Marxian framework.

The eighteenth-century Enlightenment saw the birth of an era which sought legitimacy not from the past but from the future. No longer would human beings invoke the authority of tradition; instead, modern societies emerging in the West justified themselves by their success at increasing, through the application of scientific knowledge, human control over the world. Ever since this notion of modernity was formulated it has provoked intense debate. In this wide-ranging historical introduction to social theory, Alex Callinicos explores the controversies over modernity and examines the connections between social theory and modern philosophy, political economy and evolutionary biology. He offers clear and accesssible treatments of the thought of Montesquieu, Adam Smith and the Scottish Enlightenment, Hegel, Marx, Tocqueville, Maistre, Gobineau, Darwin, Spencer, Kautsky, Nietzsche, Durkheim, Weber, Simmel, Freud, Lukacs, Gramsci, Heidegger, Keynes, Hayek, Parsons, the Frankfurt School, Levi-Strauss, Althusser, Foucault, Habermas and Bourdieu, and concludes by surveying the state of contemporary social thought. A remarkably comprehensive and lucid primer, Social Theoryis essential reading for students of politics, sociology and social and political thought.

This book grew out of the conviction that the original concepts of the Pozna? School of Legal Theory are still perfectly suited for application today, in the era of moral pluralism and multicentric legal systems. Moreover, since we are in the midst of a period of heated disputes over the grounds of the normativity of law, and are confronting controversies about the basis for the legitimacy of court decisions, over the results of legal interpretation, and concerning the coherence of legal systems, it would seem that the legal-theoretical proposals put forward by the circle of Pozna? legal theorists, supported as they are by firm methodological foundations, have not by any means lost their value.

What do Catharine MacKinnon, the legacy of Brown v. Board of Education, and Lani Guinier have in common? All have, in recent years, become flashpoints for different approaches to legal reform. In the last quarter century, the study and practice of law have been profoundly influenced by a number of powerful new movements; academics and activists alike are rethinking the interaction between law and society, focusing more on the tangible effects of law on human lives than on its procedural elements. In this wide-ranging and comprehensive volume, Gary Minda surveys the current state of legal scholarship and activism, providing an indispensable guide to the evolution of law in America.

This Major Reference series brings together a wide range of key international articles in law and legal theory. Many of these essays are not readily accessible, and their presentation in these volumes will provide a vital new resource for both research and teaching. Each volume is edited by leading international authorities who explain the significance and context of articles in an informative and complete introduction.

A Theory of African Constitutionalism asks and seeks to answer why we need a new theoretical framework for African constitutionalism and how this could offer us better theoretical and practical tools with which to understand, improve, and assess African constitutionalism on its own terms. By locating constitutional studies in Africa within the experiences, interactions, and contestations of power and governance beginning in precolonial times, the book presents the development and transformation of African constitutional systems across time and place, along with the attendant constitutional designs and practices ranging from the nature and operation of the African state to its vertical and horizontal government structures, to its constitutional rights regime. This title offers both a theoretically and comparatively rich, historically and contextually informed, and temporally and spatially extensive account of the nature, travails, and incremental successes of African constitutionalism with detailed case studies from Nigeria, Ethiopia, and South Africa. A Theory of African Constitutionalism provides scholars, policymakers, governments, and constitution builders in Africa and beyond with new insights for reimagining the purpose, substance, and scope of constitutions and constitutionalism.

In the wake of apartheid, Law and Sacrifice draws on the uniquely expansive protection of fundamental rights now entrenched in the South African Constitution to outline a new theory of law. The South African Constitution not only protects the rights of people against abuses of power by the state, but also against abuses of power by private legal subjects. Drawing upon the work of contemporary thinkers such as Martin Heidegger, Hannah Arendt, George Bataille, Jacques Derrida Emmanuel Levinas and Jean-Luc Nancy, the author elicits the radical democratic potential of this 'horizontal' notion of rights. Johan van der Walt argues that apartheid must be understood as more than a racist abuse of power, and here he articulates its 'sacrificial logic'. It is in going beyond this logic, he maintains, that the truly democratic potential of the South African Constitution can be understood: in a radical formal and substantive equality that offers the legal basis for rethinking a post-apartheid future. Combining a rigorous theoretical understanding with a subtle political engagement, Law and Sacrifice is a dazzling interrogation of the limits and possibilities of democratic pluralism. It will be of interest to political and legal theorists as well as to those who are concerned with South African law and politics.

Focusing on contemporary debates in philosophy and legal theory, this ground-breaking book provides a compelling enquiry into the nature of human dignity. The author not only illustrates that dignity is a concept that can extend our understanding of our environmental impacts and duties, but also highlights how our reliance on and relatedness to the environment further extends and enhances our understanding of dignity

itself.
Moral problems, argues Professor Raymond Wacks, pervade the legal system, and he shows how the judicial function, the sources of legitimacy, and the protection of rights have an inescapable ethical dimension. The second part of the book focuses on the private domain and the legal concept of privacy. The extent to which the law ought to preserve a distinctly private realm is a pressing concern in our surveillance society in which personal information is increasingly collected, transferred, and stored. This controversial and difficult subject is one into which Professor Wacks, a leading expert in this field, is uniquely qualified to offer important insights.
Contents P. Capps: Positivism in Law and International Law D. von Daniels: Is Positivism a State Centered Theory? K. E. Himma: Legal Positivism's Conventionality Thesis and the Methodology of Conceptual Analysis R. Nunan: A Modest Rehabilitation of the Separability Thesis A. Oladosu: Choosing Legal Theory on Cultural Grounds: An African Case for Legal Positivism C. Orrego: Hart's Last Legal Positivism: Morality Might Be Objective; Legality Certainly is Not M. Pavcnik: Die (Un)Produktivitat der Positivistischen Jurisprudenz M. Haase: The Hegelianism in Kelsen's Pure Theory of Law S. Papaefthymiou: The House Kelsen Built U. J. Pak: Legal Practitioners' Need of Reflective Application of Legal Philosophy in Korea U. Schmill: Jurisprudence and the Concept of Revolution D. Venema: Judicial Discretion: a Necessary Evil? J. Baker: Rights, Obligations, and Duties, and the Intersection of Law, Conventions and Morals S. Bertea: Legal Systems' Claim to Normativity and the Concept of Law J. Dalberg-Larsen: On the Relevance of Habermas and Theories of Legal Pluralism for the Study of Environmental Law A. Philippopoulos-Mihalopoulos: A Connection of No-Connection in Luhmann and Derrida
Right from the enslavement era through to the colonial and contemporary eras, Africans have been denied their human essence – portrayed as indistinct from animals or beasts for imperial burdens, Africans have been historically dispossessed and exploited. Postulating the theory of global jurisprudential apartheid, the book accounts for biases in various legal systems, norms, values and conventions that bind Africans while affording impunity to Western states. Drawing on contemporary notions of animism, transhumanism, posthumanism and science and technology studies, the book critically interrogates the possibility of a jurisprudence of anticipation which is attentive to the emergent New World Order that engineers ‘human beings to become nonhumans’ while ‘nonhumans become humans’. Connecting discourses on decoloniality with jurisprudence in the areas of family law, environment, indigenisation, property, migration, constitutionalism, employment and labour law, commercial law and Ubuntu, the book also juggles with emergent issues around Earth Jurisprudence, ecocentrism, wild law, rights of nature, Earth Court and Earth Tribunal. Arguing for decoloniality that attends to global jurisprudential apartheid., this tome is handy for legal scholars and practitioners, social scientists, civil society organisations, policy makers and researchers interested in transformation, decoloniality and Pan-Africanism.
How should disability justice be conceptualised, not by orthodox human rights or capabilities approaches, but by a legal philosophy that mirrors an African relational community ideal? This book develops the first comprehensive answer to this question through the contemporary literature on African philosophy, which is relied upon to construct a legal philosophy of disability justice comprising of ethical ideals of community, human relationships and obligations. From these ideals, an African legal philosophy of disability justice is offered as a criterion for critically evaluating existing laws, legal and political institutions, as well as providing an ethical basis for creating new ones to ensure that they are inclusive to people with disabilities. In taking an alternative perspective on the subject, the book outlines and emphasises the need for a new public culture of obligations owed to people with disabilities, highlighting both the prospects and difficulties of achieving the ideal of disability justice that continues to elude the lived experiences of millions of Africans today. Oche Onazi's An African Path to Disability Justice is the first book-length exploration of disability in the light of African ethics, as contrasted with the human rights and capabilities frameworks. Of particular interest are Onazi's thoughtful reflections on how various conceptions of community salient in African moral philosophy—including group-based, reciprocal and relational—bear on what we owe to the disabled. --Thaddeus Metz, Distinguished Professor, University of Johannesburg
This innovative book looks at the topic of migration through the prism of law and literature. The author uses a rich mix of novels, short stories, literary realism, human rights and comparative literature to explore the experiences of African migrants and asylum seekers. The book is divided into two. Part one is conceptual and focuses on art activism and the myriad ways in which people have sought to 'write justice.' Using Mazrui's diasporas of slavery and colonialism, it then considers histories of migration across the centuries before honing in on the recent anti-migration policies of western states. Achiume is used to show how these histories of imposition and exploitation create a bond which bestows on Africans a “status as co-sovereigns of the First World through citizenship.” The many fictional examples of the schemes used to gain entry are set against the formal legal processes. Attention is paid to life post-arrival which for asylum seekers may include periods in detention. The impact of the increased hostility of receiving states is examined in light of their human rights obligations. Consideration is paid to how Africans navigate their post-migration lives which includes reconciling themselves to status fracture-taking on jobs for which they are over-qualified, while simultaneously dealing with the resentment borne of status threat on the part of the citizenry. Part two moves from the general to consider the intersections of gender and status focusing on women, LGBTI individuals and children. Focusing on their human rights and the fictional literature, chapter four looks at women who have been trafficked as well as domestic workers and hotel maids while chapter five is on LGBTI people whose legal and literary stories are only now being told. The final substantive chapter considers the experiences of children who may arrive as unaccompanied minors. Using a mixture of poetry and first person accounts, the chapter examines the post-arrival lives of children, some of whom may be citizens but who are continually made to feel like outsiders. The conclusion follows, starting with two stories about walls by Hadero and Lanchester which are used to illustrate the themes discussed in the book. Few African lawyers write about literature and few books and articles in Western law and literature look at books by or about Africans, so a book that engages with both is long overdue. This book provides fascinating reading for academics, students of law, literature,

gender and migration studies, and indeed the general public.
The book reconciles the conflicts and legal ambiguities between African Union and ECOWAS law on the use of force on the one hand, and the UN Charter and international law on the other hand. In view of questions relating to African Union and UN relationship in the maintenance of international peace and security in Africa in recent years, the book examines the legal issues involved and how they can be resolved. By explaining the legal theory underpinning the validity of the AU-ECOWAS laws, the work provides a legal basis for the adoption of the AU-ECOWAS laws as the frameworks for the implementation of the R2P in Africa.
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